

FEDERAL TRADE COMMISSION DECISIONS



FINDINGS, ORDERS, AND STIPULATIONS

JULY 1, 1944 TO DECEMBER 31, 1944

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**MEMBERS OF THE FEDERAL TRADE COMMISSION AS OF
DECEMBER 31, 1944**

ROBERT E. FREER, *Chairman.*

 Took oath of office August 26, 1935, and September 19, 1938.¹ Reappointment for second term confirmed January 28, 1939.

GARLAND S. FERGUSON.

 Took oath of office November 14, 1927,¹ January 9, 1928, September 26, 1934,¹ and February 9, 1935.² Reappointment for third term confirmed July 15, 1941.

CHARLES H. MARCH.

 Took oath of office February 1, 1929, and August 27, 1935.² Reappointment for third term confirmed September 10, 1942.

EWIN L. DAVIS.

 Took oath of office May 26, 1933, and August 31, 1939.²

WILLIAM A. AYRES.

 Took oath of office August 23, 1934, and September 24, 1940.²

OTIS B. JOHNSON, *Secretary.*

 Took oath of office August 7, 1922.

¹ Recess appointment.

² Second term.

ACKNOWLEDGMENT

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



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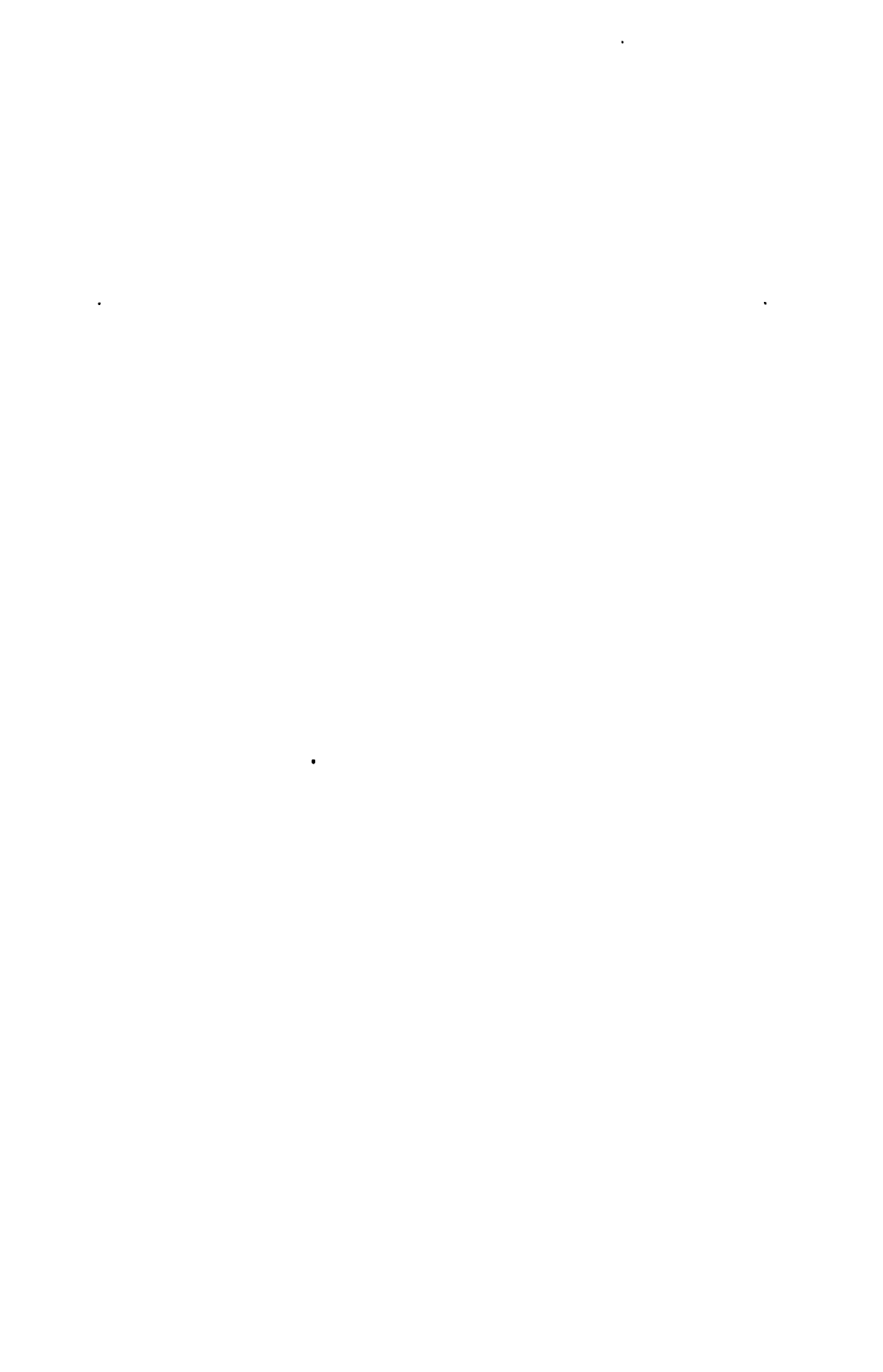
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Abbreviations: S. C. =U. S. Supreme Court; C. C. A. =Circuit Court of Appeals; S. C. of D. C. =Supreme Court of the District of Columbia (changed on June 25, 1936, to District Court of the U. S. for the District of Columbia, and identified by abbreviation D. C. of D. C.); C. A. of (or for) D. C. =U. S. Court of Appeals for the District of Columbia (prior to June 7, 1934, Court of Appeals of the District of Columbia); D. C. =District Court. Hyphenated numbers refer to volume and page of the F. T. C. Reports, the number preceding the hyphen denoting the volume, the numbers following, the page. Citations, such as 1 S. & D.—, 2 S. & D.—, or 3 S. & D.—, refer respectively to the volume and page of the three volumes of Commission publications entitled "Statutes and Decisions—Federal Trade Commission, 1914-1929," "Statutes," etc., "1930-1938," and "Statutes," etc., "1939-1943," in which are published Commission court decisions for said periods.

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¹ Interlinear citations are to the reports of the National Reporter System and to official United States Supreme Court Reports in those cases in which the proceeding, or proceedings as the case may be, have been there reported. Such cases do not include the decisions of the Supreme Court of the District of Columbia, nor, in all cases, some of the other proceedings set forth in the above table, and described or reported in the Commission's Decisions and the Commission publications entitled "Statutes and Decisions—1914-1929," "Statutes and Decisions—1930-1938," and "Statutes and Decisions—1939-1943," which also include cases here involved, for their respective periods.

The two earlier 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. As above noted, they are respectively referred to as 1 S. & D.—, 2 S. & D.—, and 3 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 2 S. & D. 487.

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³ Interlocutory order. See also 1 S. & D. 721.

⁴ For interlocutory order, see "Memoranda," 28-1965 or 2 S. & D. 485.

⁵ For interlocutory matter, see "Memoranda," 28-1968 or 2 S. & D. 489.

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* For interlocutory order, see "Memoranda," 20-744 or 1 S. & D. 720.

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⁸ Interlocutory order. See 1 S. & D. 722.

⁹ For interlocutory order, see "Memoranda," 20-743 or 1 S. & D. 716.

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¹⁰ For interlocutory order, see "Memoranda," 20-744 or 1 S. & D. 719.

¹¹ For interlocutory order, see "Memoranda," 20-744 or 1 S. & D. 718.

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¹³ For final decree of Supreme Court of the District of Columbia, see footnote, 3-542 et seq., 1 S. & D. 190.

¹⁴ For interlocutory order, see "Memoranda," 28-1966 or 2 S. & D. 435.

¹⁵ For interlocutory order, see "Memoranda," 20-744 or 1 S. & D. 720.

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¹⁸ For interlocutory matter, see "Memoranda," 28-1954, or 2 S. & D. 485.

¹⁹ For interlocutory order, see "Memoranda," 20-746, or 1 S. & D. 724.

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¹⁷ For interlocutory order, see "Memoranda," 28-1968 or 2 S. & D. 489.

¹⁸ For certain prior interlocutory proceedings, see also "Memoranda," 28-1967 or 2 S. & D. 488

¹⁹ For interlocutory order, see "Memoranda," 20-745 or 1 S. & D. 722.

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²⁰ For interlocutory order, see "Memoranda," 20-745 or 1 S. & D. 723.

²¹ For interlocutory order, see "Memoranda," 20-745 or 1 S. & D. 721.

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²² For interlocutory order, see "Memoranda," 20-744 or 1 S. & D. 721.

²³ For order of the Supreme Court of the District of Columbia, denying petition for writ of mandamus etc., see "Memoranda," 20-742 or 1 S. & D. 704.

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March of Time Candies, Inc.....	(C. C. A.) 29-1557; 3 S. & D. 116.
104 F. (2d) 999.	
Marietta Mfg. Co.....	(C. C. A.) 15-613; 2 S. & D. 129.
50 F. (2d) 641.	
Marshall Field & Co., et al.....	(C. C. A.) 32-1886; 3 S. & D. 371.
Martha Beasley Associates (J. V. Cordes et al.)..	(D. C.) 29-1621; 3 S. & D. 635.
Martoccio Co., F. A. (Hollywood Candy Co.)....	(C. C. A.) 24-1608; 2 S. & D. 381.
87 F. (2d) 561.	
Masland Durable Leather Co., et al.....	(C. C. A.) 13-567; 1 S. & D. 1155.
34 F. (2d) 733.	
Mayers Co., Inc., L. & C.....	(C. C. A.) 27-1675; 2 S. & D. 460.
97 F. (2d) 365.	
Maynard Coal Co. ²⁴	(S. C. of D. C.) 3-555; 1 S. & D.
	60; 6-575; 1 S. & D. 294; (C. A.
22 F. (2d) 873.	of D. C.) 11-698; 1 S. & D. 647.
May's Cut Rate Drug Co.....	(D. C.) 30-1713; 3 S. & D. 676.
May's Cut Rate Drug Co. of Charleston.....	(D. C.) 30-1710; 3 S. & D. 674.
McAfee Candy Co., etc. (Joe B. Hill et al.).....	(C. C. A.) 34-1800; 3 S. & D. 436.
124 F. (2d) 104.	
McKewen, George Earl, et al. (Herbal Medicine Co.).	(D. C.) 31-1913; 3 S. & D. 726.
McKinley-Roosevelt College of Arts and Sciences.	(C. C. A.) 32-1878; 3 S. & D. 364.
McLean & Son, A., et al.....	(C. C. A.) 22-1149; 2 S. & D. 347;
84 F. (2d) 910; 94 F. (2d) 802.	26-1501; 2 S. & D. 439; 31-1828;
	3 S. & D. 261.
Mells Manufacturing Co., U. S. v.....	(D. C.) 32-1907; 3 S. & D. 726.
Melster Candy Co., U. S. v.....	(D. C.) 36-1173; 3 S. & D. 734.
Mennen Co. ²⁵	(C. C. A.) 6-579; 1 S. & D. 298.
288 Fed. 774.	
Mentho-Mulsion, Inc., et al.....	(C. C. A.) 32-1868; 3 S. & D. 355.
Merit Health Appliance Co. (George S. Mogilner et al.).	(D. C.) 32-1900; 3 S. & D. 715.
Mid West Mills, Inc.....	(C. C. A.) 25-1688; 2 S. & D. 407.
90 F. (2d) 723.	
Mid-West Portrait Service, etc. (Cornelius P. Van Schaack, Jr.), U. S. v.....	(D. C.) 36-1171; 3 S. & D. 732.
Mid-West Sales Syndicate, etc. (Cornelius P. Van Schaack, Jr.), U. S. v.....	(D. C.) 36-1171; 3 S. & D. 732.
Midwest Studios, Inc., U. S. v.....	(D. C.) 34-1869; 3 S. & D. 729.
Miles Laboratories, Inc.....	(D. C. of D. C.) 36-1148; 3 S. & D.
50 F. Supp. 434; 140 F. (2d) 683.	575; (C. A. of D. C.) 38-836.

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 1 S. & D., footnote, 650.

²⁵ For interlocutory order, see "Memoranda," 20-743 or 1 S. & D. 715.

XXXII FEDERAL TRADE COMMISSION DECISIONS

Miller Co., Charles N.....	(C. C. A.) 27-1678; 2 S. & D. 464.
97 F. (2d) 563.	
Miller Drug Co.....	(D. C.) 31-1908; 3 S. & D. 706.
Miller, Ward J. (Amber-Ita).....	(C. C. A.) 21-1223; 2 S. & D. 329.
Millers National Federation, et al.....	(S. C. of D. C.) 10-739; 1 S. & D. 554; (C. A. of D. C.) 11-705; 1 S. & D. 654; (S. C. of D. C.) 14-675 (footnote); (C. A. of D. C.) 14-712; 2 S. D. 110.
23 F. (2d) 968; 47 F. (2d) 428.	
Millinery Creators' Guild Inc., et al.....	(C. C. A.) 30-1619; 3 S. & D. 175; (S. C.) 32-1865; 3 S. & D. 352.
109 F. (2d) 175; 312 U. S. 469 (61 S. Ct. 708).	
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; 1 S. & D. 193; 10-687; 1 S. & D. 502.
280 Fed. 45; 13 F. (2d) 673.	
Minter Brothers, etc.....	(C. C. A.) 28-1885; 3 S. & D. 51.
102 F. (2d) 69.	
Mishawaka Woolen Mfg. Co.....	(C. C. A., S. C.) 5-557; 1 S. & D. 238.
283 Fed. 1022; 260 U. S. 748 (43 S. Ct. 247).	
M. J. Holloway & Co., et al.....	(C. C. A.) 22-1149; 2 S. & D. 347, 439; 31-1829; 3 S. & D. 263.
84 F. (2d) 910.	
Modern Hat Works (Jacob Schachnow).....	(C. C. A.) 32-1875; 3 S. & D. 361.
Modernistic Candies, Inc., et al.....	(C. C. A.) 39-709.
145 F. (2d) 454.	
Mogilner, George S., et al. (Merit Health Appliance Co.).....	(D. C.) 32-1900; 3 S. & D. 715.
Moir, John, et al. (Chase & Sanborn) ²⁷	(C. C. A.) 10-674; 1 S. & D. 489.
12 F. (2d) 22.	
Montebello Distillers, Inc., U. S. v.....	(D. C.) 32-1908; 3 S. & D. 726.
Moretrench Corp.....	(C. C. A.) 34-1849; 3 S. & D. 480.
127 F. (2d) 792.	
Morrissey & Co., Chas. T., etc.....	(C. C. A.) 14-710; 2 S. & D. 113.
47 F. (2d) 101.	
Morton Salt Co.....	(C. C. A.) 30-1666; 3 S. & D. 215.
Motor Equipment Specialty Co. (Hiram Barber), U. S. v.....	(D. C.) 36-1174; 3 S. & D. 734.
Muller & Co., E. B., et al.....	(C. C. A.) 38-868.
142 F. (2d) 511.	
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; 2 S. & D. 337.
National Biscuit Co. ²⁸	(C. C. A.) 7-603; 1 S. & D. 345; (D. C.) 24-1618; 2 S. & D. 390.
299 Fed. 733; 18 F. Supp. 667.	
National Biscuit Co., U. S. v.....	(D. C.) 27-1697; 2 S. & D. 477.
25 F. Supp. 329.	
National Candy Co.....	(C. C. A.) 29-1557; 3 S. & D. 116.
104 F. (2d) 999.	
National Harness Mfrs. Assn.....	(C. C. A.) 4-539; 1 S. & D. 47; 3-570; 1 S. & D. 86.
261 Fed. 170; 268 Fed. 705.	
National Kream Co., Inc., and National Foods, Inc. (C. C. A.) 27-1681; 2 S. & D. 466.	

²⁶ For interlocutory order, see "Memoranda," 20-744 or 1 S. & D. 714

²⁷ For interlocutory order, see "Memoranda," 20-744 or 1 S. & D. 718

²⁸ For interlocutory order, see "Memoranda," 20-743 or 1 S. & D. 716

TABLE OF COURT CASES IN VOLUMES 1-39, INCLUSIVE XXXIII

National Merchandising Co., etc. (Perce P Green et al.)	(D. C.) 35-958; 3 S. & D. 510.
National Optical Stores Co. et al.	(D. C.) "Memoranda" 28-1970.
National Press Photo Bureau, Inc. et al.	(C. C. A.) 37-799; 3 S. & D. 594.
National Silver Co.	(C. C. A.) 24-1627; 2 S. & D. 399;
88 F. (2d) 425.	28-1957; 3 S. & D. 109; 30-1675;
	3 S. & D. 223.
National Supply Co., etc. (Perce P. Green et al.)	35-958; 3 S. & D. 510.
Neff, George G. (Prostex Co.)	(C. C. A.) 32-1842; 3 S. & D. 332.
117 F. (2d) 495.	
New Jersey Asbestos Co.	(C. C. A.) 2-553; 1 S. & D. 51.
264 Fed. 509.	
New York Premium Novelty Co. (Alexander Weiler et al.)	(C. C. A.) 34-1789; 3 S. & D. 426.
Nitke, Samuel	(C. A. of D. C.) 34-1840; 3 S. & D. 472.
Non-Plate Engraving Co. ²⁹	(C. C. A.) 15-597; 2 S. & D. 115.
49 F. (2d) 766.	
Norden Ship Supply Co., Inc., et al. (Winslow et al.)	(C. C. A.) 4-578; 1 S. & D. 166.
277 Fed. 206.	
Normandie et Cie (John H. Davis et al.)	(C. C. A.) 34-1833; 3 S. & D. 465
Northam Warren Corp.	(C. C. A.) 16-687; 2 S. & D. 187.
59 F. (2d) 196.	
Nulomoline Co.	(C. C. A.), footnote, 3-542; 1 S. & D. 35; "Memoranda," 20-740.
254 Fed. 988.	
Oberlin, Robert C. (Research Products Co.)	(D. C.) 29-1626; 3 S. & D. 640.
Ohio Leather Co. ³⁰	(C. C. A.) 4-699; 1 S. & D. 724.
45 F. (2d) 39.	
Oliver Brothers, Inc., et al.	(C. C. A.) 28-1926; 3 S. & D. 86.
102 F. (2d) 763	
Omega Manufacturing Co., Inc., et al.	(D. C.) 30-1717; 3 S. & D. 679.
Oppenheim, Collins & Co., Inc., U. S. v.	(D. C.) 33-1833; 3 S. & D. 729.
Oppenheim, Oberndorf & Co. (Sealpax Co.) ³¹	(C. C. A.) 9-629; 1 S. & D. 409.
5 F. (2d) 574.	
Ostermoor & Co., Inc. ³²	(C. C. A.) 11-642; 1 S. & D. 589.
16 F. (2d) 962.	
Ostler Candy Co.	(C. C. A.) 29-1584; 3 S. & D. 139.
106 F. (2d) 962.	
Ozment, C. J., etc.	(C. C. A.) 22-1135; 2 S. & D. 335.
Pacific States Paper Trade Assn. et al.	(C. C. A.) 8-608; 1 S. & D. 384;
4 F. (2d) 457; 273 U. S. 52 (47 S. Ct. 255);	(S. C.) 11-636; 1 S. & D. 583;
88 F. (2d) 1009.	(C. C. A.) 24-1631; 2 S. & D. 402.
Page Co., Inc., The E. R., U. S. v.	(D. C.) 36-1175; 3 S. & D. 734.
Paramount Famous-Lasky Corp. ³³	(C. C. A.) 16-660; 2 S. & D. 161.
57 F. (2d) 152.	
Parfums Corday, Inc.	(C. C. A.) 33-1797; 3 S. & D. 392.
120 F. (2d) 808.	

²⁹ For interlocutory order, see "Memoranda," 28-1965 or 2 S. & D. 485.

³⁰ For interlocutory order, see "Memoranda," 20-745 or 1 S. & D. 724.

³¹ For interlocutory order, see "Memoranda," 20-743 or 1 S. & D. 717.

³² For interlocutory order, see "Memoranda," 20-744 or 1 S. & D. 720.

³³ For interlocutory order, see "Memoranda," 28-1967 or 2 S. & D. 487.

Park, Inc., Philip R. et al.....	(C. C. A.) 36-1155; 3 S. & D. 581; 136 F. (2d) 428.
Parke, Austin & Lipscomb, Inc., et al.....	(C. C. A.) 38-828. 142 F. (2d) 437.
Pearsall Butter Co., B. S. ⁴⁴	(C. C. A.) 6-605; 1 S. & D. 324. 292 Fed. 720.
Pease Co., C. F., et al.....	(C. C. A.) 38-840. 142 F. (2d) 321.
Pep Boys—Manny, Moe & Jack, Inc.....	(C. C. A.) 33-1807; 3 S. & D. 401. 122 F. (2d) 158.
Perfect Reconditioned Spark Plug Co., The, et al.	(C. C. A.) 32-1891; 3 S. & D. 375.
Perfect Voice Institute et al.....	(C. C. A.) 35-975; 3 S. & D. 524.
Perma-Maid Co., Inc.....	(C. C. A.) 33-1803; 3 S. & D. 397. 121 F. (2d) 282.
Peterson, W. H., et al.....	(C. C. A.) 34-1789; 3 S. & D. 426. 124 F. (2d) 187.
Petrie, John (B-X Laboratories and Purity Products Co.), U. S. v.	(D. C.) 29-1643; 30-1727; 3 S. & D. 723.
Phelps Dodge Refining Corp. et al.....	(C. C. A.) 37-828; 3 S. & D. 621. 139 F. (2d) 393.
Philip Carey Mfg. Co. et al.....	(C. C. A.) 12-726; 1 S. & D. 687. 29 F. (2d) 49.
Philip R. Park, Inc. et al.....	(C. C. A.) 36-1155; 3 S. & D. 581. 136 F. (2d) 428.
Pioneer Advertising Co., etc, (Cornelius P. Van Schaack, Jr.), U. S. v.	(D. C.) 36-1171; 3 S. & D. 732.
Pittsburgh Cut Rate Drug Co.....	(D. C.) 30-1707; 3 S. & D. 671.
Piuma, U. S. v. ⁴⁵	(D. C.) 33-1827; 3 S. & D. 412. 40 F. Supp. 119; 126 F. (2d) 601. 728; (C. C. A.) 34-1837; 3 S. & D. 468.
Plantation Chocolate Co., Inc., U. S. v.....	(D. C.) 32-1908; 3 S. & D. 727.
Pond's Extract Co.....	(C. C. A.) 36-1101; 3 S. & D. 534.
Positive Products Co., etc. (Earl Aronberg).....	(D. C.) 29-1634; 3 S. & D. 647; 132 F. (2d) 165.
Post Institute Sales Corp., et al.....	(C. C. A.) 35-979; 3 S. & D. 528. (C. C. A.) 39-693.
Powe Lumber Co., Thos. E.....	(C. C. A.), footnote, 16-684; "Memoranda," 20-739.
Poy, Fong, et al.....	(C. C. A.) 34-1790; 3 S. & D. 427. 124 F. (2d) 398.
Premium Sales Co., etc. (Mitchell A. Bazelon et al.)	(C. C. A.) 34-1806; 3 S. & D. 441.
Procter & Gamble Co. et al.....	(C. C. A.) 10-661; 1 S. & D. 475. 11 F. (2d) 47.
Progressive Medical Co., etc. (Blanche Kaplan)...	(D. C.) 30-1690; 3 S. & D. 656.
Prostex Co. (George G. Neff).....	(C. C. A.) 32-1842; 3 S. & D. 332. 117 F. (2d) 495.
Pure Silk Hosiery Mills, Inc.....	(C. C. A.) 8-595; 1 S. & D. 371. 3 F. (2d) 105.
Q. R. S. Music Co. ⁴⁶	(C. C. A.) 10-683; 1 S. & D. 498. 12 F. (2d) 730.
Quality Bakers of America et al.....	(C. C. A.) 31-1858; 3 S. & D. 287. 114 F. (2d) 393.

⁴⁴ For interlocutory order, see "Memoranda," 20-743 or 1 S. & D. 716.

⁴⁵ For interlocutory order, see "Memoranda," 20-744 or 1 S. & D. 710.

TABLE OF COURT CASES IN VOLUMES 1-39, INCLUSIVE XXXV

Queen Anne Candy Co. et al.....	(C. C. A.) 22-1149; 2 S. & D. 347; 84 F. (2d) 910.	31-1832; 3 S. & D. 265.
Queen Chemical Co. (Charles Shrader).....	(D. C.) 32-1904; 3 S. & D. 718.	
Rabhor Co., Inc., The.....	(C. C. A.) 34-1847; 3 S. & D. 477.	
Radio Wire Television, Inc., of New York et al....	(C. C. A.) 31-1882; 3 S. & D. 309.	
Raladam Co. ³⁶	(C. C. A.) 14-683; 2 S. & D. 81; 42 F. (2d) 430; 51 F. (2d) 587; 283 U. S. 643	(S. C.) 15-598; 2 S. & D. 116; (C. C. A.) 33-1820; 3 S. & D. 417; (S. C.) 34-1843; 3 S. & D. 474.
(51 S. Ct. 587); 123 F. (2d) 34; 316 U. S. 149		
(62 S. Ct. 966).		
Rand, Howard, et al. (Green Supply Co., etc.)....	(D. C.) 35-958; 3 S. & D. 510.	
Raymond Bros.-Clark Co.....	(C. C. A.) 4-625; 1 S. & D. 212; 280 Fed. 529; 263 U. S. 565 (44 S. Ct. 162).	(S. C.) 7-594; 1 S. & D. 336.
Real Products Corp. et al.....	(C. C. A.) 25-1685; 2 S. & D. 404.	
90 F. (2d) 617.		
Reed's Cut Rate Drug Store, etc. (Lenard Gotlieb	(D. C.) 31-1885; 3 S. & D. 686.	
et al.).		
Reliable Premium House, etc. (Harry Froman)...	(C. C. A.) 38-893.	
Republic Iron & Steel Co.....	(D. C.) (S. C. of D. C.), footnote, 3-543.	
Research Products Co. (Robert C. Oberlin).....	(D. C.) 29-1626; 3 S. & D. 640.	
Retonga Medicine Co., U. S. v.....	(D. C.) 38-935.	
Rex Products Co., etc. (Earl Aronberg).....	(D. C.) 29-1634; 3 S. & D. 528; 132 F. (2d) 165.	(C. C. A.) 35-979; 3 S. & D. 647.
Ritholz, Benjamin D., et al.....	(C. C. A.) 22-1145; 2 S. & D. 334; 105 F. (2d) 937.	(D. C. of D. C.) 27-1696; 3 S. & D. 475; (C. A. of D. C.) 29- 1569; 3 S. & D. 126.
Rittenhouse Candy Co. (Sol Block et al.).....	(C. C. A.) 26-1497; 2 S. & D. 436.	
Rock, Monica M.....	(C. C. A.) 32-1845; 3 S. & D. 335.	
117 F. (2d) 680.		
Rogers Candy Co.....	(C. C. A.) 28-1894; 3 S. & D. 59.	
101 F. (2d) 718.		
Ron-Al Medicine Co., Dr., etc. (Irving Sofronski).	(D. C.) 29-1624; 3 S. & D. 638.	
Royal Baking Powder Co. ³⁷	(C. C. A.) 4-614; 1 S. & D. 202, 281 Fed. 744; 32 F. (2d) 966.	715; (S. C. of D. C.) 11-677, 701; 1 S. & D. 624, 650, 651, 703; (C. A. of D. C.) 12-740; 1 S. & D. 701.
Royal Milling Co. et al. ³⁸	(C. C. A.) 16-679; 2 S. & D. 180; 58 F. (2d) 581; 288 U. S. 212 (53 S. Ct. 335).	(S. C.) 17-664; 2 S. & D. 217.
R. T. Vanderbilt Co., Inc., et al., U. S. v.....	(D. C.) 38-935.	
Ryan Candy Co. (Southern Premium Manufactur-	(C. C. A.) 22-1143; 2 S. & D. 342.	
ing Co., etc.)		
83 F. (2d) 1008.		

³⁶ For interlocutory order of lower court, see "Memoranda," 28-1966 or 2 S. & D. 486.

³⁷ For interlocutory order in proceeding terminating in decision in 281 Fed. 744 (4-614), see "Memoranda," 20-743 or 1 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 1 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 1 S. & D. 703, 704.

³⁸ For interlocutory order of lower court, see "Memoranda," 28-1966 or 2 S. & D. 486.

XXXVI FEDERAL TRADE COMMISSION DECISIONS

Saks & Co.....	(C. C. A.) 32-1877; 3 S. & D. 363.
Salt Producers Ass'n et al.....	(C. C. A.) 36-1110; 3 S. & D. 542. 134 F. (2d) 354.
Sanders, Peter, et al. (The Perfect Reconditioned Spark Plug Co.)	(C. C. A.) 32-1891; 3 S. & D. 375.
Savage Candy Co.....	(C. C. A.) 25-1705; 2 S. & D. 421. 92 F. (2d) 1003.
Schachnow, Jacob (Modern Hat Works).....	(C. C. A.) 32-1875; 3 S. & D. 361.
Scientific Manufacturing Co. Inc., et al.....	(C. C. A.) 34-1793; 3 S. & D. 430. 124 F. (2d) 640.
Screen Broadcast Corp., et al.....	(C. C. A.) 38-890.
Sea Island Thread Co., Inc.....	(C. C. A.) 11-705; 1 S. & D. 653. 22 F. (2d) 1019.
Sealpax Co. (Oppenheim, Oberndorf & Co.) ⁹⁹	(C. C. A.) 9-629; 1 S. & D. 409. 5 F. (2d) 574.
Sears, Roebuck & Co.....	(C. C. A.) 1-562, 2-536; 1 S. & D. 36. 258 Fed. 307.
Sebrone Co. et al.....	(C. C. A.) 36-1142; 3 S. & D. 570. 135 F. (2d) 676.
Segal Lock & Hardware Co., Inc., et al.....	(C. C. A.) 39-690. 143 F. (2d) 935.
Segal Optical Co.....	(C. C. A.) 38-867. 142 F. (2d) 255.
Sekov Corp., et al.....	(D. C.) 30-1705; 3 S. & D. 669.
Shade Shop, etc., Alfred Klesner doing business under name of, see Klesner, Alfred.	
Shakespeare Co.....	(C. C. A.) 15-609; 2 S. & D. 126. 50 F. (2d) 758.
Shapiro, William, et al.....	(C. C. A.) 35-978; 3 S. & D. 527.
Sheffield Silver Co., Inc.....	(C. C. A.) 27-1689; 2 S. & D. 472; 31-1826; 3 S. & D. 260. 98 F. (2d) 676.
Sherry's Cut Rate Drug Co., Inc.....	(D. C.) 31-1903; 3 S. & D. 701.
Sherwin et al. v. U. S. (Lee, U. S. v.).....	(D. C.); (C. C. A.) footnote, 6-559; 290 Fed. 517; 297 Fed. 704 (affirmed, 268 U. S. 369); 45 S. Ct. 517). 1 S. & D. 1046, 1065.
Shrader, Charles (Queen Chemical Co.).....	(D. C.) 32-1904; 3 S. & D. 718.
Shupe-Williams Candy Co.....	(C. C. A.) 29-1584; 3 S. & D. 139. 106 F. (2d) 962.
Siegel Co., Jacob.....	(C. C. A.) 39-714. 150 F. (2d) 751.
Sifers Confection Co. (H. I. Sifers, etc.).....	(C. C. A.) 22-1147; 2 S. & D. 346. 84 F. (2d) 999.
Signode Steel Strapping Co.....	(C. C. A.) 35-960; 3 S. & D. 511. 132 F. (2d) 48.
Silver Co., L. B.....	(C. C. A.) 6-559, 608; 1 S. & D. 278, 327. 289 Fed. 985; 292 Fed. 752.
Silverman & Associates, J., etc.....	(C. C. A.) 39-704. 145 F. (2d) 751.
Sinclair Refining Co.....	(C. C. A.) 4-552; 1 S. & D. 145; 276 Fed. 686; 261 U. S. 463 (43 S. Ct. 450). (S. C.) 6-587; 1 S. & D. 306.

⁹⁹ For interlocutory order, see "Memoranda," 20-743 or 1 S. & D. 717.

TABLE OF COURT CASES IN VOLUMES 1-39, INCLUSIVE XXXVII

Smith, A. E., et al., and Electric Bond and Share Co.	(D. C.) 13-563; 1 S. & D. 709; 17-637; 2 S. & D. 191.
34 F. (2d) 323; 1 F. Supp. 247.	
Sofronski, Irving (Dr. Ron-Al Medicine Co., etc.).	(D. C.) 29-1624; 3 S. & D. 638.
Southern Hardware Jobbers Assn.....	(C. C. A.) 6-597; 1 S. & D. 316.
290 Fed. 773.	
Southern Premium Manufacturing Co., etc. (Ryan Candy Co.).	(C. C. A.) 22-1143; 2 S. & D. 342.
83 F. (2d) 1008.	
Sowles, M. H.....	(D. C.) "Memoranda" 20-740.
Spicer, William Edgar, et al.....	(C. C. A.) 39-693.
Stadley, Nolan B. (Sterling Appliance Co.).....	(D. C.) 32-1896; 3 S. & D. 712.
Staley Mfg. Co., A. E., et al.....	(C. C. A.) 36-1126; 3 S. & D. 556; 39-677.
135 F. (2d) 453; 144 F. (2d) 221.	
Standard Container Manufacturers' Association, Inc., et al.	(C. C. A.) 32-1879; 3 S. & D. 364.
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⁴¹ For interlocutory order, see "Memoranda," 28-1968 or 2 S. & D. 490.

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⁴² For interlocutory order, see "Memoranda," 20-742 or 1 S. & D. 715.

⁴³ For interlocutory order, see "Memoranda," 20-743 or 1 S. & D. 716.

FINDINGS AND ORDERS, JULY 1, 1944, TO DECEMBER 31, 1944

IN THE MATTER OF

PABST PHARMACEUTICAL COMPANY, INC. DOING
BUSINESS AS PABST CHEMICAL COMPANY

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

Docket 4635. Complaint, Nov. 14, 1941—Decision, July 3, 1944

Social diseases, it is well recognized, should not be submitted to self-treatment by the lay public but, instead, require the supervision of a physician so that proper tests can be made to determine when the organism has been destroyed, and particularly so in the case of treatment sold for gonorrhoea, which tends to diminish the visible symptoms and to lead the user into a false sense of security and the belief that the disease has been cured, since the failure thus to obtain adequate treatment may result in complications, such as prostatic infections and arthritis, and perhaps cause the infection of others.

Where a corporation engaged in interstate sale and distribution of its "Pabst Okay Special"; through statements and advertisements thereof displayed upon mirrors in public places, usually in public or semi-public toilets—

(a) Represented that its preparation constituted a competent and effective treatment for the diseases or conditions of the urinary passage which cause unnatural discharges;

The facts being that, while balsamic drugs, included among its ingredients (the rest of which had diuretic properties), have the ability to lessen and apparently stop the discharge of pus connected with, and symptomatic of, gonorrhoea, with possible recurrence of the discharge when the use of such drugs is discontinued, the ingredients of its preparation had no value in destroying the specific organism of gonorrhoea and consequently could not be considered as either a cure or competent treatment for this disease, and did not constitute a competent or effective treatment for gonorrhoea in women; and while prior to the advent of the sulphadiazole drugs some of such ingredients, particularly the balsamic drugs, were used in the treatment of said condition, but not as a cure, the medical profession generally has discarded the balsamic drugs as being ineffective in favor of some of the new sulfonamide compounds, such as sulfathiazole, which have been proven to be cures for the disease and which effectively destroy the specific organism causing it; and

(b) Failed to reveal that use of such treatment, which tends to diminish the visible symptoms of the disease, leads the user into a false sense of security and may result in complications for him and infection of others;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said preparation was a competent

treatment for diseases and infections of the urinary passage, including gonorrhea, and thereby to induce it to purchase its said preparation:

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

Before *Mr. Edward E. Reardon* and *Mr. John P. Bramhall*, trial examiners.

Mr. L. E. Creel, Jr., *Mr. Merle P. Lyon* and *Mr. Clark Nichols* for the Commission.

Mr. Daniel R. Forbes, 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 Pabst Pharmaceutical Co., Inc., a corporation, doing business under the name and style of Pabst Chemical Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Pabst Pharmaceutical Co., Inc., doing business under the name and style of Pabst Chemical Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1115 North Franklin Street, Chicago, Ill.

PAR. 2. Respondent is now and for several years last past has been engaged in the business of compounding, selling and distributing a medicinal preparation known and described as "Pabst Okay Special" in commerce between and among various States of the United States and in the District of Columbia. Respondent causes and has caused said product, when sold, to be transported from Chicago, Ill., to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said preparation in commerce between and among the various States of the United States and in the District of Columbia.

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

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, are the following:

Complaint

Price		Price
\$3.00	The Active Ingredients of PABST OKAY SPECIAL	\$3.00

have been used for many years

WITH SATISFACTORY RESULTS

by physicians as part of their treatment in unnatural discharges due to infection of the urinary passage in both NEW CASES AND THOSE OF LONG STANDING. To be taken internally. No inconvenience or detention from business.

For sale by (Name and address of drug store.)
and all first class drug stores everywhere.

PAR. 4. Through the use of the representations hereinabove set forth and others similar thereto not specifically set out herein, respondent represents that the active ingredients of its said preparation have been and are used by physicians generally with satisfactory results in the treatment and cure of all infections of the urinary passage and that the use of its preparation constitutes a competent treatment for all diseases and infections of the urinary passage.

PAR. 5. In truth and in fact the statements and representations of respondent hereinabove set out, and others similar thereto, are false and misleading. The active ingredients of respondent's said preparation are no longer used by physicians generally in the treatment of infections of the urinary passage and have not produced satisfactory results when used in the treatment of said infections. Respondent's preparation is not a competent treatment or cure for any diseases or infections of the urinary passage.

PAR. 6. The true facts are that the principal ingredients of respondent's preparation are Balsam Copaiba, Sandalwood Oil, Sweet Spirits of Nitre, Oil of Pennyroyal, Fluid Extract of Cubebs, Fluid Extract of Juniper Berries and Fluid Extract of Uva Urisi. Many years ago some physicians used some of the ingredients of respondent's preparation in the treatment of the infection of the urinary tract known as gonorrhea. However, the use of these drugs has long since been discontinued by reputable members of the medical profession and informed medical opinion recognizes at the present time that these drugs have no therapeutic value in the treatment of any of the diseases or ailments of the urinary tract. Modern scientists have now developed various drugs which are in fact specific remedies for many of the diseases of the urinary passage, including gonorrhea.

PAR. 7. Over a period of many years respondent has extensively advertised its product under the name "Pabst Okay Specific" and later under the name "Pabst Okay Special" as being a competent treatment and cure for infections and diseases of the urinary passage. Because of such widespread advertising the names "Pabst Okay Specific" and "Pabst Okay Special" have become identified in the minds of a substantial portion of the public as designating a product which constitutes a competent treatment for the cure of diseases and ailments of the urinary tract generally and particularly, gonorrhea.

PAR. 8. All of respondent's said advertisements are also false in that they fail to reveal all facts material in the light of such representations or material with respect to consequences which may result from the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary and usual, and fail to reveal that the use of said preparation may result in serious and irreparable injury to health of the user. Users of respondent's said preparation suffering from diseases or infections of the urinary tract, including gonorrhea, may, as a result of respondent's failure to reveal essential facts, delay or forego adequate treatment for the diseases or infections from which they are suffering with the result that their conditions may be prolonged and greatly and irrevocably aggravated, and with the further result of grievous and irrevocable injury to their physical, mental and domestic well-being.

PAR. 9. The use by the respondent of the foregoing false and misleading representations, and the use by the respondent of the names "Pabst Okay Specific" and "Pabst Okay Special" 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 preparation is a competent treatment for all diseases and infections of the urinary passage including gonorrhea and to induce a portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's said preparation.

PAR. 10. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 14, 1941, issued and subsequently served its complaint in this proceeding on the respondent, Pabst Chemical Co., a corporation, under the name, style, and description of Pabst Pharmaceutical Co., Inc., a corporation, doing business under the name of Pabst Chemical Co., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint 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 John P. Bramhall upon the evidence, and brief filed in support of the complaint (no brief having been filed by respondent and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest 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, Pabst Chemical Co., was incorporated under the laws of the State of Illinois on December 15, 1931, under the name of Pabst Pharmaceutical Co., Inc., and, from the time of its incorporation, traded under the name of Pabst Chemical Co. On January 22, 1942, the respondent amended its charter by changing its name to Pabst Chemical Co. The office and principal place of business of said respondent are located at 127 South Market Street, Chicago, Ill.

PAR. 2. Since the date of its incorporation the respondent has been engaged in the sale and distribution of a medicinal preparation known and described as "Pabst Okay Special" 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 place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, respondent has disseminated and has caused the dissemination of false advertisements concerning its said product by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and has caused the dissemination of false advertisements concerning its said product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said product in commerce as "commerce" is defined in the Federal Trade Commission Act. 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 are the following statements appearing upon mirrors displayed in public places, usually in public or semipublic toilets:

Price		Price
\$3.00	The Active Ingredients of PABST OKAY SPECIAL have been used for many years WITH SATISFACTORY RESULTS	\$3.00

by physicians as part of their treatment in unnatural discharges due to infection of the urinary passage in both NEW CASES AND THOSE OF LONG STANDING. To be taken internally. No inconvenience or detention from business.

For sale by (Name and address of drug store.)
and all first class drug stores everywhere.

PAR. 4. Through the use of the foregoing statement, respondent represents that its preparation, Pabst Okay Special, constitutes a competent and effective treatment for the diseases or conditions of the urinary passage which cause unnatural discharges. Gonorrhoea is the most common vene-

real disease the manifestations of which include infection of the urinary passage accompanied by unnatural discharge. These infections of the lower urinary tract where one sees pus escaping are usually due to the presence of gonococcus, the specific organism of gonorrhoea.

PAR. 5. Respondent's preparation, Pabst Okay Special, has as its active ingredients balsam copaiba, oil sandalwood, oil copaiba, cubebs, uvauris, juniper berries, matico, and sweet spirits of nitre. The ingredients balsam copaiba, oil sandalwood, and oil copaiba are considered as balsamic drugs. The remaining ingredients have diuretic properties. Prior to the advent of the sulpha drugs, some of the ingredients of respondent's preparation, particularly the balsamic drugs, were used in the treatment of gonorrhoea. These drugs were used, not as a cure for this disease, but for the purpose of reducing the discharge of pus from the lower urinary tract. The balsamic drugs have the ability to lessen and apparently stop the discharge of pus connected with, and symptomatic of, the condition of gonorrhoea, with possible recurrence of the discharge when the use of such drugs is discontinued. The ingredients of respondent's preparation have no curative value in destroying the specific organism of gonorrhoea and consequently cannot be considered as either a cure or competent treatment for this disease. The ingredients of this preparation have no curative effect and do not constitute a competent or effective treatment for gonorrhoea in the female as it cannot remove infection from the small glandular structures, where it colonizes in the female.

The consensus of informed medical opinion is that the ingredients used in respondent's preparation are not competent or effective treatments for gonorrhoea but are limited to the alleviation of the symptoms of pus formation associated with this condition. The disease of gonorrhoea can be cured only by certain of the new drugs which have recently been developed, particularly some of the sulfonamide compounds, such as sulfathiazole. The medical profession generally has discarded the balsamic drugs in the treatment of gonorrhoea as being ineffective and now uses drugs which are the newer developments of the science of drugs and which have been definitely proven to be cures for the disease of gonorrhoea and which will effectively destroy the specific organism causing this disease.

PAR. 6. The advertisements disseminated by the respondent are also false in that they fail to reveal all facts material in the light of such representations or material with respect to consequences which may result from the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary and usual. It is well recognized that social diseases should not be submitted to self-treatment by the lay public but, instead, require the supervision of a physician so that proper tests can be made to determine if and when the organism has been destroyed. This is particularly true when a treatment such as that sold by the respondent is used, since the effect of the use of this preparation tends to diminish the visible symptoms of gonorrhoea, such as the discharge of pus, and leads the user into a false sense of security and the belief that the disease has been cured. The failure thus to obtain adequate treatment may result in complications, such as prostatic infections and arthritis, and perhaps cause the infection of others in the mistaken belief that the condition has been cured.

Order

PAR. 7. The use by the respondent of the foregoing false and misleading representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said preparation is a competent treatment for diseases and infections of the urinary passage, including gonorrhoea, and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before trial examiners of the Commission theretofore duly designated by it, report of Trial Examiner John P. Bramhall upon the evidence, and brief filed in support of the complaint (no brief having been filed by the respondent and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent, Pabst Chemical Co., a corporation, formerly known as Pabst Pharmaceutical Co., Inc., has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Pabst Chemical Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of its preparation now designated Pabst Okay Special or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from:

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

(a) That respondent's preparation is a cure or remedy or constitutes a competent or adequate treatment for unnatural discharges due to infection of the urinary passage.

(b) That respondent's preparation has any curative value or constitutes a competent or effective treatment for any venereal disease, including gonorrhoea, the manifestations of which include infection of the urinary passage accompanied by unnatural discharge.

(c) That respondent's preparation constitutes a competent or effective treatment for any condition generally recognized as a symptom of any venereal disease in such a manner as to represent or imply that said prepara-

tion constitutes a competent or effective treatment of the disease indicated by such symptoms.

(d) That respondent's preparation constitutes a competent or effective treatment for any venereal disease.

(e) That the ingredients of respondent's preparation are recognized by physicians as being a competent or effective treatment for unnatural discharges due to infection of the urinary passage or any venereal disease of which unnatural discharge may be symptomatic.

2. Disseminating or causing to be disseminated any advertisements by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act which advertisement fails to reveal that the therapeutic value of respondent's preparation is limited to the reduction of the discharge of pus due to gonorrhoea or other venereal diseases and that it will not cure such diseases or destroy the specific germ causing such diseases and that such diseases may be communicable to others even though the symptoms of discharge have apparently disappeared.

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.

Syllabus

IN THE MATTER OF

B. L. MELLINGER DOING BUSINESS AS OVRHAUL
COMPANY

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

Docket 3713. Complaint, Feb. 14, 1939—Decision, July 18, 1944

Where an individual engaged in competitive interstate sale and distribution of its "Ovrhaul" product for use in automotive engines, composed of 25 to 28% of a mineral known as vermiculite in a heavy petroleum oil carrying agent, by advertisements in newspapers, magazines and other media, directly and by implication—

Falsely represented that use of his product in an automobile motor was the equivalent of overhauling the motor; that it checked piston slap and oil pumping, filled scores in the piston surfaces and cylinder walls, effected a substantial saving in oil consumption and substantially increased gasoline mileage, resulted in substantial savings in motor upkeep by making rebores and new ring jobs unnecessary; avoided the laying up of cars for repairs, put a "mineral plating" on worn parts, and restored or increased the power and "pep" of such motors;

The facts being, as established by tests by the Bureau of Standards, that use of the product has no beneficial effect upon the operation of the motor, any adhesive property which vermiculite might have was insufficient to plate metal surfaces or otherwise affect them to any material extent, and, while its use might result in increased compression pressure, such result, like that produced by carbon deposits, was due entirely to increase of deposits on the piston head and in the combustion chamber, and tended to decrease rather than increase power;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public with respect to said product and its results, whereby such public was caused to purchase substantial quantities of said product, and substantial trade was diverted unfairly to him from his competitors:

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

As respects the validity of claims in behalf of a product for use in automobile motors, use of which allegedly was the equivalent of and avoided the need for overhauling and reboring the motor and resulted in putting a mineral plating on worn parts and in restoring and increasing the motor's power and pep: Evidence in behalf of their validity consisting of road tests—generally inconclusive due to presence of a number of uncontrollable factors, such as temperature, wind, grade, traffic, surface, kind of tires, etc.—chassis dynamometer tests—which, though some of said factors are eliminated, cannot be considered as approximating in accuracy tests made by means of laboratory dynamometer and other testing equipment used by the National Bureau of Standards—testimony of automobile mechanics and members of the public—not all of whom experienced favorable results with the product—was insufficient to meet evidence introduced in support of the complaint consisting of a series of tests by said Bureau, for the more important of which the motors were supplied by the seller and claimant, and the application

of the product to the motors was done by his technical representative, results of which tests established that the use of the product had no beneficial effect upon the operation of an automotive engine,—conclusion supported also by the testimony of a number of witnesses who qualified as experts in the automotive engineering field.

Before *Mr. Miles J. Furnas* and *Mr. Webster Ballinger*, trial examiners.
Mr. S. Brogdyne Teu, II for the Commission.

Mr. Dudley W. Strickland, of Denver, Colo., and *Mr. Bertrand Rhine*, of Los Angeles, Calif., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that B. L. Mellinger, an individual, trading under the firm name and style of Ovrhaul 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, B. L. Mellinger, is an individual, doing business under the firm name and style of Ovrhaul Co., with his principal office and place of business located at 3706 Broadway, in the city of Kansas City, State of Missouri. For more than one year last past, said respondent has been and now is engaged in the business of offering for sale, selling and distributing a product, under the trade name Ovrhaul, in commerce among and between the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent has caused and causes said product, when sold or ordered, to be shipped and transported from his aforesaid place of business to purchasers thereof located in States other than the State of Missouri, and in the District of Columbia.

PAR. 2. In the course and conduct of his business as aforesaid, respondent has been and now is in competition with other individuals, and with partnerships and corporations engaged in the business of offering for sale, selling and distributing products used or useful as a gas and oil saver and reconditioner of worn automobiles in commerce among and between the various States of the United States and in the District of Columbia. Among said competitors are many who truthfully represent the efficacy of their products.

PAR. 3. In the course and conduct of his business as aforesaid, and for the purpose of inducing the purchase of his Ovrhaul product, respondent has caused certain advertising to appear in newspapers and magazines and in other forms of advertising matter, all of which are circulated among purchasers and prospective purchasers located in the various States of the United States and in the District of Columbia. Among the representations appearing in said advertising matter, the following is representative:

9

Complaint

FREE

To Opportunity
Magazine Readers

I will send you a
FREE SAMPLE to
DEMONSTRATE the
ASTOUNDING ACTION of
OVRHAUL!
Just Mail Coupon!

:	:	
:	Picture	:
:	B. L.	:
:	Mellinger	:
:	:	:

B. L. MELLINGER
President
OVRHAUL COMPANY.,
quits million
dollar tire business
to merchandise
OVRHAUL, to train and
build the finest sales
organization of its
kind in the country.

OVERHAULS MOTORS AT 95% SAVING

Fortunes Come Quick With Ovrhaul
Tremendous Sales
BIG PROFITS

PROVED BY
DISTRIBUTORS
EVERYWHERE

A money-making
opportunity to men
of vision and
ambition.

OVRHAUL goes over with wondrous success. Large service stations and garages now feature it. Distributors see its unlimited profits. It sells readily because thousands of autos, trucks, tractors, airplanes, and motor boats need OVRHAUL.

Overwhelming is the story of this NEW SCIENTIFICALLY APPROVED PRODUCT called OVRHAUL. Over 100,000 motorists HAVE USED IT—Millions WANT IT—and for salesmen and distributors OVRHAUL BRINGS THE GOAL OF BIG MONEY—A PERMANENT, PROFITABLE, GROWING BUSINESS because it

1. Makes new ring and rebore unnecessary.
2. Bring back "new car" pep, power, quiet.
3. Checks piston slap and oil pumping.
4. Restores compression, fills scores.
5. Saves up to 50% on oil.
6. Adds up to 45% more gas mileage.
7. Pays for itself in oil and gas savings.

OVRHAUL users prove amazing savings in motor upkeep costs. Motorists and truck owners need no longer pay up to \$150 for a rebore or new ring job or lay up their cars. Gas and oil saving is spectacular. OVRHAUL is astounding, yet every statement is backed by FACTS AND PROOF. The remarkable story of OVRHAUL is the outgrowth of many years research and study. First, a miner makes a strange new mineral discovery far up in the Rocky Mountains. Its unusual action fascinated him. Samples were submitted to the Bureau of Mines, Washington, D. C., and the State School of Mines. Thousands of tests were made by chemists and engineers. The result is OVRHAUL, a revolutionary new scientific way of motor reconditioning.

It is so amazing in results achieved and low cost that it has astounded engineers and car owners and turned thousands into boosters. It puts a mineral "plating" on the worn parts, thus restoring compression and proper engine efficiency. Its low cost is a revolution in value. Within a few months over 100,000 OVRHAUL were eagerly bought by motorists everywhere.

Can you afford to allow yourself NOT to take advantage of this wonderful money making opportunity OVRHAUL presents to YOU? Desirable territories are being "snapped up". Enormous profits ARE BEING made with OVRHAUL—why not get your share? No experience necessary as we show you how.

PAR. 4. Through the use of said statements and representations hereinabove set forth, and others similar thereto not herein set out, all of which purport to be descriptive of respondent's product and the opportunities available to distributors thereof, respondent has grossly misrepresented and exaggerated the efficiency of said product and the nature of the opportunities available to the distributors thereof. By the means and in the manner aforesaid the respondent represents that he will give one sample of said product free and without cost or condition to persons becoming distributors thereof.

In truth and in fact, the respondent does not give a free sample to persons becoming distributors of his product. It is necessary to purchase one unit of the product Ovrhaul in order to secure one without additional cost.

The respondent, through the statements and representations herein set out, has represented that fortunes can be made quickly with Ovrhaul; that tremendous sales and big profits are possible and that such has been proven by distributors everywhere; that Ovrhaul enables one to achieve wondrous success in sales; that large service stations and garages feature it and dealers see unlimited profits in selling it; that said product sells readily; that more than 100,000 motorists have used it and millions of others want it; and that it brings to salesmen and distributors the goal of big money, and enables them to build a permanent, profitable, growing business.

In truth and in fact, the foregoing representations made by the respondent are false, deceptive and untrue. Fortunes cannot be made quickly with Ovrhaul; tremendous sales and big profits are not possible; Ovrhaul does not enable one to achieve success, "wondrous" or otherwise, in sales; large service stations and garages do not feature it and dealers do not see unlimited profits in selling it, nor does it sell readily; 100,000 motorists have not used said product nor do millions of others want it; and it does not bring to salesmen and distributors big money, and it does not enable them to build a permanent, profitable, growing business.

The respondent has also represented through the use of said statements and representations heretofore set out that the story of Ovrhaul is the story of a new, scientifically approved product; that the use of Ovrhaul makes new rings and rebore unnecessary; bringing back "new car" pep, power and quietness, checking piston slap and oil pumping; restoring compression and filling scores in the pistons; that its use will save up to 50% in oil and add up to 45% more gasoline mileage, paying for itself in oil and gasoline savings; that it makes for amazing savings in motor upkeep and motorists and truck owners are able to avoid the payment for rebores and new ring jobs. The respondent has further represented that through the use of Ovrhaul motorists can avoid the necessity of laying up their cars for repairs; that Ovrhaul is an astounding product and the story of it is the story of the outgrowth of many years of research and study; that miners made the discovery of Ovrhaul and thousands of tests have been made by chemists and engineers and Ovrhaul is a revolutionary scientific way of motor reconditioning and that the results achieved by its use and its low cost have astounded engineers and car owners; that it has turned thousands of users into boosters; and that it puts a mineral "plating" on worn parts and restores compression.

In truth and in fact, the foregoing representations made by the respondent are false, deceptive and untrue. The story of the product Ovrhaul is not the story of a new, scientifically approved product, for it has not received scientific approval. The use of the product will not make new piston rings and cylinder rebores unnecessary, nor does it bring back "new car" pep, power and quietness. The use of the product Ovrhaul will not check piston slap or oil pumping, nor does it restore compression in the cylinders or fill scores in cylinder walls. Its use in an engine will not save up to 50% in oil and will not add up to 45% more gasoline mileage, nor will its use result in any substantial savings in oil or any substantial increase in gasoline mileage, and it will not pay for itself in oil and gasoline savings. The product Ovrhaul is not an "astounding" product and it is not the outgrowth of many years of research and study, and it was not discovered by miners. Chemists and engineers have not made thousands of tests of the product Ovrhaul and the product is not a revolutionary scientific way of reconditioning motors. The results achieved by its use or its low cost have not astounded engineers or car owners and it is not boosted by thousands of users. Its use does not put a mineral "plating" on worn parts of an engine.

Through the use of the above and foregoing representations, the respondent grossly and misleadingly exaggerates the efficiency of said product Ovrhaul as a gasoline and oil saver and as a reconditioner of worn gasoline motors, and the amount of money that may be earned by distributors of said product.

PAR. 5. The aforesaid statements and representations made by the respondent in connection with the offering for sale and sale of its product have had, and have, the tendency and capacity to, and do, mislead and deceive purchasers and prospective purchasers thereof into the false and erroneous belief that the said statements and representations are true, and thus have induced the purchase of said product in reliance upon such beliefs induced as aforesaid. As a result, trade in said commerce has been, and is, diverted unfairly to respondent from those of his competitors who

truthfully represent their products and who do not engage in the practices herein alleged. In consequence thereof, substantial injury has been done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 14, 1939, issued and subsequently served its complaint in this proceeding upon the respondent, B. L. Mellinger, an individual, trading under the name Ovrhaul Co., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in violation of the provisions of that act. After the filing of respondent's answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced 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 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, B. L. Mellinger, is an individual, trading under the name Ovrhaul Co., with his principal office and place of business located at 679 South Dunsmuir Drive, Los Angeles, Calif. He is now and for some nine years last past has been engaged in the sale and distribution of a product intended for use in automotive engines and designated by the trade name "Ovrhaul."

PAR. 2. Respondent causes and has caused his product, when sold, to be transported from his place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and 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. Respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution, in commerce among and between the various States of the

United States and in the District of Columbia, of preparations and devices designed for substantially the same purposes as those for which respondent's product is designed.

PAR. 4. In the course and conduct of his business and for the purpose of inducing the purchase of his product, respondent has made certain representations and claims for his product in advertising disseminated by means of newspapers, magazines and other media, all of which are circulated among prospective purchasers located in the various States of the United States and in the District of Columbia. Among and typical of such representations and claims are the following:

OVERHAULS MOTORS AT 95% SAVING

* * *

Overwhelming is the story of this NEW SCIENTIFICALLY APPROVED PRODUCT called OVRHAUL. * * *

1. Makes new ring and rebore unnecessary.
2. Brings back "new car" pep, power, * * *.
3. Checks piston slap and oil pumping.
4. Saves up to 50% on oil.
5. Adds up to 45% more gas mileage.
6. Pays for itself in oil and gas savings.
7. Restores compression, fills scores.

OVRHAUL users prove amazing savings in motor upkeep costs. Motorists and truck owners need no longer pay up to \$150 for a rebore and new ring job or lay up their cars. Gas and oil saving is spectacular. OVRHAUL is astounding, yet every statement is backed by FACTS AND PROOF. The remarkable story of OVRHAUL is the outgrowth of many years research and study. First, a miner makes a strange new mineral discovery far up in the Rocky Mountains. * * * Thousands of tests were made by chemists and engineers. The result is OVRHAUL, a revolutionary new scientific way of motor reconditioning.

It is so amazing in results achieved and low cost that it has astounded engine and car owners * * *. It puts a mineral "plating" on the worn parts, thus restoring compression and proper engine efficiency * * *. (Tr. pp. 264-265)

PAR. 5. Through the use of these statements and others of a similar nature, respondent has represented, directly or by implication, that the use of his product in an automobile motor is the equivalent of overhauling such motor; that the product checks piston slap and oil pumping, and fills scores in the piston surfaces and cylinder walls; that it effects a substantial saving in oil consumption and substantially increases gasoline mileage; that it results in substantial savings in motor upkeep by making rebores and new ring jobs unnecessary; that it avoids the laying up of cars for repairs; that it puts a "mineral plating" on worn parts; and that it restores or increases the power and "pep" of automobile motors.

PAR. 6. Respondent's product is composed of a heavy petroleum oil and a mineral known as vermiculite, the latter ingredient constituting from 25% to 28% of the total content. The oil is merely the vehicle or carrying agent for the vermiculite and no virtue is claimed for it by respondent insofar as any effect on an automobile motor is concerned. Respondent's

claims are based entirely upon the vermiculite content of the product. The product is packed in collapsible metal tubes and is applied to the motor by squeezing a portion of the contents of the tube into each cylinder of the motor after the spark plugs have been removed. To facilitate the application, a small rubber hose or tube is supplied by respondent with each tube of the product.

Respondent's directions for the application of the product are substantially as follows:

First be sure that motor is warm but not hot. Remove all spark plugs. Take compression of each cylinder with compression gauge, by turning motor over with starter until indicator on compression gauge will not go any higher. Repeat this with each cylinder. Have gas throttle wide open while making compression tests.

Then divide contents of tube equally between cylinders, placing Ovrhaul directly on TOP of pistons. See illustration for your type of engine on other side. Avoid placing Ovrhaul on valves or allowing to drip on threads in spark plug openings. Wipe off rubber tube after installing in each cylinder. After installing turn motor over one minute, before replacing plugs, with the ignition OFF. Then allow motor to stand FIVE minutes to give the material an opportunity to drain down into place. Replace all spark plugs. Then start motor, without racing, and idle for TWENTY minutes as slow as possible. This does not mean nineteen minutes. It means TWENTY minutes at idling speed. Above all, do not—RACE—motor during this time. It is then best to cover the radiator and get motor HOT. Additional idling for an hour or two is helpful in many cases. This gives Ovrhaul an opportunity to expand and "WORK-IN." Then drive slowly—not over THIRTY miles per hour for about 30 miles. After this, normal driving can be resumed. Continuous driving during the 400-mile period is not necessary. (Com. Ex. No. 89)

PAR. 7. Vermiculite is a hydrous mica. Its principal property or characteristic is that it expands and exfoliates when subjected to sufficient heat. Respondent insists that it also has the property of adhering to or "plating" metal surfaces. Essentially, the theory upon which respondent asserts the merit of his product appears to be that when placed in the cylinders of an automobile motor the product acts as a packing, expanding or exfoliating and attaching itself to the piston rings and cylinder wall; that it thus improves the relation between the piston rings and cylinder wall and eliminates or reduces "blowby," that is, the gases which get by the piston rings on the compression and power strokes of the piston and escape from the combustion chamber into the crankcase; and that, in consequence, the compression and power of the motor are restored or increased, the installation of new piston rings and the reboring of the cylinders rendered unnecessary, substantial savings in oil and gasoline effected, etc.

PAR. 8. At the request of the Commission, a series of tests of respondent's product were made by the National Bureau of Standards, and the results of these tests form a part of the record in this proceeding. The automobile motors used in the more important of the tests were supplied by respondent, and the application of the product "Ovrhaul" to the motors was done by a technical representative of respondent. The results of the tests establish that the use of the product has no beneficial effect upon the operation of an automotive engine, and this conclusion is supported also by the testimony of a number of witnesses who qualified as experts in the automotive engineering field. There is serious doubt

whether the temperature of an automobile motor in operation is sufficient to cause vermiculite to exfoliate to any appreciable degree, but whatever may be the extent of the exfoliation, it has no beneficial effect upon the motor. Likewise, any adhesive property which vermiculite may have is insufficient to "plate" metal surfaces or otherwise affect them to any material extent. While the use of "Ovrhaul" may result in increased compression pressure, such result is due entirely to the fact that the presence of the product tends to increase deposits on the piston head and in the combustion chamber, with a consequent reduction in the volume of the combustion chamber. The effect is substantially the same as that produced by deposits of carbon. The increase in compression pressure brought about by the use of "Ovrhaul" therefore does not result in increased power; rather, it would tend to have the opposite effect.

A substantial volume of evidence in opposition to these conclusions was introduced by respondent, including the results of certain road and laboratory tests made of the product at respondent's instance, as well as tests made by means of a chassis dynamometer. There was also testimony by several expert witnesses in support of respondent's position, as well as testimony by a number of automobile mechanics and members of the public who had used respondent's product. As to the road tests, the record shows that such tests are generally inconclusive, due principally to the presence of a number of factors which cannot be controlled, such as temperature, wind, grade, traffic, surface, kind of tires, etc. In the case of chassis dynamometer tests, some of these factors are eliminated but others remain, and such tests cannot be considered as approximating in accuracy tests made by means of a laboratory dynamometer and the other testing-equipment used by the Bureau of Standards. The laboratory tests relied upon by respondent, while undoubtedly of greater value than the road and chassis dynamometer tests, were not, in the opinion of the Commission, as comprehensive or accurate as those made by the Bureau of Standards. The testimony of the automobile mechanics and members of the public as to their experience with respondent's product is, in the opinion of the Commission, entitled to little weight in view of the large volume of scientific evidence in the record. Moreover, not all of the mechanics and laymen testifying in the proceeding experienced favorable results with the product, some of them testifying to the contrary. After considering all of the evidence introduced by respondent, the Commission is of the opinion that it is insufficient to meet the evidence introduced in support of the complaint.

PAR. 9. The Commission therefore finds that the representations made by respondent with respect to his product, as set forth in paragraphs 4 and 5 hereof, are erroneous and misleading. The use of the product in an automobile motor is not the equivalent of overhauling such motor. The product is incapable of checking piston slap or oil pumping, and is likewise incapable of filling scores in the piston surfaces and cylinder walls. It does not effect any saving in oil or gasoline consumption, nor increase gasoline mileage. The use of the product does not render unnecessary the reboring of cylinders or the installation of new piston rings, nor does it avoid the laying up of automobiles for repairs. It does not plate worn parts. It is incapable of restoring or increasing the power or "pep" of an automobile motor.

PAR. 10. The use by respondent of these erroneous and misleading representations has the tendency and capacity to mislead and deceive a

substantial portion of the purchasing public with respect to the properties and characteristics of respondent's product and the results which may be obtained through the use of the product, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of the product as a result of the erroneous and mistaken belief so engendered. In consequence, substantial trade has been diverted unfairly to respondent from his competitors, among whom are those who do not misrepresent their products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, report of the trial examiners upon the evidence, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, B. L. Mellinger, individually, and trading as Ovrhaul Company, 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 product designated "Ovrhaul," 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 representing, directly or by implication:

1. That the use of said product in an automobile motor is the equivalent of overhauling such motor.

2. That said product checks piston slap or oil pumping.

3. That said product fills scores in piston surfaces or cylinder walls, or plates worn parts.

4. That said product reduces oil or gasoline consumption, or increases gasoline mileage.

5. That the use of said product renders unnecessary the reboring of cylinders or the installation of new piston rings, or that it avoids the laying up of automobiles for repairs.

6. That said product restores or increases the power or "pep" of an automobile motor.

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

RUDOLF LESCH FINE ARTS, 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 4693. Complaint, Feb. 3, 1942—Decision, July 19, 1944

Where six corporations engaged in the publication and interstate sale and distribution of art pictures, prints, etchings, reproductions of paintings and allied products, among the leaders in the industry concerned and doing a substantial portion of the business done by the entire industry and in competition with one another except in so far as said competition had been hindered, lessened and restrained as a result of the acts and practices set forth below; as a result of certain meetings, of which those who did not attend were kept informed and to the decisions reached wherein they assented—

- (a) Agreed upon discounts to be allowed public institutions, school dealers, and semi-jobbers, and decided a jobbing discount would be allowed only in those cases where they had agreed that purchaser concerned was a wholesaler, or where purchaser furnished an affidavit to the effect that at least 75 per cent of his business was wholesale; and
- (b) Prepared and distributed, from lists supplied by the different concerns, a master list of wholesalers agreed upon by them and similar lists of school dealers and semi-jobbers, and, except for isolated instances, adhered to their said classifications and maintained the agreed discounts for the several classes of purchasers, in a number of instances requiring affidavits from prospective purchasers claiming to be wholesalers and in some instances taking certain of said concerns to task because of their alleged failure to maintain their schedule of discounts;

With effect of unduly and unlawfully hindering, lessening and restraining competition among them in the sale and distribution in commerce of art pictures, prints, etchings, reproductions of paintings, and allied products, and with tendency and capacity so to do:

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

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. George W. Williams for the Commission.

Mr. Albert Hirst, of New York City, for Rudolph Lesch Fine Arts, Inc.

Mr. Edwin R. Monnig and *Mr. Harold Goodman*, of Detroit, Mich., for International Art Publishing Co., Inc.

Purdy & Lamb, of New York City, for International Frame & Picture Co., 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 Com-

mission, having reason to believe that the parties named in the caption hereof, and hereinafter more particularly described, 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, Rudolf Lesch Fine Arts, 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 225 Fifth Avenue, New York City.

Respondent, New York Graphic Society, 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 10 West 33rd Street, New York City.

Respondent, Erich S. Herrmann, 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 385 Madison Avenue, New York City.

Respondent, David Ashley, 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 230 Fifth Avenue, New York City.

Respondent, Raymond & Raymond, 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 40 East 52nd Street, New York City.

Respondent, International Art Publishing Company, 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 242 West Lafayette Avenue, Detroit, Mich.

Respondent, Reinthal & Newman, 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 33 West 34th Street, New York City.

Respondent, International Frame and Picture Company, 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 225 Fifth Avenue, New York City.

PAR. 2. Respondents are now and have been for many years, and at least during the last past five years, engaged in the business of publishing, offering for sale, selling and distributing art pictures, prints, reproductions of paintings, etchings and allied products for use and resale in commerce between and among the various States of the United States and in the District of Columbia, and as a result of such sales cause said products to be shipped and transported from their respective places of business to the purchasers thereof, who are located in the various States of the United States other than the States in which the respective respondents' places of business are located. There is, and has been at all times herein mentioned, a continuous course of trade and commerce in said products across State lines between the respective respondents' place of business and the purchasers of said products.

In the regular course of the business aforesaid the various respondents and others engaged therein freely and completely exchange their respective products so that each respondent and member of the industry has, or may have, a full line of said products.

PAR. 3. In the course and conduct of their respective businesses as aforesaid, respondents are now, and during all the time herein mentioned have been, in active competition with other corporations, and with individuals, partnerships and firms engaged in the business of publishing, selling and distributing art pictures, prints, reproductions of paintings, etchings and allied products in commerce, except insofar as said competition has been hindered, lessened or restrained, or potential competition has been forestalled, by the practices and methods of said respondents hereinafter set forth. The volume of business done by said respondents constitutes a substantial portion of the business done by the whole industry.

PAR. 4. Said respondents, during the time herein mentioned, have entered into, and carried out and maintained agreements, understandings, combinations and conspiracies between and among themselves to suppress, hinder and lessen competition in selling and distributing the said products in the course of their aforesaid businesses, in commerce, as herein described.

Pursuant to, and in furtherance of, and to make effective said agreements, understandings, combinations and conspiracies, said respondent members concertedly and in cooperation with each other have performed, and still perform, among others, the following acts and practices:

1. (a) Adopted, fixed and maintained uniform prices, discounts, terms, and other conditions of sale, for their respective products, in connection with the sale thereof.

(b) Exchanged and circulated among each other, directly and through the officers of one of the respondents, lists showing said prices, discounts, terms and other conditions of sale for their respective products.

2. Arbitrarily arranged their customers into the following classifications, namely:

(a) Dealers or retailers,

(b) Jobbers or wholesalers,

(c) Semi-jobbers,

(d) School, educational and institutional group dealers,

and have fixed and maintained definite prices and discounts and other terms and conditions of sale predicated upon said classifications.

3. Exchanged and circulated among each other, directly and through the officers of one or more of the respondents, lists showing said classifications, and

4. Refused to sell to their customers except at said prices, discounts and other terms and conditions of sale in accordance with the said classifications.

5. Reported to the officers of one or more of the respondents instances of quotations of prices less or discounts greater than those fixed by said respondents, which information was intended to be used and was used in connection with the enforcement of the foregoing prices, discounts, terms and other conditions of sale.

6. Held meetings and otherwise conferred with each other as to plans and means of fixing and maintaining prices, discounts, terms, and other

conditions of sale of their said products, and the classifications of their customers, as herein set forth, and to make and receive reports of violations of their agreements and to discuss and determine ways and means of correcting and preventing the same.

7. Used coercive measures to bring the membership of the industry into line with said agreements and practices by misrepresenting the activities of the Federal Trade Commission to the members of the industry by stating that respondents were acting under the authority and requirements of the Federal Trade Commission in the fixing of the prices, discounts and other conditions of sale and arranging the trade into the above classifications, as herein set forth, when they were not in fact acting under such authority or requirement; and by stating and intimating that any deviation therefrom would result in the Federal Trade Commission proceeding against such offender for such deviation.

PAR. 5. The capacity, tendency and effect of the aforesaid agreements, understandings, combinations and conspiracies, and the practices and acts and things done and performed by respondents in pursuance thereof are, and have been, to unreasonably lessen, suppress and restrain competition in the sale and distribution of art pictures, prints, reproductions, paintings, etchings and allied products in the United States and in the District of Columbia, and to deprive the purchasing public of the advantages of prices, terms and conditions in connection with the sale and distribution thereof, 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 said trade and industry.

PAR. 6. 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 hindered and prevented competition between and among said respondents in the sale and distribution of said products in commerce, within the intent and meaning of the Federal Trade Commission Act, and placed in said respondents power to control and enhance prices and other terms and conditions in connection with the sale and distribution of the said products; have a dangerous tendency to create in respondents a monopoly in said products in said commerce, and constitute unfair methods of competition within the intent and meaning of Section 5 of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 3, 1942, issued and subsequently served its complaint in this proceeding upon the parties respondent 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 by the respondents, (except respondent Raymond & Raymond, Inc.), of their answers to the complaint, 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, answers, testimony and other evidence, report of the trial examiner upon the evidence, brief in support of the complaint, and briefs in opposition thereto on behalf of respondents, Rudolf Lesch Fine Arts, Inc., and International Frame and Picture Company, Inc., (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, Rudolf Lesch Fine Arts, 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 225 Fifth Avenue, New York, N. Y.

Respondent, New York Graphic Society, 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 10 West 33d Street, New York, N. Y.

Respondent, Erich S. Herrmann, 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 385 Madison Avenue, New York, N. Y.

Respondent, David Ashley, 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 230 Fifth Avenue, New York, N. Y.

Respondent, Raymond & Raymond, 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 40 East 52d Street, New York, N. Y.

Respondent, International Art Publishing Company, 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 242 West Lafayette Avenue, Detroit, Mich.

Respondent, Reinthal & Newman, 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 34th Street, New York, N. Y.

Respondent, International Frame and Picture Company, 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 225 Fifth Avenue, New York, N. Y.

The Commission having concluded that the evidence is insufficient to establish that respondents, Reinthal & Newman, Inc. and International Frame and Picture Company, Inc., participated in the acts and practices hereinafter described, the term "respondents" as used hereinafter will not include these two parties unless the contrary is indicated.

PAR. 2. The respondents are now and for a number of years last past have been engaged in the publication, sale, and distribution of art pictures, prints, etchings, reproductions of paintings, and allied products. In the course and conduct of their respective businesses the respondents cause and have caused their products, when sold, to be transported from their respective places of business to purchasers thereof located in various States of the United States other than the States in which the respondents' respective places of business are located. Each of the respondents maintains and has maintained a continuous course of trade in its products in commerce among and between the various States of the United States.

The respondents are among the leaders in the publication, sale, and distribution of the better grade of pictures, prints, etchings, and reproductions of paintings in the United States, and the volume of business done by respondents constitutes a substantial portion of the business done by the entire industry.

PAR. 3. In the course and conduct of their respective businesses respondents are and have been in active competition with one another and with other corporations, and with individuals and partnerships, engaged in the sale and distribution of art pictures, prints, etchings, reproductions of paintings, and allied products in commerce among and between the various States of the United States, except insofar as such competition has been hindered, lessened, and restrained as a result of the acts and practices hereinafter described.

PAR. 4. The record discloses that for some time prior to the fall of 1939 the picture publishing industry had been in a somewhat confused and unsettled condition, particularly with respect to the discounts which were being allowed by the members of the industry to various purchasers. Among the troubles besetting the industry was that many purchasers who were in fact doing a retail business only claimed themselves to be jobbers or wholesalers and insisted that they were entitled to the jobbing discount. It frequently happened that one publisher would regard a particular purchaser as a jobber and would accord to him the jobbing discount while another publisher would reach a contrary conclusion and would decline to allow any discount other than the regular discount allowed retail dealers, which was 50% off the publisher's list price. This discount appears to be a trade custom of long standing, having been in effect for many years throughout the entire industry.

Other matters which concerned the respondents at this time were the discount to be allowed public institutions such as schools, libraries, and churches, and the discount to be allowed that class of dealers whose business was confined largely to sales to public institutions. Dealers of this kind are referred to generally in the industry as "school dealers" or "educational dealers." A further matter with which respondents were concerned was that of determining what discounts should be allowed that class of dealers referred to in the industry as "semi-jobbers," that is, dealers whose business was primarily retail but who did a limited amount of jobbing or wholesale business as well. Of equal or greater importance than the determination of the discount to be allowed each class of purchasers was the determination of the particular class in which the various purchasers should be placed.

PAR. 5. For the purpose of considering these matters and reaching a common understanding in respect thereto, the respondents held a series of conferences or meetings, beginning in the early part of November, 1939, and extending into the spring of 1940. At that time certain of the respondents were under investigation by the Federal Trade Commission in connection with alleged violations of the Robinson-Patman Act, and it is insisted by the respondents that the meetings were held solely for the purpose of making their business practices conform to the requirements of that Act. Some six or more meetings were held, each of the respondents being present through one or more of its officers at some or all of the meetings. Those respondents who did not attend the meetings regularly were kept informed by the others as to the progress of the meetings and assented to the decisions reached therein.

As a result of these meetings, definite agreements were reached by respondents with respect to the discounts to be allowed public institutions, school dealers, and semi-jobbers. Public institutions were to be allowed a discount not exceeding 25% off of the list price. School dealers were to be allowed, in addition to the regular retail dealer discount of 50% off of the list price, an additional discount not exceeding 20% of the net price; and the same schedule was to apply to semi-jobbers. With respect to jobbers or wholesalers, apparently the respondents were more concerned with reaching an agreement as to which purchasers should be regarded as wholesalers than with establishing a fixed discount for that class of purchasers. It was decided that a jobbing discount would be allowed only in those cases where respondents had agreed among themselves that the purchaser in question was a wholesaler or where the purchaser furnished an affidavit to the effect that at least 75% of his business was wholesale.

Each of the respondents brought or sent to the meetings a list of those of its customers whom it regarded as wholesalers, and from these lists a master list was prepared containing the names of those purchasers agreed upon by the respondents as being wholesalers. A copy of this master list was supplied to each of the respondents, and as additions to the list were subsequently made each respondent was supplied with a supplemental list showing such additions. Similarly, lists of school dealers and semi-jobbers were agreed upon and copies supplied to each of the respondents.

That these agreements were promptly put into operation and effect is apparent from the record. Except for isolated instances, the respondents adhered to the classifications of customers which they had agreed upon, and likewise maintained the agreed discounts for the several classes of purchasers. A number of instances are disclosed in which certain of the respondents required affidavits from prospective purchasers who claimed to be wholesalers. Instances are also disclosed in which certain of the respondents were taken to task by others because of their alleged failure to maintain the agreed schedule of discounts.

PAR. 6. The Commission therefore finds that the respondents have entered into and put into operation and effect agreements, understandings, combinations, and conspiracies to hinder, lessen, and restrain competition in the sale of their products.

PAR. 7. The tendency, capacity, and effect of the agreements, understandings, combinations, and conspiracies entered into by the respondents, and of the acts and things done pursuant thereto and in furtherance

thereof, as set forth herein, have been and are unduly and unlawfully to hinder, lessen, and restrain competition among the respondents in the sale and distribution of art pictures, prints, etchings, reproductions of paintings, and allied products in commerce among and between the various States of the United States, and unduly and unlawfully to restrict and restrain trade in such products in commerce as aforesaid.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers thereto, 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, brief in support of the complaint, and briefs in opposition thereto on behalf of respondents, Rudolf Lesch Fine Arts, Inc. and International Frame and Picture Company, Inc. (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that certain of the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Rudolf Lesch Fine Arts, Inc., New York Graphic Society, Inc., Erich S. Herrmann, Inc., David Ashley, Inc., Raymond & Raymond, Inc., and International Art Publishing Company, Inc., corporations and their officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of art pictures, prints, etchings, reproductions of paintings, and allied products 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 to this proceeding, to do or perform any of the following acts or things:

1. Fixing or establishing uniform discounts, or adhering to or maintaining any discounts so fixed or established.
2. Establishing or maintaining classifications of customers or prospective customers, or fixing or maintaining discounts predicated upon such classifications.
3. Circulating or exchanging among themselves lists showing classifications of customers or prospective customers.

4. Holding meetings or otherwise conferring among themselves for the purpose of establishing or maintaining uniform discounts or classifications of customers or prospective customers.

5. Engaging in any act or practice substantially similar to those set out in this order with the purpose or effect of establishing or maintaining uniform discounts or classifications of customers or prospective customers.

It is further ordered, That these 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 Reinthal & Newman, Inc. and International Frame and Picture Company, Inc.

IN THE MATTER OF
RESEARCH MANUFACTURING CORPORATION,
HAROLD S. GUY AND J. L. SEAT

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

Docket 5063. Complaint, Oct. 15, 1943—Decision, July 20, 1944

Where a corporation and two individuals who controlled and directed it, engaged in the manufacture and interstate sale and distribution to garages and service stations for resale to the purchasing public, of their "Fre-Zex" antifreeze solution for automobile and other internal combustion engines; through statements in folders, circulars and other advertising material, directly and by implication—

- (a) Falsely represented that their said product furnished protection to the cooling system of automobile and other types of combustion engines against freezing and other damaging effects; was safe and dependable for use as recommended, and a superior permanent-type antifreeze, which protected the entire cooling system of automobile engines against corrosion, rust, and deterioration; and that use thereof would prevent rust or other damage to the hose connections, radiators, and other metal and rubber parts of the cooling system and finish of automobiles; and that it would not evaporate or clog passages in the cooling system;

Facts being said preparation, composed of a calcium chloride base, would corrode most metals, including iron, steel, brass, and aluminum, and had caused rust, corrosion, clogged passages, and other serious damage to the engines, radiators, ignition wires, spark plugs, hose connections and the exterior finish of automobiles, and resulted in leakage in the cooling systems of automotive engines; and, if it came in contact with spark plugs or ignition wires, would short circuit the ignition system and necessitate replacement thereof; and

- (b) Failed to inform of the danger of such deleterious and damaging effects, the general public, accustomed to believing that a product advertised as an anti-freeze may be used with safety and without causing results above set forth;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements were true, and of inducing it to purchase substantial quantities of said product as a result thereof: *Held*, That said acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Herman M. Levy, of New Haven, Conn., for Research Manufacturing Corp. and *Bernard P. Kopkind*, Trustee in Bankruptcy of Research Manufacturing Corp.

Hurwitz & Hurwitz, of Boston, Mass., for Harold S. Guy.

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 Research Manufacturing Corporation, a corporation, Harold S. Guy, individually, and as President of Research Manufacturing Corporation, and J. L. Seat, 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 the charges in that respect as follows:

PARAGRAPH 1. The respondent, Research Manufacturing Corporation, is a corporation, organized and existing under the laws of the State of Massachusetts, with its office and principal place of business located at 227 Park Square Building, Boston, Mass., and with its manufacturing plant located at Portland, Conn.

The respondent, Harold S. Guy, is an individual, and is president of the corporate respondent, Research Manufacturing Corporation, whose present address is now care Tobler Chemical Company, Portland, Conn.

The respondent, J. L. Seat, is an individual, who was formerly president of the corporate respondent, Research Manufacturing Corporation, whose address is care Pratt & Whitney, Hartford, Conn.

PAR. 2. The respondents, since June 20, 1942, and prior to December, 1942, were engaged in the manufacture, sale and distribution of a so-called anti-freeze solution designated "Fre-Zex," recommended for use in the cooling system of automobile and other internal combustion engines. Such product was sold by respondents to automotive supply houses for resale to retailers and the consuming public. Respondents caused their product, when sold, to be transported from their place of business in the State of Connecticut to purchasers thereof located in various other States of the United States and in the District of Columbia.

The respondents maintained, and at all times mentioned herein have maintained, a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

Respondent, Harold S. Guy, controls, formulates and directs the acts and practices of the respondent, Research Manufacturing Company, and J. L. Seat while president of the corporate respondent, Research Manufacturing Company, controlled, formulated and directed the acts and practices of said respondent.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their product Fre-Zex, the respondents have circulated among prospective purchasers throughout the United States, many false statements concerning their said product by means of folders, circulars, labels and other advertising material. Among and typical of such false statements and representations circulated as aforesaid are the following:

Permanent anti-freeze solution for liquid cooled motors.

Does not boil away.

Prevents rust and corrosion.

Is not adversely affected by temperature of pressure fluctuations instant to usage in gas engines under varying climatic conditions.

Will not damage body finish; injure metal or rubber parts of the cooling system.

Through the use of the statements and representations hereinabove set forth and others similar thereto, not specifically set out herein, the respondents have represented, directly or by implication, that said product, Fre-Zex, is a high quality anti-freeze solution which furnishes protection to the cooling system of automobiles and other internal combustion engines against freezing, water seepage, and corrosion and prevents other damaging effects; that it is safe and dependable for use as recommended; that it will protect the entire cooling system of automobiles against freezing; that it prevents rust and corrosion; that it will not boil away; that its use will not cause rust or other damage to the hose connections, gaskets and other metal parts of an automobile or other internal combustion engine; and that it will not evaporate or clog passages in the cooling system and will not damage body finish on automobiles.

PAR. 4. The foregoing claims, statements and representations are grossly exaggerated, false and misleading. In truth and in fact respondents' product Fre-Zex is not a high quality anti-freeze solution as it is composed of a calcium chloride base and is inferior to anti-freeze solutions containing glycerin or alcoholic bases. Said product does boil away. It is not safe and dependable for use as recommended and is not a superior type of anti-freeze. It does not protect the cooling system of engines against corrosion, rust or other deterioration. The use of said product causes and has caused rust, corrosion, clogged passages and other serious damage to engines, radiators, ignition wires, spark plugs, hose connections, gaskets, water pumps, and to the exterior finish of automobiles. Said product evaporates and will clog passages in the cooling system.

PAR. 5. For many years there has been on the market and sold to the general public throughout the United States, solutions for use in the water in the cooling systems of automobile and other types of internal combustion engines to prevent injury to such engines from the freezing of the water used in the cooling system. These solutions are known as anti-freeze and have proven dependable both from the standpoint of protecting the cooling system and other parts of the engine from cold and in not damaging any part of the engine or vehicle in which the engine is installed through rust, corrosion, clogging or any other form of deterioration or injury.

When a product is advertised as an anti-freeze the public believes that it possesses the attributes found in these long-used, dependable products; that it may be used with safety in such cooling systems; that it will not cause rust, corrosion, clogging or other deterioration or injury and that it will protect the cooling system and other parts of the engine from cold.

Respondents' representations that their product is an "anti-freeze" leads the public to believe that said product is safe and dependable for use in the cooling systems of internal combustion engines in guarding against damage from low temperatures and without injury to such engines from rust, corrosion, clogging or other deleterious or damaging effects. Respondents' failure to inform the general public of the deleterious and damaging effects which result or may result from the use of their product as an anti-freeze is misleading and deceptive.

PAR. 6. The use by the respondents 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 respondents' products as a result of such belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 15, 1943, issued and subsequently served its complaint in this proceeding on the respondents, Research Manufacturing Corporation, a corporation; Harold S. Guy, individually, and as president of Research Manufacturing Corporation; and J. L. Seat, 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 the answers of the respondents 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 exceptions filed thereto, and brief in support of the complaint (no brief having been filed by the respondents and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Research Manufacturing Corporation, is a corporation, which was organized under the laws of the State of Massachusetts on or about June 19, 1942. Said corporate respondent maintained its office and principal place of business at 227 Park Square Building, Boston, Mass., and maintained its manufacturing plant at Portland, Conn.

The respondent, Harold S. Guy, an individual, who presently resides at 274 Court Street, Middletown, Conn., was vice president of said corporate respondent in charge of sales until December 1942, and from that time until July 1943 was president of said corporate respondent.

The respondent, J. L. Seat, an individual, whose present address is care of Pratt & Whitney Aircraft Corporation, Hartford, Conn., was president of said corporate respondent from the date of incorporation until December 1942.

PAR. 2. The respondents, from June 20, 1942, were engaged in the manufacture, sale, and distribution of a so-called antifreeze solution designated "Fre-Zex," recommended for use in the cooling system of automobiles and other internal-combustion engines. Said product was sold by the respondents to jobbers, garages, and service stations for resale to the purchasing public. The sale of said product was discontinued in December 1942, and subsequent thereto the corporate respondent, Research Manufacturing Corporation, was duly adjudicated a bankrupt in the District Court of the United States for the District of Connecticut. During the period from June 20, 1942, to December 1942 the respondents caused their said product, when sold, to be transported from their place of business in the State of Connecticut to purchasers thereof located in various other States of the United States and in the District of Columbia. During the times mentioned herein, the respondents 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.

The respondents, Harold S. Guy and J. L. Seat, during the times mentioned herein, formulated, controlled, and directed the acts and practices of said corporate respondent.

PAR. 3. In the course and conduct of their said business and for the purpose of inducing the purchase of their said product Fre-Zex, the respondents circulated among prospective purchasers throughout the United States many false statements and advertisements concerning their said product by means of United States mails, by means of advertising folders, circulars, and other advertising material. Among and typical of such false statements and representations circulated as aforesaid were the following:

- Permanent anti-freeze solution for liquid cooled motors
- Does not boil away
- Prevents rust and corrosion

It was created with one primary object . . . to provide a distinctly superior permanent type anti-freeze solution for a competitive market.

RESEARCHII MANUFACTURING CORP. guarantees that "FRE-ZEX" if used in accordance with DIRECTIONS FOR USE as printed in this booklet, in normal motor cooling systems, will protect the cooling system against freezing and clogging from the formation of rust during a complete winter season. It further guarantees that "FRE-ZEX" will not (1) boil away; (2) damage body finish; (3) injure metal or rubber parts of the cooling system or (4) leak from a cooling system sufficiently tight to hold water.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondents have represented, directly or by implication, that their product Fre-Zex furnishes protection to the cooling system of automobile and other types of combustion engines against freezing and other damaging effects; that it is safe and dependable for use as recommended; that it is a superior permanent-type antifreeze; that it protects the entire cooling system of automobile engines against corrosion, rust, and deterioration; that

its use will prevent rust or other damage to the hose connections, radiators, and other metal and rubber parts of the cooling system and finish of automobiles; and that it will not evaporate or clog passages in the cooling system.

PAR. 5. The foregoing claims, statements, and representations are grossly exaggerated, false and misleading. In truth and in fact, respondents' product Fre-Zex is composed of a calcium-chloride base and is not a superior type of antifreeze solution and is not a safe and dependable product for use as recommended. It does not protect the cooling systems of engines against corrosion, rust, or other deterioration. In fact, the use of said product will bring about corrosion on most metals, including iron, steel, brass, and aluminum, and causes, and has caused, rust, corrosion, clogged passages, and other serious damage to the engines, radiators, ignition wires, spark plugs, and hose connections and to the exterior finish of automobiles and results in leakage in the cooling systems of automotive engines. The use of respondents' product containing calcium chloride will give rise to persistent ignition troubles if any of the solution comes in contact with spark plugs or ignition wires and will short circuit the ignition system and necessitate the replacement thereof.

PAR. 6. For many years there have been on the market and sold to the general public throughout the United States, solutions for use in the water in the cooling systems of automobiles and other types of internal-combustion engines to prevent injury to such engines from freezing of the water used in the cooling system. These solutions are known as "antifreeze" and have proved dependable both from the standpoint of protecting the cooling system and other parts of the engine from cold and in not damaging any part of the engine or vehicle in which the engine is installed through rust, corrosion, clogging, or any other form of deterioration or injury.

When a product is advertised as an antifreeze, the public believes that it possesses the attributes found in these long-used, dependable products; that it may be used with safety in such cooling systems; that it will not cause rust, corrosion, clogging, or other deterioration or injury; and that it will protect the cooling system and other parts of the engine from cold.

Respondents' representations that their product is an antifreeze leads the public to believe that said product is safe and dependable for use in the cooling systems of internal-combustion engines in guarding against damage from corrosion, clogging, or other deleterious or damaging effects. Respondents' failure to inform the general public of the deleterious and damaging effects which result or may result from the use of their product as an antifreeze is misleading and deceptive.

PAR. 7. The use by the respondents 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 has induced, the public to purchase substantial quantities of respondents' product as the result of such belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answers 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 exceptions filed thereto, and brief in support of the complaint (no brief having been filed by the respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Research Manufacturing Corporation, a corporation, and its officers, representatives, agents, and employees, and the individual respondents, Harold S. Guy and J. L. Seat, 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 their product designated "Fre-Zex" or any other product of substantially similar composition, whether sold under the same name or under any other name, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication:

1. That said product is a safe or dependable antifreeze preparation for use in the cooling systems of automobile engines.

2. That said product is a superior type of antifreeze preparation.

3. That said product will protect the cooling systems of automobile engines against corrosion, rust, or other deterioration.

4. That said product will not cause rust, corrosion, or other damage to the cooling systems of automobile engines or damage to such engines or to radiators or hose connections or the exterior finish of automobiles.

5. That said product will not evaporate in use or clog passages in the cooling systems of automobile engines.

6. That said product will not injure, rust, or corrode aluminum, brass, copper, iron, or other metals, or injure the rubber parts of the cooling systems of automobile engines.

7. That said product is an antifreeze preparation for use in the cooling systems of automobile engines, without affirmatively disclosing in a clear and conspicuous manner in immediate connection with such representation, that said preparation will rust and corrode the cooling systems of automobile engines and may clog the passages in such systems.

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
MORTON SALT COMPANY

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

Docket 4319. Complaint, Sept. 18, 1940—Decision, July 28, 1944

Where a corporation engaged in the production of salt and in the competitive interstate sale and distribution thereof from its various plants or warehouses to wholesalers or jobbers for resale to the retail trade, to large retail purchasers such as cooperative and corporate chain stores, and to customers purchasing in large quantities for use in their manufacturing processes such as meat packers, tanners and many other industries;

In selling its blue label plain and iodized salt on a delivered price basis at \$1.60 per case of 24 packages in less than carload lots and \$1.50 per case for car lots, subject to additional discount of 10 cents per case for purchase of 5,000 cases or more in any consecutive 12-month period, and another discount of 5 cents, or a total of 15 cents, for similar purchase of 50,000 cases or more—

- (a) Discriminated in price between purchasers of like grade and quality through making available said carload differential and price to customers who joined in purchase of a car for delivery to them at a specific destination, from which they paid price of delivery to their respective warehouses or places of business, and through making them available also at certain of its warehouses at which it permitted purchases at said carload lot price in any desired quantity;
- (b) Discriminated in price between purchasers as aforesaid, through making available said 5,000 case discount of 10 cents on combined purchases of separate wholesalers and wholesale groups, and to the corporate purchasing agent of nearly 20,000 member retailer grocer purchasers, no individual purchaser of which groups qualified;
- (c) Discriminated in price between purchasers as aforesaid through said 15 cent discount on 50,000 case purchases, benefit of which it extended to four retail store chains, combined purchases of all of whose stores located throughout the United States were sufficient to qualify therefor, but for which purchases of no single branch or retail store qualified, which discount in many cases permitted such retail chain grocers to sell its salt to the consuming public at prices lower than those at which wholesalers could reasonably sell it to their retail customers, and among the competitors of which chain stores were retailers who purchased salt from it at the \$1.50 carload lot price, or 5,000 case quantity discount of 10 cents; and

In selling other salt than its blue label grade at list price plus transportation charges from its plant serving the customer's location under its "unit discount" schedule, pursuant to which it allowed one unit or approximately 5 per cent off list on carload purchases, and an additional unit discount to customers purchasing 50,000 or more cases of table salt during a 12-month period;

- (d) Discriminated in price between purchasers of like grade and quality through extending said carload unit discounts to less-than-carload customers who combined their purchases to form a carload under the so-called "pool car arrangement"; and

- (e) Discriminated as aforesaid, through said 50,000 case unit discount schedule, and inclusion in the total for the purpose of reckoning (but not for discount) of its blue label as well as other salt;

With the result that—

- (1) Discounts allowed by it on said staple—in which a difference of 5 cents per case in the wholesale price may result in the loss of a sale to a customer, not only of the salt involved, but of other commodities as well, the order for which might be placed therewith—in some instances enabled the favored wholesalers to offer its table salt to retailers at prices equal to those paid by competing wholesalers or at prices less than such wholesalers could reasonably sell said salt to their retailer customers;
- (2) Customers who received the benefit of the various discriminatory prices had a substantial advantage in competition with other customers in the same trading area who were not thus favored, or were obliged to pay its full price;
- (3) Wholesalers who paid its full price or were denied the discounts allowed such favored customers, were compelled, in order to compete with the others, either to sell at competitive prices and in so doing reduce their possible profits by the amount of the discrimination against them or attempt to sell at higher prices with result of reduction in their volume of sales;
- (4) Customers paying the highest price were discriminated against with respect to all other customers, those paying the lowest price were given the benefit of the discrimination as against other customers, and the medium-sized wholesale grocer was discriminated against with respect to his larger competitors and given benefit of the discrimination as against the smaller competitors;
- (5) The discriminations based upon the 50,000 or more case purchases allowed to said large retail chain stores discriminated not only against the smaller or medium-sized chain stores, who could not purchase in such quantities, but also against small retailers who were compelled to purchase through wholesalers at prices in excess of the retail prices maintained by such competitive volume purchasers, and against retailer customers of wholesalers, prices of which exceeded those charged such large retail chain stores, and who, in turn, were forced to pay prices which prohibited their competing with said large retail chain stores; and
- (6) Said various arbitrarily fixed discounts and discriminatory prices—differentials of which were not shown as justified by reason of differences in the cost of manufacture, sale or delivery resulting from the different methods or quantities in which its table salt was sold or delivered to its various customers—might substantially lessen and injure competition between customers; and

Where said corporation, separately and apart from the aforesaid discounts—

- (f) Discriminated in price through special allowances or discounts to certain customers, referred to by it as “competitive adjustments” but not shown as made in good faith to meet competition, including one of 7½ cents per case allowed by it to a corporate wholesale grocery group operating 22 units or branches throughout Louisiana in competition with other wholesale grocers therein who did not receive said special 7½ cent discount, and including also an additional unit discount on table salt other than its blue label extended to another corporate wholesale group, notwithstanding failure of said group to qualify therefor by purchase of \$50,000 worth of salt during any consecutive 12-month period;

Effect of which discriminations in price might be substantially to lessen competition in the line of commerce concerned, and to injure, destroy and prevent competition between those purchasers receiving the benefit of said discriminatory prices and those to whom they were denied, with tendency to create a monopoly in favored

Complaint

purchasers in the various localities in the United States in which they and their competitors were engaged in business:

Held, That aforesaid discriminations in price, under the circumstances above set forth, constituted violations of subsection (a) of Section 2 of the Clayton Act, or Act of Congress approved October 15, 1914, as amended by the Robinson-Patman Act, or act approved June 19, 1936.

As respects certain special allowances or so-called "competitive adjustments" extended to certain customers, which it was contended were arrived at to meet competition, the evidence was too vague and indefinite to show that the long continued discriminations concerned were made in good faith to meet an equally low price of a competitor.

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

Mr. John T. Haslett for the Commission.

Stearns & McBride, of Chicago, Ill., for respondent.

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" (the Clayton Act), as amended by an Act approved June 19, 1936, entitled "An act to amend Section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13) and for other purposes" (the Robinson-Patman Act), the Federal Trade Commission having reason to believe that the respondent hereinafter described is violating and has been violating the provisions of said Clayton Act as amended hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Morton Salt Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois and having its principal place of business at 208 West Washington Street, Chicago, Ill.

PAR. 2. Respondent corporation is now and has been engaged in the business of producing, manufacturing, offering for sale, selling and distributing salt in all parts of the United States. The respondent is one of the largest producers and distributors of salt in the United States and occupies a dominating position in said industry. Respondent sells its products to wholesalers, retailers, corporate chains, voluntary chains. Respondent sells and distributes its products in commerce between and among the various States of the United States and in the District of Columbia and preliminary to or as a result of such sale causes such products to be shipped and transported from the places of origin of the shipment to the purchasers thereof who are located in States of the United States and in the District of Columbia other than the State of origin of the shipment, and there is and has been at all times herein mentioned a continuous current of trade in commerce in said products across state lines between respondent's plants or factories and the purchasers of such products. Said products are sold and distributed for use, consumption and resale within the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid respondent is now and during the time herein mentioned has been in substantial competition with other corporations, individuals, partnerships and firms engaged in the business of selling and distributing salt in commerce between and among the various States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business as aforesaid since June 19, 1936, respondent has been and is now discriminating in price between different purchasers buying such products of like grade and quality by selling its products to some of its customers at lower prices than it sells its products of like grade and quality to other of its customers who are competitively engaged one with the other in the sale of said products within the United States.

The said discriminations in price are brought about by the following practices and policy pursued by the respondent, to wit:

(1) A discount amounting to approximately five per cent of the list price is allowed to all customers who purchase a carload of salt.

(2) In addition to the carload discount hereinbefore referred to in paragraph 1 hereof, a five per cent discount is allowed to customers whose purchases of salt during a twelve consecutive month period are equal to or in excess of fifty thousand dollars.

(3) To customers who purchase five thousand or more cases consisting of twenty-four packages to a case during a twelve consecutive month period of "free running" table salt and "iodized" salt, a discount of 10¢ per case is granted, and to customers who purchase fifty thousand or more cases of the above type salt, a discount of 15¢ per case is granted. Said discount is not in addition to, but in lieu of the discounts referred to in paragraphs 1 and 2 hereinbefore mentioned.

The discount referred to in paragraph 2 heretofore mentioned is allowed to customers of the respondent who do not purchase from the respondent fifty thousand dollars worth of salt during a twelve consecutive month period, provided, however, the total purchases of salt from all sources made by said customer total fifty thousand dollars during said given period of time. In the industry this type of selling is known as "split business," that is, basing the price upon the requirements of a customer and not upon the actual quantity purchased from the respondent.

In addition to the discriminations effected by the aforementioned discounts respondent discriminates in price between different purchasers of its products, and such price discriminations result from respondent's selling said salt to an individual customer where the delivery thereof is made to several branches or outlets of said individual customer at prices based upon the total quantity or volume delivered to all of the separate branches or outlets of said customer provided such total quantity or volume amounts to the required minimums during the twelve consecutive month period as set forth in paragraphs 2 and 3 hereinbefore mentioned and not upon the quantity or volume delivered by the respondent to the respective branches or outlets of such individual customer.

In the industry this type of selling is known as "combine selling," that is, basing the price upon the total quantity delivered to all the separate branches or outlets of an individual customer and not upon the quantity delivered to the respective branches or outlets of said customer.

PAR. 5. The effect of the discriminations in price generally and specifically mentioned in paragraph 4 herein has been and may be substantially to lessen competition in the line of commerce in which the purchaser receiving the benefit of said discriminatory prices is engaged and to injure, destroy and prevent competition between those purchasers receiving the benefit of said discriminatory prices and those to whom they are denied, and has been and may be to tend to creat a monopoly in those purchasers receiving the benefit of said discriminatory prices in said line of commerce in the various localities or trade areas in the United States in which said favored customers and their competitors are engaged in business.

PAR. 6. The foregoing acts and practices of said respondent are violations of subsection 2(a) of Section 1 of said Act of Congress, approved June 19, 1936, entitled "An Act to amend Section 2 of an act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13) and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid Act, the Federal Trade Commission on September 18, 1940, issued and subsequently served its complaint upon the respondent, Morton Salt Co., 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 a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed in support of and in opposition to the complaint, and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Morton Salt Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal place of business at 310 South Michigan Avenue, Chicago, Ill. In addition to its main office, said respondent also maintains branch offices and warehouses in various of the

larger cities throughout the United States and also maintains plants for processing and manufacturing salt at Port Huron, Mich.; Manistee, Mich.; Hutchinson, Kans.; Kanopolis, Kans.; Grand Saline, Tex.; Saltair, Utah; and Newark, Calif.

PAR. 2. Since prior to June 19, 1936, respondent has been engaged in the production and manufacture of various kinds and grades of salt and in the sale and distribution of such products in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes its products, when sold, to be transported from its various plants or warehouses to the purchasers thereof located in States other than the State in which such shipments originate. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now, and during the times herein mentioned has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the business of selling and distributing salt in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. The various types of salt processed, manufactured, and sold by the respondent may be divided into four basic classifications: granulated salt, produced from brine and evaporated in vacuum pans; grainer's salt, produced from brine and processed through open-pan evaporation; rock salt, which is mined; and solar salt, which is produced from solar evaporation in open ponds. Table salt may come from all four of these sources.

The principal brand of table salt processed and sold by the respondent is Morton's Free Running Salt, plain and iodized. This brand is the finest grade sold by the respondent and is processed from the granulated or vacuum-pan type of salt. This brand is sold in a round blue package that contains 26 ounces of salt and is generally known as "Blue Label" salt. When sold by the respondent its Blue Label salt is packed twenty-four packages to a case or carton.

Respondent sells its various grades of salt to three classes of customers: (1) wholesalers or jobbers, who in turn resell to the retail trade; (2) retailers who purchase in large quantities, such as cooperative and corporate chain stores; (3) consumers who purchase in large quantities for use in their manufacturing processes, such as meat packers, tanners, and many other industries.

PAR. 5. In the course and conduct of its business since June 19, 1936, the respondent has been, and is now, discriminating in price between different purchasers buying such products of like grade and quality by selling its products to some of its customers at lower prices than it sells its products of like grade and quality to other of its customers who are competitively engaged with each other in the sale of such products within the United States.

PAR. 6. In connection with the sale of its Blue Label plain and iodized salt, respondent followed the practice of allowing various discounts to wholesalers and retail purchasers. Respondent sold its Blue Label salt on a delivered-price basis at \$1.60 per case of 24 packages in less-than-carload lots. When sold in carload lots the delivered price was \$1.50 per case. In

addition, if a customer purchased 5,000 or more cases in any consecutive 12-month period, an additional discount of 10 cents per case was allowed by the respondent. If a customer purchased 50,000 or more cases in any consecutive 12-month period an additional 5-cent discount per case was allowed or a discount of 15 cents per case in lieu of the 5,000-case discount.

These quantity discounts were not deducted from the invoice price but, instead, it was the practice of the respondent to make quarterly, semi-annual, or other stated-period remittances or rebates to those customers whose purchases entitled them to the quantity discounts.

PAR. 7. In many instances the respondent both permitted and encouraged customers to purchase on a so-called pool-car arrangement, whereby a number of competing wholesalers or retailers joined in the purchase of a car for delivery at a specific destination. Participants in such pool-car arrangements would call at the destination point and pick up the salt consigned to them and pay cost of delivery from such destination point to their respective warehouses or places of business. Such customers were billed separately by the respondent at the carload price of \$1.50 per case.

In some localities respondent sold its Blue Label salt through brokers who arranged for customers to join in pool-car shipments. Respondent paid brokerage commission to such brokers and billed the individual customers, regardless of individual purchases, at the carload price of \$1.50 per case. As in the previous case, the customers paid delivery costs from destination point to their respective warehouses or places of business. Respondent also permitted customers to pick up its Blue Label salt in any case quantity desired at certain of its warehouses at the price of \$1.50 per case, customer paying cost of delivery to his warehouse or place of business.

PAR. 8. In allowing the discount of 10 cents per case on the purchase of 5,000 cases of Blue Label salt, the respondent did not require the purchase of this amount by each individual customer in order to qualify but, instead, permitted combined purchases in order to obtain this discount.

In some instances, the respondent permitted one wholesaler to place orders for Blue Label salt for a number of his competitors. Respondent considered these combined purchases in allowing the quantity discount for 5,000-case purchases and issued its remittances or rebates to such wholesaler for distribution to his competitors. In some instances the wholesaler remitted the entire discount to his competitors and in others retained 2 cents per case and remitted the balance. To those wholesalers who received the entire discount the net price was \$1.40 per case and to the others, \$1.42 per case. None of such wholesalers individually purchased 5,000 cases of Blue Label salt in any consecutive 12-month period.

The respondent also permitted the Thomas & Howard Cos., a group of separate corporations, all wholesale grocers, located in various cities in North and South Carolina, to combine their purchases to obtain the quantity discount on purchases of 5,000 cases of Blue Label salt. No individual Thomas & Howard Co. purchased 5,000 cases of Blue Label salt, but, based upon the combined purchases of all the companies, the respondent remitted the discount of 10 cents per case to the Thomas & Howard Co. at Columbia, S. C., for distribution to the other companies in proportion to their purchases. In like manner respondent paid the quantity discount on 5,000-case purchases to C. D. Kenny Co. for distribution to its various branches, although no individual branch purchased 5,000 cases.

The respondent also permitted the National Retailer-Owned Grocers, Inc., to combine the purchases of its members to obtain the quantity discount on 5,000-case purchases of Blue Label salt. This organization acts as purchasing agent for its membership of approximately 18,917 retail stores located in 42 States of the United States. These members in turn own about 116 wholesale warehouses, which act as wholesalers to such members. No individual wholesale warehouse or retail grocer purchased 5,000 cases of Blue Label salt from respondent, but, based upon combined purchases of all the member stores, the respondent remitted the quantity discount to the principal office of the National Retailer-Owned Grocers, Inc., for distribution to its members.

PAR. 9. The allowance of 15 cents per case made to purchasers of 50,000 or more cases of Blue Label salt was limited to four customers whose purchases were sufficient to qualify for this discount. These were American Stores Co. of Philadelphia, Pa.; National Tea Co. of Chicago, Ill.; Safeway Stores, Inc., of Oakland, Calif.; and Great Atlantic & Pacific Tea Co. of New York. These customers were all retail chain stores with branches and stores located in various cities throughout the United States. No branch or retail store purchased a sufficient quantity of respondent's Blue Label salt to qualify for said discount but, instead, the allowance was based upon the combined purchases of all stores and branches. Such discount in many cases permitted such retail chain groceries to sell respondent's Blue Label salt to the consuming public at prices less than wholesalers could reasonably sell said salt to their retail customers. There were other retailers in competition with the above-named retailer customers who purchased Blue Label salt from the respondent and who did not receive the quantity discount on purchases of 50,000 cases but who, instead, purchased said salt from the respondent at the carload price of \$1.50 or at the 5,000-case quantity discount.

PAR. 10. Salt sold by the respondent, other than the Blue Label salt, was not sold on a delivered-price basis as was the custom with the Blue Label salt. Instead, such salt was sold at list price plus freight or transportation charges from the plant nearest the customer or from the plant serving the area in which the customer was located and from which delivery was customarily made. On such salt other than Blue Label, the respondent also maintains a schedule of discounts known as the "unit discount." One unit amounts to approximately 5 per cent of the list or plant price. One unit, or approximately 5 per cent of list price, is allowed to a customer who purchases in carload lots. This discount is also allowed to customers whose individual purchases are less than a carload but who combine their purchases to form a carload on the so-called pool-car arrangement.

To those customers who purchase table salt during a 12-consecutive-month period in amounts equal to, or in excess of, \$50,000, the respondent allows an additional unit discount amounting to approximately 5 per cent of the list price. While this discount does not apply to respondent's Blue Label salt, the amount of Blue Label salt purchased during the 12-month period is included in arriving at the total purchase of \$50,000.

PAR. 11. The Commission finds that the discounts allowed by the respondent in the sale of its Blue Label salt, including price differentials on carload and less-than-carload lots, purchases under so-called pool-car

arrangements, and on purchases in 5,000- and 50,000-case quantities, as well as unit discounts allowed on carload lots and \$50,000 purchases of salt other than Blue Label, constituted discriminations in price between purchasers of commodities of like grade and quality.

Salt is a staple commodity with a medium turnover and is generally sold by wholesalers to their retail customers on a lower margin of profit than that received on other commodities generally. Consequently, the price at which the wholesaler offers his table salt is usually controlling, and a difference of 5 cents per case may result in the loss of a sale to a customer, not only of the salt involved but of other commodities as well, the order for which might be placed with the salt purchase.

In some instances the discounts allowed by the respondent to some of its wholesaler customers have enabled such wholesalers to offer respondent's table salt to retail dealers at prices equal to prices paid by competing wholesalers or at prices less than competing wholesalers could reasonably sell said salt to the retailer customers.

The Commission further finds that customers of the respondent who receive the benefit of the various discriminatory prices granted by the respondent have a substantial advantage in selling respondent's salt in competition with other customers of the respondent who do not receive the benefit of said discount or who are obliged to pay respondent's full price for said salt. In order to sell respondent's table salt in competition with customers of the respondent who receive the benefit of respondent's discrimination in price, wholesalers who pay respondent's full price or who are denied the discounts allowed such favored customers must either sell at competitive prices and in so doing reduce their possible profits which they might reasonably obtain by the amount of the discriminations against them, or attempt to sell at higher prices than the favored customers of respondent charge for the same product, with the result of inability to secure business and a reduction in the volume of their sales.

In each instance where the respondent has granted special and regular discounts to its customers, there were competing customers in the same trading area who were purchasing their requirements of Blue Label salt from the respondent at the carload price of \$1.50 per case or were paying full less-than-carload price.

By respondent's method of selling and the use of the quantity and special discounts hereinbefore described, customers paying the highest price are discriminated against with respect to all other customers, while the customers paying the lowest price are given the benefit of the discrimination as against other customers of the respondent. Furthermore, the medium-sized wholesale grocer is discriminated against with respect to his larger competitors and is given the benefit of the discrimination as against his smaller competitors.

The discriminations in price based upon purchase of 50,000 or more cases of Blue Label salt allowed to certain of the large retail chain stores constitute a discrimination in price not only against the smaller or medium-sized chain stores that cannot purchase Blue Label salt in such quantities from the respondent, but also constitute a discrimination against the small retail dealer who is in competition with such large chain stores but who is compelled to purchase Blue Label salt through wholesalers at prices in excess of the retail price maintained by such competitive volume pur-

chasers. Respondent, by selling its Blue Label salt to such large retail chain stores at prices below those charged for the same salt when sold to wholesalers, forces retailer customers of such wholesalers to pay prices which prohibit competition in price between such small retailers and the large retail chain stores.

The Commission further finds that the various discounts and discriminatory prices hereinbefore described have been arbitrarily fixed by the respondent and that the effect thereof may be substantially to lessen and injure competition between customers of the respondent. The price differentials so fixed and established by the respondent have not been shown to be justified by reason of differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which its table salt is sold or delivered to its various customers.

PAR. 12. Separate and apart from the discounts hereinbefore described respondent has made special allowances or discounts to certain customers. For example, the respondent has, for several years, made to the Consolidated Cos., Inc., of Plaquemine, La., a special allowance of $7\frac{1}{2}$ cents per case from the carload price of \$1.50 on its Blue Label salt. Consolidated Cos., Inc., is engaged in the wholesale grocery business and operates 22 units or branches throughout the State of Louisiana in competition with other wholesale grocers in Louisiana who purchase Blue Label salt from the respondent but who do not receive the special discount of $7\frac{1}{2}$ cents per case allowed by the respondent to Consolidated Companies, Inc.

An additional example is the allowance by the respondent of an additional unit discount on table salt other than Blue Label to the Thomas & Howard Cos., although said Thomas & Howard Cos. do not purchase \$50,000 worth of salt during any consecutive 12-month period to entitle them to the additional unit discount.

The respondent refers to these and other special allowances as "competitive adjustments" and contends that they were arrived at to meet competition. Based upon the record in this case the Commission finds that the respondent has not shown the existence of facts which might indicate or prove that these discriminations in price were made in good faith to meet an equally low price of a competitor. The evidence submitted by the respondent is too vague and indefinite to show that the long-continued discriminations herein described were made in good faith to meet an equally low price of a competitor.

PAR. 13. The Commission finds that the effect of the discriminations in price generally and specifically described herein may be substantially to lessen competition in the line of commerce in which the purchaser receiving the benefit of said discriminatory price is engaged and to injure, destroy, and prevent competition between those purchasers receiving the benefit of said discriminatory prices and those to whom they are denied, and may tend to create a monopoly in those purchasers receiving the benefit of said discriminatory prices in said line of commerce in the various localities or trade areas in the United States in which said favored customers and their competitors are engaged in business.

CONCLUSION

The aforesaid discriminations in price by the respondent, as herein found, constitute violations of subsection (a) of Section 2 of an Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, 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, 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 made its findings as to the facts and its conclusion that respondent has violated the provisions of subsection (a) of Section 2 of an Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by Act approved June 19, 1936 (Robinson-Patman Act).

It is ordered, That respondent, Morton Salt Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in the sale of Morton's Free Running Table Salt, plain or iodized, or other grades of table salt in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating directly or indirectly in the price of such products of like grade and quality as among wholesale or retail dealers purchasing said salt when the differences in price are not justified by differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such products are sold or delivered,

(a) By selling any of such products to some wholesalers thereof at prices different from the prices charged other wholesalers who in fact compete in the sale and distribution of such products.

(b) By selling any of such products to some retailers thereof at prices different from the prices charged other retailers who in fact compete in the sale and distribution of such products.

(c) By selling any of such products to any retailer at prices lower than prices charged wholesalers whose customers compete with such retailer.

For the purpose of comparison, the term "price" as used in this order takes into account discounts, allowances, and other terms and conditions of sale.

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

IN THE MATTER OF

WALLACE T. AUSTELLE AND JOHN W. FLINTOM DOING
BUSINESS AS AUSTELLE-FLINTOM COMPANY

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

Docket 5130. Complaint, Feb. 7, 1944—Decision, Aug. 12, 1944

Where two partners engaged in the purchase of canned fruits and vegetables, citrus juices, sugar, rice, beans, salt and other miscellaneous commodities for their own account, and in their resale to jobbers, wholesalers, retail chain stores, and other purchasers without the state direct from sellers;

Received and accepted, directly or indirectly from sellers in connection with such purchases of commodities for their own account, in interstate commerce as aforesaid, brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts:

Held, That said receipt and acceptance of brokerage fees and commissions or allowances and discounts in lieu thereof, from sellers, under the circumstances set forth, was in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

Mr. Edward S. Ragsdale for the Commission.

Felder & Rosen, of Orangeburg, S. C., for respondents.

COMPLAINT

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

PARAGRAPH 1. Respondents, Wallace T. Austelle and John W. Flintom, are partners, doing business under the name and style of Austelle-Flintom Company, having their principal office and place of business located in the Atlantic Coast Line Warehouse, on Dukes Avenue, in Orangeburg, S. C. Respondents are engaged in the business of purchasing canned fruits and vegetables, citrus juices, sugar, rice, beans, salt, and other miscellaneous commodities for their own account, and of reselling the same to jobbers, wholesalers, retail chain stores and other purchasers.

Since June 19, 1936, respondents have made many purchases of such commodities for their own account for resale as aforesaid from sellers located in States other than the State of South Carolina, pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to respondents or, pursuant to instructions and directions from respondents, to the respective purchasers to whom such commodities have been resold by respondents.

Since June 19, 1936, respondents have also made many purchases of such commodities for their own account as aforesaid from sellers located in the State of South Carolina, which sellers, pursuant to instructions and directions from respondents, have caused the commodities so purchased by respondents to be shipped and transported from the State of South Carolina across State lines to the respective purchasers to whom such commodities have been resold by respondents.

PAR. 2. Since June 19, 1936, in connection with the purchases of such commodities by respondents for their own account in interstate commerce as aforesaid, respondents have received and accepted, directly or indirectly, from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

PAR. 3. Since June 19, 1936, respondents have resold such commodities purchased for their own account as set forth in paragraphs 1 and 2 hereof to purchasers located in States other than the State of South Carolina, pursuant to which sales respondents have caused such commodities to be shipped and transported across State lines to such purchasers.

Since June 19, 1936, in connection with the resale of such commodities in interstate commerce as aforesaid, respondents have granted and allowed, directly or indirectly brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to the purchasers of such commodities.

PAR. 4. The receipt and acceptance of brokerage fees and commissions or allowances and discounts in lieu thereof from sellers by respondents upon the purchases of commodities by the respondents, as set forth herein, and also the granting and allowing of brokerage fees and commissions or allowances and discounts in lieu thereof by respondents to purchasers upon the resale of commodities by respondents as set forth herein, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U.S.C. Title 15, Sec. 13), the Federal Trade Commission on February 7, 1944, issued and subsequently served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging said respondents with violation of the provisions of subsection (c) of Section 2 of said Clayton Act, as amended. After the issuance of said complaint and the filing of respondents' answer, the Commission entered its order granting respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting the material allegations of fact set forth in said complaint, except certain allegations in paragraph three thereof, 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 said substitute answer, and the Commission, having duly considered the same and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Wallace T. Austelle and John W. Flintom, are partners, doing business under the name and style of Austelle-Flintom Company, having their principal office and place of business located in the Atlantic Coast Line Warehouse, on Dukes Avenue, in Orangeburg, S. C. Respondents are engaged in the business of purchasing canned fruits and vegetables, citrus juices, sugar, rice, beans, salt, and other miscellaneous commodities for their own account, and of reselling the same to jobbers, wholesalers, retail chain stores and other purchasers.

Since June 19, 1936, respondents have made many purchases of such commodities for their own account for resale as aforesaid from sellers located in States other than the State of South Carolina, pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to respondents or, pursuant to instructions and directions from respondents, to the respective purchasers to whom such commodities have been resold by respondents.

Since June 19, 1936, respondents have also made many purchases of such commodities for their own account as aforesaid from sellers located in the State of South Carolina, which sellers, pursuant to instructions and directions from respondents, have caused the commodities so purchased by respondents to be shipped and transported from the State of South Carolina across State lines to the respective purchasers to whom such commodities have been resold by respondents.

PAR. 2. Since June 19, 1936, in connection with the purchases of such commodities by respondents for their own account in interstate commerce, as aforesaid, respondents have received and accepted, directly or indirectly, from sellers, brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

CONCLUSION

Under the facts and circumstances set forth in the foregoing findings as to the facts, the Commission concludes that the receipt and acceptance of brokerage fees and commissions or allowances and discounts in lieu thereof from sellers by respondents upon the purchases of commodities by respondents, as set forth herein, is in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, which answer admits, with certain exceptions, the material allegations of fact set forth in said complaint and waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of "An Act to supplement existing laws against unlawful

restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U.S.C. Title 15, Sec. 13).

It is ordered, That the respondents, Wallace T. Austelle and John W. Flintom, partners, doing business under the name and style of Austelle-Flintom Company, or under any other name, and their agents, employees, and representatives, directly or through any corporate or other device, in connection with the purchase of canned fruits and vegetables, citrus juices, sugar, rice, beans, salt, or any other commodities in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon purchases made for respondents' own account.

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 AMERICAN PRODUCTS COMPANY AND THE
ZANOL PRODUCTS COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 2336. Order, August 16, 1944

Order modifying prior modified cease and desist order of January 25, 1940, 30 F.T.C. 424, so as to require respondents, their officers, etc. in connection with offering, etc., in commerce, of food and toilet products and household cleaners, to cease and desist from misrepresenting the volume of respondents' business, or risk or expense incurred by their salesmen or distributors, or using the term "free" to describe articles offered as compensation for distribution thereof, or misrepresenting earnings or profits of sales persons or dealers, as in said order below set forth.

MODIFIED 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 the material allegations of facts set forth in said complaint, and the Commission having duly made and issued its findings as to the facts, conclusion and modified order to cease and desist dated January 25, 1940; and the Commission having further considered said modified order to cease and desist heretofore issued, and being of the opinion that the public interest requires that a further modification of the order to cease and desist should be issued in said cause; and the Commission having given due notice to the respondents to show cause on July 24, 1944, why this case should not be reopened for the purpose of modifying said modified order to cease and desist; and the Commission having heard oral argument of counsel and having considered the matter and the record herein, and having issued its order modifying said order in certain respects, issues this its modified order to cease and desist.

It is ordered, That the respondents, The American Products Company, a corporation, and The Zanol Products Company, a corporation, their officers, representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of food and toilet products and household cleaners in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting in any manner the volume of respondents' business.
2. Representing that salesmen or distributors of respondents' merchandise incur no risk or expense when in fact respondents require a deposit from such persons for the goods, samples or sales equipment supplied.
3. Using the term "free," or any other term of similar import or meaning, to describe or refer to articles offered as compensation for distributing respondents' merchandise.

4. Representing any specified sum of money as possible earnings or profits of sales persons or dealers for any stated period which is not a true representation of the net earnings or profits which have been made for such stated period of time by a substantial number of respondents' active sales persons or dealers in the ordinary course of business under normal conditions and circumstances.

5. Representing any specified sum of money as earnings or profits of any specified dealer or sales person for any stated period of time unless such sum of money has in fact been earned net, by such dealer or sales person averaged over a period of at least two months in the ordinary course of business and under normal conditions and unless such representation is immediately accompanied by a statement to the effect that such dealer or sales person is an exceptional or unusual dealer or sales person.

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
ABRAHAM STARR TRADING AS SUPERIOR TEXTILE MILLS
MODIFIED CEASE AND DESIST ORDER

Docket 3190. Order, August 16, 1944

Order modifying prior cease and desist order of November 15, 1939, 29 F. T. C. 1317, so as to require respondent, his representatives, etc., in connection with the offer, etc., in commerce, of fabrics or wearing apparel, to cease and desist from representing, through use of word "mills" in his trade name, or use of term "direct from mills to wearer," or otherwise, that he is a manufacturer of the products sold by him, etc., and from misrepresenting articles offered by him as "free," etc., and misrepresenting his offers as limited, etc., as in said order below set forth.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission, upon complaint of the Commission, the answer of the respondent, testimony and other evidence taken before Edward E. Reardon, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and in opposition thereto, brief filed herein by S. Brogdyne Teu, II, counsel for the Commission (the respondent having filed no brief and not having requested oral argument); and the Commission having duly made and issued its findings as to the facts, conclusion and order to cease and desist dated November 15, 1939; and the Commission having further considered said order to cease and desist heretofore issued, and being of the opinion that the public interest requires that a modified order to cease and desist should be issued in said cause; and the Commission having given due notice to the respondent to show cause on July 24, 1944, why this case should not be reopened for the purpose of modifying said order to cease and desist; and the Commission having considered the matter and the record herein, and having issued its order modifying said order in certain respects, issues this its modified order to cease and desist.

It is ordered, That the respondent Abraham Starr, individually, and trading as Superior Textile Mills, 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 fabrics or wearing apparel 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 word "Mills" in respondent's trade name or of the term "direct from mills to wearer," or any words or terms of similar import or meaning, or through any other means or device, or in any manner that said respondent is the manufacturer of the products sold by him unless and until such respondent actually owns and operates or directly and absolutely controls the manufacturing plant wherein said products are manufactured by him.

2. Representing that any article regularly included in a combination offer with other articles is "free" or that the sale thereof constitutes a "free merchandise sale."

3. Representing, designating or describing any articles or merchandise delivered only upon the condition that some other articles be purchased and paid for as "free," or in any other manner indicating that the said articles or merchandise is a gift or gratuity.

4. Representing that respondent's business was established in 1905, or at any time other than the date of its actual establishment.

5. Representing that any offer of merchandise is limited as to time or otherwise unless such offer is in fact so limited.

6. Using the term "free," or any other term of similar import and meaning, to describe, designate or refer to any merchandise which is not a gift or gratuity and delivered to the recipient thereof without cost and unconditionally.

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
WILLIAM C. STEFFY, LORINA STEFFY AND
G. V. PARKINSON

MODIFIED CEASE AND DESIST ORDER

Docket 3238. Order, August 16, 1944

Modified order in proceeding in question, in which original order issued on August 2, 1939, 29 F. T. C. 465, requiring respondents, their representatives, etc., in connection with the offer, etc., in commerce, of earthenware, chinaware, radios or sales promotional plans, including premium certificates, coupons, or other similar devices redeemable in silverware, earthenware, chinaware, or other merchandise, to cease and desist misrepresenting connections and arrangements with others through use of term "Rogers Silverware," etc., misrepresenting articles as free, misrepresenting that they are conducting an advertising campaign for others, misrepresenting their terms and undertakings and the prices of their products, and supplying, using, etc., lottery devices or schemes for the sale thereof, as in said order specified.

MODIFIED 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, William C. Steffy and G. V. Parkinson, in which said respondents admit all of the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearings as to said facts, and upon the testimony taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, relative to the acts and practices of respondent Lorina Steffy, and the Commission having duly made and issued its findings as to the facts, conclusion and order to cease and desist dated August 2, 1939; and the Commission having further considered said order to cease and desist heretofore issued, and being of the opinion that the public interest requires that a modified order to cease and desist should be issued in said cause; and the Commission having given due notice to the respondents to show cause on July 24, 1944, why this case should not be reopened for the purpose of modifying said order to cease and desist; and the Commission having considered the matter and the record herein, and having issued its order modifying said order in certain respects, issues this its modified order to cease and desist.

It is ordered, That the respondents, William C. Steffy and G. V. Parkinson, individually, and trading as Atlas Globe China Co., Advertising Department, Rogers Silverware Distributors, Bordeau China Co., or China Sales Syndicate, or trading under any other name or names, or trading through the corporations Security Silverware Distributors, Inc., United States Sales Corporation, or through any other corporation or corporations, their representatives, agents and employees, directly or through any other corporate or other device, in connection with the offering for sale,

sale and distribution of silverware, earthenware, chinaware, radios or sales promotional plans, including premium certificates, coupons, cards, or other and similar devices redeemable in silverware, earthenware, chinaware or any other merchandise, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing through the use of the term "Rogers Silverware" either alone or in connection with any other term or terms in a corporate or trade name, or in any other manner, that respondents have an interest in, form a part of, or have any connection with, the manufacturers of Simon L. and George H. Rogers Silverware, or from representing in any manner that respondents have an interest in, form a part of, or have any connection with the International Silverware Company, the Atlas Globe China Company, or any other manufacturer or manufacturers of silverware, chinaware or earthenware.

2. Representing merchandise delivered in redeeming certificates, coupons, or trading cards as "free" or as a gift or gratuity or as delivered without cost to the holders of said certificates, coupons or trading cards when said merchandise is not in fact delivered to the holders of said certificates, coupons or trading cards without cost and unconditionally.

3. Representing that respondents are conducting any special campaign or advertising campaign to introduce, advertise or sell any article or articles of merchandise on behalf of a manufacturer or manufacturers of silverware, earthenware or chinaware, or any other manufacturer or concern unless such a campaign is in fact being conducted at the instance of and on behalf of such manufacturer or concern.

4. Representing that respondents sell premium certificates, cards, coupons or other and similar devices or other merchandise in any territory or locality exclusively to any purchaser therein unless and until such is the fact.

5. Representing that the respondents will give a set of silverware or other merchandise free, or will refund the sum of \$4.50, or any other sum, to the purchaser of said premium certificates, gift cards, coupons or other and similar devices on the redemption of a specified number or cards, certificates or coupons unless such merchandise is delivered to said purchaser, without cost and unconditionally and said premium certificates, gift cards, coupons or other and similar devices are redeemed without cost to the holders thereof and unconditionally, and said refund is made to said purchaser upon the redemption of the specified number of premium certificates, gift cards, coupons or other and similar devices.

6. Representing that the retail price of radios is \$24.90 or \$39.99 or any other amount or amounts unless and until said radios are customarily and ordinarily sold at retail at such amount or amounts.

7. Supplying to, or placing in the hands of, others said radios or other merchandise together with a padlock and a number of keys which said padlock and keys are to be used or may be used to conduct a lottery, gaming device or gift enterprise in the sale or distribution of said radios or other merchandise to the general public.

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

9. Supplying to, or placing in the hands of, others any lottery device, game of chance or a gift enterprise so as to enable such persons to dispose of or sell any merchandise by the use thereof.

Order

39 F. T. C.

10. Representing that certificates, coupons or trading cards will be redeemed with certain articles of merchandise, unless the merchandise described is delivered to the holders of such certificates, coupons or trading cards without cost or condition.

It is further ordered, That this proceeding in so far as it relates to respondent, Lorina Steffy, be and the same hereby is, closed without prejudice.

It is further ordered, That the respondents, William C. Steffy and G. V. Parkinson 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.

Order

IN THE MATTER OF
AARON N. SAUER, TRADING AS NATION-WIDE
DISTRIBUTORS

MODIFIED CEASE AND DESIST ORDER

Docket 3407. Order, August 16, 1944

Modified order, in proceeding in question, in which original order issued on February 7, 1939, 28 F. T. C. 363, requiring respondent, his representatives, etc., in connection with offer, in commerce, of electric toasters, watches, pen and pencil sets, and various other articles, to cease and desist from using or supplying, etc., lottery devices or schemes for the merchandising of his said products, or misusing terms "free," or "without cost," etc., as in said order below set forth.

MODIFIED 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 duly made and issued its findings as to the facts, conclusion and order to cease and desist dated February 7, 1939; and the Commission having further considered said order to cease and desist heretofore issued, and being of the opinion that the public interest requires that a modified order to cease and desist should be issued in said cause; and the Commission having given due notice to the respondent to show cause on July 24, 1944, why this case should not be reopened for the purpose of modifying said order to cease and desist; and the Commission having considered the matter and the record herein, and having issued its order modifying said order in certain respects, issues this its modified order to cease and desist.

It is ordered, That the respondent, Aaron N. Sauer, individually, and trading as Nation-Wide Distributors, 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 electric toasters, watches, pen and pencil sets, jewelry ensembles, leather wallets, silverware sets, chinaware, dresser sets, cameras, cosmetics, razor blades, cigarette lighters, or any other articles of merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to, or placing in the hands of others, pull cards or circulars having pull tabs thereon, or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping or transporting to his agents or to distributors or to members of the public pull cards or circulars having pull tabs thereon, or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

Order

39 F. T. C.

3. Selling or otherwise disposing of any merchandise by the use of pull cards or circulars having pull tabs thereon, or any other lottery device.

4. Using the terms "free" or "without cost" or any other terms of similar import or meaning to describe or refer to merchandise offered as compensation for distributing respondent's merchandise.

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.

Order

IN THE MATTER OF

LINWOOD SALES CO., INC. AND BERNARD ABRAMS
AND ABE S. WILLNER

MODIFIED CEASE AND DESIST ORDER

Docket 3414. Order, August 16, 1944

Modified order in proceeding in question, in which original order issued on February 7, 1939, 28 F. T. C. 374, requiring respondents, their representatives, etc., in connection with the offer in commerce of razor blades, watches and various other articles of merchandise, to cease and desist from supplying, etc., lottery devices or schemes for the sale of their products, or using the term "free" to describe articles offered as compensation for distributing their merchandise, as in said order specified.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts; and the Commission having duly made and issued its findings as to the facts, conclusion and order to cease and desist dated February 7, 1939; and the Commission having further considered said order to cease and desist heretofore issued, and being of the opinion that the public interest requires that a modified order to cease and desist should be issued in said cause; and the Commission having given due notice to the respondents to show cause on July 24, 1944, why this case should not be reopened for the purpose of modifying said order to cease and desist; and the Commission having considered the matter and the record herein, and having issued its order modifying said order in certain respects, issues this its modified order to cease and desist:

It is ordered, That the respondents, Linwood Sales Co., Inc., its officers, and Bernard Abrams and Abe S. Willner, individually, 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 razor blades, watches, china and silverware, clocks, cosmetics, dresser sets, umbrellas, bedding, or any other articles of merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others, pull cards or circulars having pull tabs thereon or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping or transporting to their agents or to distributors or to members of the public pull cards or circulars having pull tabs thereon or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of pull cards or circulars having pull tabs thereon or any other lottery device.

4. Using the term "free," or any other term of similar import or meaning, to describe or refer to articles offered as compensation for distributing respondents' merchandise.

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.

Order

IN THE MATTER OF

STAFFORD T. MITCHELL, JANET M. MITCHELL, AND
OTIS S. MITCHELL, DOING BUSINESS AS ARVIL COMPANY

ORDER MODIFYING ORDER TO CEASE AND DESIST

Docket 3472. Order, August 16, 1944

Order modifying paragraph 7 of cease and desist order in proceeding in question — in which original order, issuing on December 6, 1939, 30 F. T. C. 1, required respondents, their representatives, etc., in connection with offer, etc., in commerce, of their "Arvil" and "Dawn Shampoo" preparations, to cease and desist specified representations relative to the effect thereof, significance of graying hair, cause of dandruff according to consensus of scientific opinion, and representation that "Arvil" contains no harmful or dangerous drugs and will have no ill effect upon the body through failure to reveal that its use is not wholly safe, particularly if there is any injury or inflammatory condition on the skin—so as to change said last named prohibition to read "representing that the use of the preparation Arvil is safe and will have no ill effects upon the human body."

ORDER MODIFYING ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record, and an order to cease and desist having been issued pursuant thereto on December 6, 1939, and upon further consideration it now appearing to the Commission that paragraph 7 of said order should be modified in certain respects in order to conform to the present scientific findings pertaining to lead acetate hair dye preparations, and the respondents having executed and filed with the Commission an instrument in which it is stated that they will not resist modification of the order in the respects outlined in said instrument.

Now, therefore, it is ordered, That paragraph 7 of the order to cease and desist entered herein on December 6, 1939, be modified to read as follows:

7. "Representing that the use of the preparation Arvil is safe and will have no ill effects upon the human body."

It is further ordered, That, except as herein modified, said order to cease and desist remain in full force and effect.

Note: The original order, reported with the complaint and findings in 30 F. T. C. 1, follows:

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (the respondents not having filed answer), testimony and other evidence taken before Willaim C. Reeves, Charles F. Diggs, and Webster Ballinger, Examiners of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief in support of the allegations of the complaint (respondents not having filed a brief and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Stafford T. Mitchell, Janet M. Mitchell, and Otis S. Mitchell, individually, and trading as The Arvil Co. or trading under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their hair preparations designated as "Arvil" and "Dawn Shampoo," or any other preparation composed of substantially similar ingredients, or possessing substantially similar properties whether sold under those names or any other name or names in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that "Arvil" restores or replaces pigment in the hair shaft or that the use thereof causes the hair to assume a natural or youthful color or that said product produces color by any means other than dyeing the hair shaft.

2. Representing that graying hair is an indication that the hair or scalp is not in normal health.

3. Representing that it is the consensus of scientific opinion that dandruff is caused by a germ.

4. Representing that "Arvil" is effective as an antiseptic or astringent when applied to the hair or scalp.

5. Representing that either "Arvil" or "Dawn Shampoo," or both of said products, will permanently relieve dandruff or itching scalp or that either, or both of said products is an effective treatment for dandruff.

6. Representing that either "Arvil" or "Dawn Shampoo," or both of said products, is a cure or remedy for baldness or is a cure or remedy or an effective treatment for falling hair or the cause or causes thereof.

7. Representing, through failure to reveal that the use of "Arvil" on the skin is not wholly safe, particularly if there is any injury, abrasion or inflammatory or eczematous condition thereon, or through any other means or device or in any other manner, that "Arvil" contains no harmful or dangerous drugs, or that the use of said preparation will have no ill effects upon the human body.

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

Order

IN THE MATTER OF

PREMIO SALES COMPANY, INC. AND ROSE SOMMERS

MODIFIED CEASE AND DESIST ORDER

Docket 3489. Order, August 16, 1944

Modified order, in proceeding in question, in which original order issued on February 7, 1939, 28 F. T. C. 386, requiring respondents, their representatives, etc., in connection with offer, etc., in commerce, of clocks, watches, cameras, and various other articles of merchandise, as below set out, to cease and desist from supplying, etc., others with lottery devices or schemes for the sale of respondents' merchandise, or using the term "free" to describe articles offered as compensation for distribution thereof, as in said order specified.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts; and the Commission having duly made and issued its findings as to the facts, conclusion and order to cease and desist dated February 7, 1939; and the Commission having further considered said order to cease and desist heretofore issued, and being of the opinion that the public interest requires that a modified order to cease and desist should be issued in said cause; and the Commission having given due notice to the respondents to show cause on July 24, 1944, why this case should not be reopened for the purpose of modifying said order to cease and desist; and the Commission having considered the matter and the record herein, and having issued its order modifying said order in certain respects, issues this its modified order to cease and desist.

It is ordered, That the respondent, Premio Sales Co., Inc., a corporation, its officers and Rose Sommers, individually, and as an officer of Premio Sales Co., Inc., and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of, clocks, watches, cameras, bedding, clothing, cigarette lighters and cases, silverware, chinaware, jewelry, dolls, kitchenware, pocketknives, pen and pencil sets, cosmetics, razor blades, or any other articles of merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others, pull cards or circulars having pull tabs thereon or any other lottery device for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting, to their agents, or to distributors, or to members of the public, pull cards or circulars having pull tabs thereon

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or any other lottery device so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of pull cards or circulars having pull tabs thereon or any other lottery device.

4. Using the term "free," or any other term of similar import or meaning, to describe or refer to articles offered as compensation for distributing respondents' merchandise.

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

Order

IN THE MATTER OF

K & S SALES COMPANY AND MRS. FANNYE COHN

MODIFIED CEASE AND DESIST ORDER

Docket 3497. Order, August 16, 1944

Modified order, in proceeding in question, in which original order issued on August 12, 1939, 29 F.T.C. 600, requiring respondent individual, her representatives, etc., in connection with the offering, etc., in commerce, of any sales stimulator plan, including certificates, coupons, and cards redeemable in chinaware or other merchandise, to cease and desist from misrepresenting terms of redeeming said certificates, etc., undertakings, costs of said products to her, effect of her plan in increasing customer's business, and merchandise delivered in redemption, as "free," etc., as in said order specified.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and upon testimony with respect to the dissolution of the corporate respondent, K & S Sales Co., and upon the answer of the individual respondent, Mrs. Fannye Cohn, in which answer said respondent admits all the material allegations of fact set forth in said complaint and states that she waives all intervening procedure and further hearing as to said facts, and the Commission having duly made and issued its findings as to the facts, conclusion and order to cease and desist dated August 12, 1939; and the Commission having further considered said order to cease and desist heretofore issued, and being of the opinion that the public interest requires that a modified order to cease and desist should be issued in said cause; and the Commission having given due notice to the respondent to show cause on July 24, 1944, why this case should not be reopened for the purpose of modifying said order to cease and desist; and the Commission having considered the matter and the record herein, and having issued its order modifying said order in certain respects, issues this its modified order to cease and desist.

It is ordered, That the respondent, Mrs. Fannye Cohn, her representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of any sales stimulator plan, including certificates, coupons, and cards, redeemable in chinaware or other merchandise, do forthwith cease and desist from:

1. Representing that certificates, coupons or trading cards will be redeemed with certain articles of merchandise unless the merchandise described is delivered to the holders of such certificates, coupons or trading cards without cost or condition, except the actual cost of packing, handling, and transportation.

2. Representing that respondent supplies to her customers or to other persons circulars, pamphlets, or other advertising matter relating to said sales stimulator plan when such is not the fact.

3. Misrepresenting that any specified sum is the actual cost to respondent of said chinaware or other merchandise or is the actual cost of packing, handling and distributing said products, or misrepresenting in any other manner the actual cost to respondent of said products or the actual cost of packing, handling and distributing said products.

4. Representing that the respondent will make refunds to the purchaser of said sales stimulator plan upon presentation of a specified number of said certificates, coupons or trading cards for redemption, unless said certificates, coupons or trading cards are redeemed without cost to the holders thereof and unconditionally, and said refund is made to said purchaser upon the redemption of the specified number of certificates, coupons or trading cards.

5. Representing that the general sales of respondent's customers will be increased by reason of their use of respondent's sales stimulator plan.

6. Representing merchandise delivered in redeeming certificates, coupons or trading cards as "free" or as a gift or gratuity or as delivered without cost to the holders of said certificates, coupons or trading cards, when said merchandise is not in fact delivered to the holders of said certificates, coupons or trading cards without cost and unconditionally.

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.

It is further ordered, That this case be, and the same hereby is, closed as to the corporate respondent, K & S Sales Co., without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume prosecution thereof in accordance with the Commission's regular procedure.

Order

IN THE MATTER OF

JOSEPH SALADOFF AND SARA SALADOFF, TRADING AS
NOVELTY PREMIUM COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 3505. Order, August 16, 1944

Modified order, in proceeding in question, in which original order issued on November 18, 1940, 31 F. T. C. 1379, requiring respondents, in connection with offer, etc., in commerce, of candy, watches, and various other articles of merchandise, to cease and desist from supplying lottery devices or schemes for use in connection with the sale of their merchandise, from the use of the terms "free" or "at absolutely no cost," and from falsely representing that they pay shipping charges, as in said order specified.

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 taken before Randolph Preston, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint (respondents having offered no proof in opposition thereto), brief filed herein by counsel for the Commission (respondents not having filed brief and oral argument having been waived), and the Commission having duly made and issued its findings as to the facts, conclusion and order to cease and desist dated November 18, 1940; and the Commission having further considered said order to cease and desist heretofore issued, and being of the opinion that the public interest requires that a modified order to cease and desist should be issued in said cause; and the Commission having given due notice to the respondents to show cause on July 24, 1944, why this case should not be reopened for the purpose of modifying said order to cease and desist; and the Commission having considered the matter and the record herein, and having issued its order modifying said order in certain respects, issues this its modified order to cease and desist.

It is ordered, That the respondents, Joseph Saladoff and Sara Saladoff, individually, and trading as Novelty Premium Co., or trading under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of candy, watches, clocks, guns, baby buggies, quilts, aluminum ware, or any other articles of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punch boards or other devices which are to be used, or may be used, in the sale and distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. Shipping, mailing or transporting to agents or to distributors or to members of the public, push or pull cards, punch boards, 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.

4. Using the terms "free" or "at absolutely no cost" or any other term or terms of similar import or meaning to describe or refer to articles offered as compensation for distributing respondents' merchandise.

5. Representing that respondents pay shipping charges on their merchandise, when in fact they do not pay such charges.

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.

Order

IN THE MATTER OF
UNIVERSAL INDUSTRIES, INC., ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 3882. Order, August 16, 1944

Modified order in proceeding in question, in which original order issued on April 24, 1941, 32 F.T.C. 1270, requiring respondents, their officers, representatives, etc., in connection with the offer, etc., in commerce, of sales stimulator plans, or devices, including trade cards, circulars, and other advertising material, and tableware and other products used as premium merchandise in connection with the operation of any sales stimulator plan, to cease and desist from misrepresenting their financial condition, business history, price, value of products, and salesmen's earnings, and goods offered as compensation for service, as free or when not free, and misrepresenting the cost of the plan to the purchaser through failing to reveal additional payment required, as in said order specified.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and report of the trial examiner thereon, and briefs filed herein, and the Commission having duly made and issued its findings as to the facts, conclusion and order to cease and desist dated April 24, 1941; and the Commission having further considered said order to cease and desist heretofore issued, and being of the opinion that the public interest requires that a modified order to cease and desist should be issued in said cause; and the Commission having given due notice to the respondents to show cause on July 24, 1944, why this case should not be reopened for the purpose of modifying said order to cease and desist; and the Commission having considered the matter and the record herein, and having issued its order modifying said order in certain respects, issues this its modified order to cease and desist.

It is ordered, That the respondent Universal Industries, Inc., a corporation, its officers, representatives, agents, and employees, the respondent, Abraham Leonard Koolish, an individual, and respondent George William Ehrlich, an individual, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of sales stimulator plans or devices, including trade cards, circulars, and other advertising material, and tableware and other products used as premium merchandise in connection with the operation of any sales stimulator plan, do forthwith cease and desist from:

1. Misrepresenting, in any manner, the financial condition and assets of respondents' business or the length of time in which said respondents have been engaged in business.

2. Representing as customary or regular prices or values for any of respondents' products, prices or values which are, in fact, fictitious or greatly in excess of the prices at which such products are customarily offered for sale and sold in the normal course of business.

3. Representing any specified sum of money as possible earnings or profits of agents, salesmen, representatives, or distributors for any stated period of time which is not a true representation of the net earnings or profits which have been made for such stated period of time by a substantial number of respondents' active agents, salesmen, representatives, or distributors in the ordinary course of business under normal conditions and circumstances.

4. Representing any specified sum of money as earnings or profits of any specified agent, salesman, representative, or distributor for any stated period of time which has not, in fact, been consistently earned, net, by such agent, salesman, representative, or distributor in the ordinary course of business and under normal conditions and circumstances.

5. Using the term "free," or any other term of similar import or meaning, to describe or refer to articles offered as compensation for distributing respondents' merchandise.

6. Misrepresenting the cost of any sales plan or sales stimulator to any dealer or merchant by failing to reveal that additional sums of money must be paid by such dealer or merchant in the operation of such sales plan or the use of such sales stimulator.

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

Syllabus

IN THE MATTER OF
THOMAS J. CASEY

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

Docket 4586. Complaint, Sept. 8, 1941—Decision, Aug. 16, 1944

Where an individual engaged in the competitive interstate sale and distribution of correspondence courses of study and instruction in electronics, photocells, television and radio; through sales representatives and through printed matter distributed among prospective students, enrolled students, and others—

(a) Represented that the school conducted by him was both a resident and correspondence school and a large organization composed of various divisions and departments, and that he operated a powerful short-wave radio station as part of the operating equipment of the school;

The facts being he was engaged solely in conducting a correspondence school with limited personnel; it was not an extensive organization but occupied only a small portion of one floor of the building concerned; and while he did own the equipment of a certain radio station located in his offices and operated by another, it was not used for any purpose connected with his school; and

(b) Represented that he maintained a staff of field engineers who called upon students at frequent intervals to give them instruction and assistance; that in connection with his courses he furnished home laboratory equipment, including a complete short-wave transmitting and receiving set of the value of several hundred dollars which was included in the cost of tuition; and that he would establish numerous short-wave broadcasting stations throughout the various states and establish such a station in the near vicinity of the prospective student for assistance in training him;

The facts being that the true function of his so-called "field engineers" and "field instructors" who called on students at irregular intervals, ostensibly to assist them in their study, was to renew the students' interest in the course and induce payment of delinquent accounts; laboratory equipment furnished by him consisted of tools, tubes, condensers and other material for the purpose of experimenting in radio operation and construction, and was not of the value of several hundred dollars, but of approximately \$50.00; and he had not established and did not establish any such short-wave broadcasting stations for the assistance of his students;

(c) Represented that persons completing his courses of study would be fully qualified as electrical engineers or as electronic engineers; that he selected only a limited number of applicants in each community for his courses; and that persons lacking in education, experience or aptitude could become competent and expert electrical or electronic engineers by taking the same;

The facts being that the instruction offered by him was not a complete course in electronic or electrical engineering, and would not qualify a person as such engineers, as he did not teach higher mathematics or physics—subjects which could not be taught with sufficient success by correspondence to qualify a person as aforesaid; and applicants solicited and selected by him were not limited but included all available prospects, who were solicited and accepted, including persons who had not completed high school, on the representation that his courses would qualify

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them as aforesaid when in fact they were lacking in education, experience or aptitude; and

- (d) Falsely represented that positions were immediately available in the radio field to persons who had completed his said courses of study, and that relay television stations would be established throughout the various states and in the near vicinity of the prospective student, making positions available at such stations for graduates of his school;

With the effect of misleading purchasers and prospective purchasers into the mistaken belief that said representations were true, and of inducing them thereby to purchase his said study courses, and with capacity and tendency so to do:

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. Andrew B. Dwall*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. Joseph L. Bard, of Minneapolis, Minn., for respondent.

COMPLAINT

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

PARAGRAPH 1. The respondent, is an individual, formerly doing business under the name and style of National Institute of Technology, and since on or about June 6, 1939, doing business under the name and style of National School of Electronics, with his office and principal place of business at 529 South Seventh Street, Minneapolis, Minn.

PAR. 2. Respondent is now, and has been for more than five years last past, engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of courses of study and instruction designated as "Electronics" which includes such subjects as Photo Cells, Television, Ultra Short Waves, Sound Broadcasting, Talking Movies, Public Address System, Commercial and Aircraft Radio and Design Construction Research. Respondent, in the course and conduct of his said business during the time aforesaid caused, and does now cause, his said courses of study and instruction including lessons, instructional laboratory equipment and other instructional material to be transported from his place of business in Minnesota to, into and through various States of the United States other than Minnesota to the various purchasers thereof located in such other States, and in the District of Columbia.

PAR. 3. During the time above mentioned, other individuals and various firms and corporations located 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 Co-

lumbia of courses of study and instruction in "Electronics" including the subjects above mentioned, and in other trade subjects, and also of courses of study and instruction intended for preparing students thereof for various positions, employments, trades, callings and professions, all of which are pursued by correspondence. Respondent now is, and has been during the time aforesaid, in substantial competition with such individuals, firms and corporations in said commerce in the sale of his said courses of study and instruction.

PAR. 4. Respondent, in the course and conduct of said business in said commerce and during the time aforementioned, has, through letters, circulars and catalogs circulated throughout the various States of the United States and in the District of Columbia, and through statements made to prospective students by representatives of the respondent, made various false and misleading representations in regard to said courses of study and matters and things connected therewith. Among the representations so made and used are the following:

1. That the personnel of respondent's school is greater than is actually the fact and that respondent's organization is so extensive as to include and require such divisions as "Laboratory Equipment Division," "Student Welfare Department," "Accounting Department," "Auditing Department," "Student Service Department" and as to include and require such officers as "Publication Director" and "Technical Director."

2. That respondent's school is a residence school, as well as a correspondence school and occupies a large six-story building covering half a city block.

3. That respondent is connected with most of the major electrical companies, airports and radio and police broadcasting stations throughout the United States and that equipment manufactured or invented by respondent is used in major aircraft throughout the United States.

4. That respondent's correspondence course is "Electronic Engineering" or "Engineering" and that the graduates thereof are "Electronic Engineers" or "Engineers."

5. That some of the best engineers in the country collaborate in preparing the course and that a staff of engineers corrects each lesson for inaccuracies.

6. That the students of respondent have the benefit of frequent visits from "Field Engineers" who act in the capacity of traveling teachers or instructors.

7. That home laboratory equipment, including a complete short-wave transmitting and receiving set, of the value of several hundred dollars, is included in the price of tuition, which said equipment respondent furnishes and ships to the student.

8. That respondent supplies batteries to operate the electrical laboratory equipment where no electric current is available.

9. That respondent's airplane equipped with radio devices and respondent's trucks similarly equipped will be flown or driven to the student's home and used for the purpose of testing equipment built by the student.

10. That only a limited number of applicants in each community will be accepted for the training offered by respondent and that the prospective student will be the only one in his community to receive the experimental laboratory equipment.

11. That persons lacking in education, experience or aptitude can become competent and expert electronic or radio men by taking respondent's course of study and instruction.

12. That the courses of study offered by respondent are full, thorough and complete and include specialized training of a peculiar nature and will make the student an expert or trained electronic engineer upon completion thereof.

13. That a United States Government Radio Operator's License will be issued to the student upon completing respondent's course of study or that said course of study prepares the student to pass an examination for a United States Government Radio Operator's License or to fill high positions in the radio field.

14. That the prospective student will receive remunerative employment or special paying assignments from the respondent or others while taking respondent's courses of instruction or after the completion thereof.

15. That graduates of respondent's school are guaranteed employment and that positions are immediately available in the radio field and more particularly for those persons completing the courses of study offered for sale by respondents.

16. That many graduates of respondent's school are drawing high salaries in the radio field and that several of respondent's graduates are heads of broadcasting stations.

17. That respondent will establish numerous short-wave broadcasting stations throughout the various States and that respondent will establish such a station in the near vicinity of the prospective student; and that the prospective student may work at the broadcasting station to be erected in his vicinity with the engineers employed by respondent to operate said station.

18. That the United States Government is spending large sums of money on the establishment of television stations throughout the various States and that there will be lucrative positions available at such stations for the graduates of respondent's school.

19. That the amount paid by the student before graduation pursuant to the contract of enrollment constitutes a training fee and merely covers the cost of the student's training.

20. That the student by a "deferred tuition" privilege may withhold payment of \$100.00 or \$125.00 of his tuition until he has secured a position.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false and misleading. In truth and in fact the respondent's school is conducted by him with limited personnel, the school's engineering staff consisting of one graduate of an engineering college and three men with practical training in radio and the balance of the school's staff being made up of one commercial artist, one tutor and a clerical force of three who attend to auditing, shipping and mailing. Respondent's school is not a residence school but is a correspondence trade school occupying only a small portion of one floor of the Sexton Building in Minneapolis. The respondent has no connection or affiliation with any electrical companies, radio and police broadcasting stations or airports, nor is any equipment manufactured or invented by respondent used in major aircraft or any aircraft throughout the United States. The instruction offered by respondent is not a complete course in "Electronic Engineering" and does not equip one

to be an "Electronic Engineer" or "Engineer." None of the best engineers in the country have collaborated in preparing respondent's courses of study nor does a staff of engineers correct each lesson for inaccuracies. Respondent's field force is not composed of "engineers" as the members of such field force are not grounded in the engineering sciences nor are they graduates of engineering technical schools but are high school graduates who have received their entire radio or electronic training from respondent's school; and the home experimentation and study of respondent's students is not supervised by such alleged "field engineers," such visits as are made being for the purpose of quieting complaints, making collections and renewing the students' interest so that tuition payments may be kept current. Such laboratory equipment as is furnished his students by respondent for experimental purposes is not of the value of several hundred dollars but may be purchased on the open market for less than \$50 and in some instances respondent has failed to furnish any equipment whatsoever. Respondent does not provide his students with batteries to operate the home electrical equipment furnished where electrical current is not available. Respondent does not visit nor do his agents visit his students at frequent intervals or at all with airplanes and trucks equipped with electrical radio devices for the purpose of testing equipment built by such students. The applicants solicited and accepted by respondent are not limited in number but all available prospects are solicited and accepted. Persons lacking in education, experience or aptitude cannot become competent and expert electronic radio men by taking respondent's courses of study; the courses of study offered by respondent are not full, thorough and complete and do not include specialized training of a peculiar nature and will not make the student an expert or trained Electronic Engineer upon completion thereof. A United States Government Radio Operator's License is not issued to the student upon completion of respondent's courses of study nor is the student prepared to pass an examination for such a license or to fill high positions in the radio field. Respondent does not provide students with remunerative employment or special paying assignments from the respondent or others while taking respondent's courses of study or after the completion thereof. There are not as great a number of students placed in positions as respondent represents, positions are not immediately available upon graduation from respondent's school and respondent does not and cannot fulfill his guarantee of employment. Respondent's graduates are not in many instances filling high positions nor drawing high salaries in the radio field nor are any of the respondent's graduates the heads of broadcasting companies. Respondent has not established nor does respondent intend to establish short-wave broadcasting stations at numerous points throughout the United States and it is contrary to the rules of the Federal Communications Commission to issue a license therefor to a school or to a representative of a school. The United States Government has not appropriated nor is it spending any monies for the establishment of television stations throughout the United States. The amount paid by the student before graduation pursuant to the enrollment contract of the respondent is not merely a training fee covering the cost of the student's training but is the actual tuition and includes the total cost of the course and equipment. The "Deferred Tuition" privilege as represented by the respondent is not a bona fide deferment of a part of the tuition charge but

is simply a "mark-up" used by the respondent to convince prospective students of his assurance of their securing remunerative employment upon completion of respondent's said courses of study. The so-called "training fee" is the charge for tuition, and respondent makes no effort to collect and in fact never has collected the so-called "Deferred Tuition" fee. The price represented by the respondent as the cost of tuition and training is wholly fictitious and greatly in excess of the price for which said courses of study are customarily and regularly sold. Respondent has never sold said courses of study at the price quoted for the tuition and so-called training fee.

PAR. 6. Respondent in advertisements and through statements made by salesmen, represents that a powerful short-wave radio station, W9VXZ, is a part of the operating equipment owned by respondent's school. An example of such representation is an advertisement which appeared in the respondent's catalogue:

NEW N. I. T. TRANSMITTER STATION W9VXZ PART OF N. I. T.'S LABORATORY.

The National Institute of Technology has recently installed a new ultra-modern transmitter. The addition of this new piece of equipment to our laboratories offers a fine opportunity for our students to become acquainted with modern transmitter designs, practice, and operation.

In "Electronotes," a publication issued from time to time and widely distributed by respondent among students and others, there appeared the following references to said short-wave radio station:

Meet the staff of N. I. T. and see our 1,000 watt transmitter.

The tremendous strides N. I. T. has made, the great improvements, and the many additions . . . Ever since the installation of the new transmitter last spring, every effort has been made to keep it abreast of modern developments.

We'll hold a 5-minute DX contest by each student over W9VXZ.

ANOTHER STEP FORWARD. One of the greatest things that happened to N. I. T. since the installation of its 1000-watt transmitter, is the recent purchase of the new Skyrider Dual Diversity Receiving Set. With this addition, it practically leaves nothing to ask for in our station. However, this is not the limit. Greater things are in the making for W9VXZ, and we are really getting set for one of the busiest fall seasons that has ever been planned.

In truth and in fact, the short-wave radio station W9VXZ is not the property of respondent or respondent's school but the license therefor is held by Raymond O. Overby, as trustee for an amateur radio society designated "National Institute of Technology Radio Club" upon a showing made by said Raymond O. Overby, Trustee, to the Federal Communications Commission of control of proper transmitting apparatus and the control of the premises upon which such apparatus was to be located. In truth and in fact, respondent does not now, nor has he at all times mentioned herein, controlled or operated said amateur radio station W9VXZ for the curricular purposes of the school or for any other purpose.

PAR. 7. In the course and conduct of his said business and for the purpose of inducing the purchase of said courses of study and instruction by members of the general public, respondent has adopted and used as a trade

name for his business the name "National Institute of Technology," which name is misleading in that "Institute" is understood by the public to import and imply an organization for the promotion of learning, philosophy, art or science, or an association of technologists for the purpose of considering and solving their problems as such and "Technology" is understood by the public to be the science or systematic knowledge of the industrial arts, especially the more important manufactures. In truth and in fact respondent's school is not an "Institute," as above defined, but is an individual business conducted by him with limited personnel for personal profit, nor is "Technology," as that term is understood by the public, pursued or studied in respondent's said school which in fact is merely a trade school.

PAR. 8. The use by respondent of the foregoing statements and representations, and others of similar import not herein specifically set out, in offering for sale and selling his courses of study and instruction in said commerce, has had, and now has, the tendency and capacity to, and does in fact, mislead prospective purchasers and purchasers thereof into the erroneous and mistaken belief that the representations hereinabove set out are true, and induces them to purchase such courses of study and instruction on account thereof. Thereby trade is unfairly diverted to respondent from competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of correspondence courses intended for preparing students thereof for electronics or the radio trade.

There are among the competitors of respondent those who in the sale of their respective courses of instruction do not similarly or in any other manner misrepresent their courses of study and instruction or matters pertaining thereto. As a result of respondent's said practices as herein set forth, substantial injury has been, and is now being, done by respondent to competition in commerce between and among the various States of the United States 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 8, 1941, issued and subsequently served its complaint in this proceeding on the respondent, Thomas J. Casey, 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. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced 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 regu-

larly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief filed 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, Thomas J. Casey, is an individual, trading under the name and style of National School of Electronics, with his office and principal place of business at 529 South 7th Street, Minneapolis, Minn. Prior to June 6, 1938, this respondent was engaged in business under the name and style of National Institute of Technology, which name was discontinued pursuant to a stipulation executed by the respondent with the Commission.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction in electronics, photo cells, television, and radio. In the course and conduct of his said business, respondent causes his said courses of study and instruction, including lessons, instructional laboratory equipment, and other material, to be transported from his place of business in the State of Minnesota to purchasers thereof located in various other States of the United States.

PAR. 3. Respondent is now, and during the times mentioned herein has been, engaged in competition with other individuals and with various firms and corporations located in various States of the United States who sell and distribute courses of study and instruction in electronics, including photo cells, television, and radio, in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of his said business and for the purpose of inducing the purchase of his courses of study, said respondent has made various false, deceptive, and misleading statements and representations with reference to his courses of study through sales representatives engaged in soliciting the sale of such courses and through printed matter distributed among prospective students, enrolled students, and others located in the various States of the United States. Among and typical of the false, deceptive, and misleading representations made by the respondent through the means hereinabove described are the following:

1. That the school conducted by the respondent is both a resident and correspondence school and is a large organization composed of various divisions and departments.

2. That persons completing respondent's courses of study will be fully qualified as electrical engineers or as electronic engineers.

3. That respondent maintains a staff of field engineers who call upon students at frequent intervals for the purpose of giving instruction and assisting such students.

4. That in connection with his courses of study the respondent furnishes home laboratory equipment, including a complete short-wave transmitting and receiving set, of the value of several hundred dollars, which is included in the cost of tuition.

5. That respondent selects only a limited number of applicants in each community for his courses of study.

6. That persons lacking in education, experience, or aptitude can become competent and expert electrical or electronic engineers by taking respondent's courses of study and instruction.

7. That positions are immediately available in the radio field to persons who have completed respondent's courses of study.

8. That respondent will establish numerous short-wave broadcasting stations throughout the various States and will establish such a station in the near vicinity of the prospective student for assistance in training such student.

9. That relay television stations will be established throughout the various States and in the near vicinity of the prospective student, making positions available at such stations for graduates of respondent's school.

10. That respondent operates a powerful short-wave radio station as part of the operating equipment of respondent's school.

PAR. 5. In truth and in fact, respondent does not conduct a resident school but is engaged solely in conducting a correspondence school with limited personnel. In addition to respondent, the employees from 1939 to 1941 consisted of approximately 20 or 26 people, including 4 to 6 field instructors and 12 to 16 salesmen, the number of the personnel varying with the season of the year and the amount of business being done and has been greatly reduced since 1941. Respondent's school is not an extensive organization but occupies only a small portion of one floor of the Sexton Building in Minneapolis.

The instruction offered by respondent is not a complete course in electronic or electrical engineering and does not equip one to be an electronic engineer or an electrical engineer.

Respondent sells his courses of study by means of salesmen, who operate under a crew manager, who is, in turn, under a sales manager. These salesmen call on prospective students for the purpose of inducing them to enter into contracts for the purchase of respondent's courses. In addition to the salesmen, respondent employs a number of so-called "field engineers" and "field instructors," who call on students at irregular intervals ostensibly to assist them in their study, but practically to renew the students' interest in the course and to induce payment of delinquent accounts.

The courses of study supplied by the respondent are not such as would qualify a person completing such courses as an electronic engineer or an electrical engineer, as the respondent does not teach higher mathematics or physics, nor could such subjects be taught with sufficient success by correspondence as to qualify a person as an electrical engineer or an electronic engineer.

The laboratory equipment furnished by the respondent in connection with his courses of study consists of tools, tubes, condensers, and other material for the purpose of experimenting in radio operation and construction, and is not of the value of several hundred dollars but amounts to approximately \$50 in value.

The applicants solicited and selected by respondent are not limited in number, but all available prospects are solicited and accepted. Respondent has solicited and accepted high-school students and persons who have not completed high school on the representation that his courses of study would qualify such persons as electrical engineers, electronic engineers, or expert electronic radio men when in fact such persons are lacking in education, experience, or aptitude.

Positions in the radio field are not immediately available for persons completing respondent's courses, as represented by respondent.

The respondent has not established and does not establish short-wave broadcasting stations in various localities for assistance of students taking his courses.

Respondent's representations that relay television stations were to be established in various localities were untrue, as the establishment of such relay stations was not in contemplation or proposed by any broadcasting station nor does it appear from the record in this proceeding that any such relay stations have been established in the vicinity of any student taking respondent's courses.

The respondent does not operate a short-wave broadcasting station in connection with his school. Respondent does own the equipment of radio station W9VXZ, located in the offices of the respondent and operated by Raymond O. Overby as trustee of the Downtown Radio Club, but said station is not used for curricular purposes of respondent's school or for any other purpose connected therewith.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations and others of similar import not specifically set out herein in offering for sale and selling his courses of study and instruction has had, and now has, the tendency and capacity to, and does in fact, mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true and induces them to purchase such courses of study and instruction on account thereof.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and 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 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 (no brief having been filed by the respondent

and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Thomas J. Casey, an individual, 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 courses of study and instruction in electronics, photo cells, television, radio, and other similar subjects in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondent's school, which is engaged solely in the distribution of courses of study by correspondence, is a resident school; or otherwise misrepresenting the size and extent of the business conducted by the respondent.

2. Representing that persons completing respondent's courses of study will be fully qualified as electrical engineers, electronic engineers, or engineers generally.

3. Representing that respondent maintains a staff of field engineers who call on students at frequent intervals for the purpose of giving instruction and assisting such students unless calls are made on such students at frequent and regular intervals by instructors qualified to instruct and assist students.

4. Misrepresenting the value or extent of the laboratory equipment furnished to students in connection with the courses of study sold by respondent.

5. Representing that respondent selects only a limited number of applicants in each community for his courses of study.

6. Representing that persons lacking in education, experience, or aptitude can become competent and expert electrical or electronic engineers by taking respondent's courses of study and instruction.

7. Representing that positions are immediately available in the radio field to persons who have completed respondent's courses of study; or otherwise misrepresenting the prospects of employment open to persons taking respondent's courses of study.

8. Representing that respondent will establish short-wave broadcasting stations in the near vicinity of prospective students for assistance in training such students.

9. Falsely representing that relay television stations will be established in the near vicinity of prospective students, making positions available at such stations for persons taking respondent's courses of study.

10. Representing that respondent operates a short-wave radio station as part of the operating equipment of respondent's school unless, in fact, such station is operated and used for curricular purposes of respondent's school.

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

39 F. T. C.

IN THE MATTER OF

HOLZBEIERLEIN & SONS, INC.

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 AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5020. Complaint, July 29, 1943—Decision, Aug. 16, 1944

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of its "Bamby" bread to customers competitively engaged with one another in the sale of said product to consumers and to others for resale to consumers;

Paid to a preferred customer \$250.00 a month as compensation for advertising services and facilities contracted to be furnished and furnished by said customer in connection with the sale of its said "Bamby" bread, with the understanding and agreement that said customer would advertise said bread in a weekly newspaper and by hand bills and bulletins; without making payment of advertising allowances available on proportionally equal terms to any other customers competitively engaged in the distribution of its said product:

Held, That such contracts to pay and payments for advertising services and facilities, without making such payments available on proportionally equal terms to other customers competing with said favored customer, constituted violation of Sec. 2 (d) of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Mr. Harry A. Grant, of Washington, D. C., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described since June 19, 1936, has violated and is now violating the provisions of subsection (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), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. The respondent, Holzbeierlein & Sons, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1849 Seventh Street, Northwest, Washington, D. C.

PAR. 2. Respondent corporation is now and has been since prior to June 19, 1936, engaged in the business of processing and manufacturing and offering for sale, selling and distributing bakery bread in the several States of the United States and the District of Columbia, and causes said product to be shipped and transported from its place of business to the purchasers thereof who are located in the several States of the United States other than the District of Columbia in which respondent's place of business is located. The respondent distributes its bakery bread under the name of "Bamby Bread." There is and has been at all times mentioned

a continuous course of trade and commerce in the said product across State lines between respondent's bakery and warehouse and the purchasers of said product. Such product is sold and distributed for use and resale within 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, respondent is now and has been during all the time herein mentioned 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 bakery bread in commerce.

PAR. 4. Respondent corporation in the course and conduct of its business and in the course of such commerce is now and has been subsequent to June 19, 1936, engaged in manufacturing and processing bakery bread for distribution and sale, and in selling such product to customers who are competitively engaged with each other in the handling, offering for sale and sale of such bakery bread to consumers, and to others for resale to consumers, and the respondent corporation has contracted to pay, and has paid to one of its preferred customers, namely, the District Grocery Stores, Inc., of Washington, D. C., the sum of \$250 per month in consideration of and as compensation for advertising services and facilities contracted to be furnished and furnished by said District Grocery Stores, Inc., in connection with the handling, offering for sale and sale of said bakery bread. The respondent has made and makes such payments as compensation for advertising services and facilities in connection with the preferred customer's offering for sale bakery bread and with the general understanding and agreement that the District Grocery Stores, Inc., will advertise its bread in its weekly newspaper advertising and by handbills and bulletins. Respondent has not made payments of advertising allowance available on proportionally equal terms to any other customers who compete in the distribution of its bread.

PAR. 5. Such acts of respondent since June 19, 1936, in interstate commerce in the manner and form aforesaid in paying and contracting to pay valuable consideration to and for the benefit of one preferred customer for services and facilities furnished by and through such customer in connection with the handling, offering for sale and sale of its bakery bread without making such payments available on proportionally equal terms to all other competing customers is in violation of the provisions of Section 2 (d) of the Robinson-Patman Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Sec. 13), the Federal Trade Commission on July 29, 1943, issued and thereafter served its complaint in this proceeding upon Holzbeierlein & Sons, Inc., a corporation, charging it with violation of the provisions of subsection (d) of Section 2 of said act, as amended. After the issuance of said complaint and the filing of respondent's answer, the Commission by

order entered herein granted respondent's motion for permission to file an amended answer admitting all material allegations of fact set forth in said complaint and that said acts constituted a violation of subsection (d) of Section 2 of said act. The respondent also waived all intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, amended answer, and waiver of intervening procedure; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Holzbeierlein & Sons, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1849 Seventh Street, Northwest, Washington, D. C.

PAR. 2. Respondent is now and has been since prior to June 19, 1936, engaged in the business of processing, manufacturing, offering for sale, selling and distributing bakery bread in the several States of the United States and in the District of Columbia, and causes said product to be shipped and transported from its place of business in the District of Columbia to the purchasers thereof who are located in the several States of the United States and in the District of Columbia. The respondent distributes its bakery bread under the name of "Bamby Bread." There is and has been at all times mentioned a continuous course of trade in commerce in the said product across State lines between respondent's bakery and warehouse and the purchasers of said product. Such product is sold and distributed for use and resale within 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, respondent is now and has been during all the time herein mentioned 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 bakery bread in commerce.

PAR. 4. In the sale and distribution of its bread in commerce as aforesaid, respondent has been and is now selling such bread to customers who are competitively engaged with one another in the handling, offering for sale, and sale of such bakery bread to consumers, and to others for resale to consumers; and respondent has contracted to pay, and has paid to one of its preferred customers, namely, the District Grocery Stores, Inc., of Washington, D. C., the sum of \$250 per month in consideration of and as compensation for advertising services and facilities contracted to be furnished and furnished by said District Grocery Stores, Inc., in connection with the handling, offering for sale, and sale of said bakery bread. The respondent has made and makes such payments as compensation for advertising services and facilities in connection with the preferred customer's offering for sale bakery bread, and with the general understanding and agreement that the District Grocery Stores, Inc., will advertise its bread in its weekly newspaper advertising and by handbills and bulletins. Dur-

ing the times mentioned in the complaint herein, respondent made no payments of advertising allowances available on proportionally equal terms to any other customers who compete in the distribution of its bread.

CONCLUSION

Under the facts and circumstances set forth in the foregoing findings of fact, the Commission concludes that the respondent, Holzbeierlein & Sons, Inc., a corporation, has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended, by contracting for the payment of and paying, since June 19, 1936, \$250 per month in consideration of and as compensation for advertising services and facilities contracted to be furnished and furnished by District Grocery Stores, Inc., in connection with the handling, offering for sale, and sale of respondent's bakery bread, without making such payments for advertising services and facilities available on proportionally equal terms to other customers who compete with District Grocery Stores, Inc., in the distribution of respondent's bread.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the respondent's answer, amended answer and waiver of intervening procedure, and the Commission having made its findings as to the facts and its conclusion that respondent Holzbeierlein & Sons, Inc., has violated and is violating the provisions of subsection (d) of Section 2 of "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" approved October 15, 1914 (the Clayton Act), as amended by an Act approved June 19, 1936 (the Robinson-Patman Act).

It is ordered, That the respondent, Holzbeierlein & Sons, Inc., a corporation, its officers, representatives, agents and employees, in or in connection with the sale and distribution in commerce, as "commerce" is defined in the aforesaid Clayton Act, of "Bamby Bread" or any other bakery products, do forthwith cease and desist from:

1. Paying or contracting to pay anything of value to or for the benefit of District Grocery Stores, Inc., for advertising services or facilities furnished by such customer, unless such payment or consideration is available to all other competing customers on proportionally equal terms.

2. Paying or contracting to pay anything of value to or for the benefit of any customer for services or facilities furnished by or through such customer in connection with the handling, sale or offering for sale of respondent's said bakery products, unless such payment or consideration is available to all other competing customers on proportionally equal terms.

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 is complying and has complied with the order to cease and desist hereinabove set forth.

Complaint

39 F. T. C.

IN THE MATTER OF
CARADINE HAT COMPANY

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

Docket 5151. Complaint, Apr. 15, 1944—Decision, Aug. 16, 1944

Where a corporation engaged directly and through its subsidiaries in the importation and manufacture and competitive interstate sale and distribution of various types, styles and grades of hats to jobbers, retail chain stores, independent retailers, and retailers affiliated with buying organizations;

Selling its said products by its salesmen, who solicited all retailer customers individually at their respective places of business, where it also delivered their orders, and treating all without distinction other than billing the buying organizations for the purchases of members or affiliates, while billing the non-numbers or non-affiliates directly—

Discriminated in price between different purchasers of its said hats of like grade and quality through granting and allowing larger discounts and in some instances lower net prices to favored customers, generally members or affiliates of such buying organizations, than to certain of their competitors, through treating the purchases of such members or affiliates as those of a single customer, and granting to each the preferred net prices, discounts and other allowances which it had determined were applicable to a single purchaser who purchased such an amount;

Effects of which discriminations in price might be substantially to lessen competition in the sale and distribution of products concerned in the respective lines of commerce in which it and its customers were engaged, and to injure, destroy or prevent competition with it and with its customers who received the benefits of such discriminatory prices:

Held, That such discriminations in price by it between different purchasers of hats of like grade and quality in interstate commerce, under the facts and circumstances set forth, were in violation of the provisions of Section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.
Greensfelder & Hemker, of St. Louis, Mo., for respondent.

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" (the Clayton Act), as amended by an act approved June 19, 1936, entitled "An Act to amend Section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914, as amended (U. S. C., Title 15, Section 13) and for other purposes" (the Robinson-Patman Act), the Federal Trade Commission having reason to believe that Caradine Hat Company, a corporation, is vi-

olating and has been violating the provisions of the said Clayton Act as amended, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Caradine Hat Co., is a corporation, organized and existing under the laws of the State of Missouri, with its principal office and place of business located at 8 South 4th Street, St. Louis, Mo. The respondent is directly engaged, and is also indirectly engaged through its various subsidiaries, in the business of importing, manufacturing, distributing, and selling various types, styles, and grades of hats, and has sold and sells such products to four groups of customers: jobbers; retail chain stores; independent retailers; and retailers who are members of, or affiliated with, certain buying organizations.

The respondent facilitates its sales by the use of a staff of traveling salesmen who travel in various States of the United States soliciting and securing orders. Many additional orders are secured from customers through the mails after solicitation by salesmen and others.

The respondent owns in their entirety a number of subsidiaries, some of which are listed below. Each of said subsidiaries has its principal office located at 18 South 4th Street, St. Louis, Mo.

The Superior Hat Co.,
 William T. Christmas Co.,
 Cardinal Hat Co.,
 The Independent Hat Co.,
 Richard Van Lier, Inc.,
 Fitwell Hat Co.,
 Helmet Corporation of America.

PAR. 2. Since June 19, 1936, in the course and conduct of its business the respondent has been and is now importing, manufacturing, selling and distributing various types, styles and grades of hats, and has sold, shipped, and does now sell and ship, such products, in commerce between and among the various States of the United States, from the State in which respondent's principal office, factories and warehouses are located, across State lines to purchasers thereof located in States other than the State in which respondent's principal office, plants and warehouses are located.

PAR. 3. The respondent in the course and conduct of its business since June 19, 1936, has been and is now in substantial competition with other corporations, individuals, partnerships and firms engaged in the business of manufacturing, selling and distributing various types, styles and grades of hats in commerce.

PAR. 4. In the course and conduct of its business as aforesaid, since June 19, 1936, the respondent has been, and is now, in the course of such commerce, directly and indirectly discriminating in price between different purchasers of its hats of like grade and quality, which products are sold for use, consumption, and resale within the several States of the United States, in that the respondent has been, and is now, selling such hats to some purchasers at a higher price than the price at which such hats are sold to other purchasers generally competitively engaged with the favored purchasers.

Respondent effects said discriminations in prices by granting and allowing larger discounts from list prices to its favored customers, and also by selling to some of such favored purchasers at lower net prices than to other

competing purchasers. The extent of said discriminations in price varies from differentials of approximately fifteen per cent to differentials of approximately thirty per cent, depending upon the type and grade of product sold and the purchaser, and also depending upon whether the customer is, or is not, a member of a favored buying organization.

The favored customers generally are affiliated with, or are member of, certain buying organizations, representative of which are the following:

Twin City Wholesale Grocery Co., Minneapolis, Minn.

Allied Clothiers, Kansas City, Mo.

Allied Clothiers, St. Paul, Minn.

Northwestern Buyers and Jobbers, St. Paul, Minn.

Midwest Stores, Inc., Minneapolis, Minn.

Northwestern Purchasing Co., St. Paul, Minn.

Egyptian Retailers' Association, Ramsey, Ill.

The respondent customarily sells its products by having its salesmen call on its customers and solicit their orders. Its favored customers are usually certain retailers who are members of, or affiliated with, certain buying organizations; and its unfavored customers are customarily neither members of, nor affiliated with, such buying organizations.

The method of soliciting and receiving orders from either type of customer is the same. The respondent's salesmen call on such retailers and solicit their orders individually, and transmit such orders to the respondent, who invoices and ships the merchandise to the retailer. The only difference in the method of sale is that the respondent bills and collects from the respective buying organization for the purchase price of the hats purchased by its preferred customer while the nonpreferred customer is billed and pays the respondent direct. Such salesmen, however, call on such preferred and unpreferred customers at their respective and geographically separated places of business, solicit and receive their respective orders, and the respondent delivers its hats, when purchased, to both the favored and unfavored purchasers at their respective places of business.

Each of said preferred firms is a separate, distinct, and independent legal and business entity doing business with respondent as aforesaid, yet the basis upon which respondent grants the preferred net prices, discounts, and other allowances to each of said firms is that respondent considers and treats all the purchasers who are members of or affiliated with each favored buying organization collectively, as constituting the purchases of a single customer, and grants to each of said customers the preferred net prices, discounts, and other allowances which respondent has determined are applicable to a single purchaser who purchases approximately the amount purchased by all collective members of each of the respective buying organizations.

PAR. 5. The effect of the discriminations in prices as hereinbefore set forth may be substantially to lessen competition in the sale and distribution of the said products in the respective lines of commerce in which respondent and its customers are engaged, and has been, and may be, to injure, destroy or prevent competition in the sale and distribution of said products with the respondent and with its customers who receive the benefits of such discriminatory prices.

PAR. 6. Such discriminations in prices by respondent between different purchasers of hats of like grade and quality in interstate commerce in the

manner and form aforesaid are in violation of the provisions of Section 2 (a) of the act described in the preamble hereof.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Sec. 13), the Federal Trade Commission on April 15, 1944, issued and thereafter served its complaint in this proceeding upon the party respondent named in the caption hereof, charging said respondent with violating the provisions of subsection (a) of Section 2 of said act, as amended.

After the issuance of said complaint, the respondent in due course filed its answer admitting, with certain exceptions, the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to the facts. Thereafter, the matter came on for final hearing before the Commission on said complaint and answer, and the Commission, having duly considered the same and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Caradine Hat Co., is a corporation, organized and existing under the laws of the State of Missouri, with its principal office and place of business located at 8 South Fourth Street, St. Louis, Mo. The respondent is directly engaged, and is also indirectly engaged through its various subsidiaries, in the business of importing, manufacturing, distributing, and selling various types, styles, and grades of hats, and has sold and sells such products to four groups of customers: jobbers; retail chain stores; independent retailers; and retailers who are members of, or affiliated with, certain buying organizations.

The respondent facilitates its sales by the use of a staff of traveling salesmen who travel in various States of the United States soliciting and securing orders. Many additional orders are secured from customers through the mails after solicitation by salesmen and others.

The respondent owns in their entirety a number of subsidiaries, some of which are listed below. Each of said subsidiaries has its principal office located at 18 South Fourth Street, St. Louis, Mo.

The Superior Hat Co.

William T. Christmas Co.

Cardinal Hat Co.

The Independent Hat Co.

Richard Van Lier, Inc.

Fitwell Hat Co.

Helmet Corporation of America

PAR. 2. Since June 19, 1936, in the course and conduct of its business the respondent has been and is now importing, manufacturing, selling, and

distributing various types, styles, and grades of hats, and has sold and shipped, and does now sell and ship, such products in commerce between and among the various States of the United States, from the State in which respondent's principal office, factories, and warehouses are located across State lines to purchasers thereof located in States other than the State in which respondent's principal office, plants, and warehouses are located.

PAR. 3. The respondent in the course and conduct of its business since June 19, 1936, has been and is now in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of manufacturing, selling, and distributing various types, styles, and grades of hats in commerce.

PAR. 4. In the course and conduct of its business as aforesaid, since June 19, 1936, the respondent has been, and is now, in the course of such commerce, directly and indirectly discriminating in price between different purchasers of its hats of like grade and quality, which products are sold for use, consumption, and resale within the several States of the United States, in that the respondent has been, and is now, selling such hats to some purchasers at a lower price than the price at which such hats are sold to other purchasers generally competitively engaged with the favored purchasers.

Respondent effects said discriminations in prices by granting and allowing larger discounts from list prices to its favored customers, and also by selling to some of such favored purchasers at lower net prices than to other competing purchasers.

The favored customers generally are affiliated with, or are members of, certain buying organizations, representative of which are the following:

Twin City Wholesale Grocery Co., Minneapolis, Minn.

Allied Clothiers, Kansas City, Mo.

Allied Clothiers, St. Paul, Minn.

Northwestern Buyers and Jobbers, St. Paul, Minn.

Midwest Stores, Inc., Minneapolis, Minn.

Northwestern Purchasing Co., St. Paul, Minn.

Egyptian Retailers' Association, Ramsey, Ill.

The respondent customarily sells its products by having its salesmen call on its customers and solicit their orders. Its favored customers are usually certain retailers who are members of, or affiliated with, certain buying organizations; and its unfavored customers are customarily neither members of, nor affiliated with, such buying organizations.

The method of soliciting and receiving orders from either type of customer is the same. The respondent's salesmen call on such retailers and solicit their orders individually, and transmit such orders to the respondent, who invoices and ships the merchandise to the retailer. The only difference in the method of sale is that the respondent bills and collects from the respective buying organization for the purchase price of the hats purchased by its preferred customer while the nonpreferred customer is billed and pays the respondent direct. Such salesmen, however, call on such preferred and unpreferred customers at their respective and geographically separated places of business, solicit and receive their respective orders, and the respondent delivers its hats, when purchased, to both the favored and unfavored purchasers at their respective places of business.

Each of said preferred firms is a separate, distinct and independent legal and business entity doing business with respondent as aforesaid, yet the basis upon which respondent grants the preferred net prices, discounts, and other allowances to each of said firms is that respondent considers and treats all the purchasers who are members of or affiliated with each favored buying organization collectively, as constituting the purchases of a single customer, and grants to each of said customers the preferred net prices, discounts, and other allowances which respondent has determined are applicable to a single purchaser who purchases approximately the amount purchased by all collective members of each of the respective buying organizations.

PAR. 5. The effect of the discriminations in prices as hereinbefore set forth may be substantially to lessen competition in the sale and distribution of the said products in the respective lines of commerce in which respondent and its customers are engaged, and has been, and may be, to injure, destroy or prevent competition in the sale and distribution of said products with the respondent and with its customers who receive the benefits of such discriminatory prices.

CONCLUSION

Under the facts and circumstances set forth in the foregoing findings as to the facts, the Commission concludes that such discriminations in prices by respondent between different purchasers of hats of like grade and quality in interstate commerce in the manner and form aforesaid are in violation of the provisions of Section 2 (a) of the act described in the preamble hereof.

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, which answer admits, with certain exceptions, the material allegations of 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 subsection (a) of Section 2 of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U.S.C. Title 15, Sec. 13).

It is ordered, That the respondent, Caradine Hat Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in the sale of hats in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality as among purchasers of such products where the differences in price are not justified by differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such products are sold or delivered:

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By selling such products to some purchasers at prices which are lower than the prices charged other purchasers competing with such favored purchasers in the sale and distribution of such products. (For purposes of comparison, the term "price" as used in this order takes into account discounts, allowances, and other terms and conditions of sale.)

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

BENJAMIN CHAITT, ISAAC CHAITT, MAX CHAITT, AND
MRS. ELIZABETH CARL

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT APPROVED SEPT. 26, 1914, AND THE WOOL PRODUCTS LABELING ACT OF 1939, APPROVED OCT. 15, 1940

Docket 5041. Complaint, Sept. 4, 1943—Decision, Aug. 22, 1944

Where three brothers and a sister engaged in the operation in New York and Pennsylvania of four stores from which they sold women's ready-to-wear, and in the interstate and intrastate purchase from manufacturers, for resale to the public, of coats, suits, dresses and other wearing apparel, including many composed in whole or in part of wool products as defined by the Wool Products Labeling Act and which, when delivered to them had affixed thereto the stamp, tag, label or other means of identification showing the percentage of the total fiber weight of wool, reprocessed wool, reused wool and non-wool fiber, maximum percentage of adulterating matter, and proper identification of the manufacturer, seller, etc. as required by the Act;

Acting in concert with one another, and with their family corporation and store owner prior to its dissolution, and with intent to violate the provisions of said act and rules and regulations, removed and mutilated, and participated in and caused the removal and mutilation of said identifying stamps, etc., and did not replace them; so that, when offered for sale and sold by them and by said corporation to the general public at said stores said products did not have affixed thereto stamps, tags, labels or other means of identification containing the information required by said act and rules and regulations:

Held, That their aforesaid acts, practices, and methods, under the circumstances set forth, were in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Gardner & Moseson, of Elmira, N. Y., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Benjamin Chaitt, Isaac Chaitt, Max Chaitt, and Mrs. Elizabeth Carl, individuals, hereinafter referred to as respondents, have violated the provisions of said acts, and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the commission that a proceeding by it in respect thereof would be in the public

interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondents are now and for more than one year last past have been engaged in the business of purchasing for resale and selling ladies' ready-to-wear, including coats, suits, dresses, and other wearing apparel.

Respondent, Benjamin Chaitt, operates a store under the trade name Logan-Rogers at 134 West Water Street, Elmira, N. Y., where he sells said merchandise direct to the general public.

Respondent, Isaac Chaitt, operates a store in Harrisburg, Pa., where he sells said merchandise to the general public.

Respondent, Max Chaitt, operates a store at 7 East King Street, Lancaster, Pa., where he sells said merchandise to the general public.

Respondent, Mrs. Elizabeth Carl, operates a store at 816 Cumberland Street, Lebanon, Pa., where she sells said merchandise to the general public.

PAR. 2. For more than one year prior to August, 1942, the aforesaid stores were owned and operated by Logan's, Inc., a Pennsylvania corporation of which respondents, Benjamin Chaitt and his brothers, Max Chaitt and Isaac Chaitt, were officers and stockholders, and their sister, respondent, Mrs. Elizabeth Carl, was a stockholder. All of the capital stock of said corporation was owned by the aforesaid respondents and Mrs. Benjamin Chaitt, wife of respondent, Benjamin Chaitt. The aforesaid respondents were in active control of the aforesaid stores during the existence of the corporation and since the dissolution of the corporation, the respondents have continued to operate their respective stores, and they have acted, during all of the time aforementioned, in concert in carrying out the policies and practices hereinafter described.

PAR. 3. Respondents now purchase and while the stores were operated by the aforesaid corporation, it purchased women's clothing, including coats, suits, dresses and other wearing apparel, for resale in the respective stores from various manufacturers of women's apparel located in States other than the States in which said stores are located and caused such clothing to be transported in commerce through regular and continuous channels of trade in which such apparel through respondents reached the ultimate purchaser-consumer in a State other than the State of manufacture or first introduction into such commerce. Respondents also purchase and during the life of the corporation it purchased said clothing from various manufacturers located in the State in which said stores are located who manufacture such clothing for introduction into said commerce.

Said clothing transported in commerce as aforesaid and also clothing manufactured for introduction into said commerce is thereafter offered for sale and sold by the respondents, and prior to August, 1942 by the aforesaid corporation, to the general public at said places of business. Respondents maintain, and during the life of the corporation it maintained, a regular course of trade in said clothing in commerce as aforesaid.

PAR. 4. Among the clothing purchased and transported in commerce as aforesaid by respondents and prior to August, 1942 by the aforesaid corporation, and also among the clothing manufactured for introduction into said commerce and thereafter offered for sale and sold by respondents and by the aforesaid corporation, during its existence, since July 15, 1941, are

many articles which are wool products within the intent and meaning of the Wool Products Labeling Act of 1939 in that such articles are composed in whole or in part of wool, reprocessed wool, and reused wool as those terms are defined in said act.

All of said wool products purchased and transported in said commerce as aforesaid, and all of said wool products manufactured for introduction into said commerce, were subject to the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and all of said wool products had affixed thereto by the manufacturer thereof, or by some person authorized under the provisions of said act and said rules and regulations, a stamp, tag, label or other means of identification purporting to show (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation, not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentages by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of non-fibrous loading, filling or adulterating matter; (c) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a subsequent seller or reseller of the product, as provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to Section 3 of said act with respect to such wool product; (d) the percentages, in words and figures plainly legible, by weight of the wool contents of said wool product where said wool product contained a fiber other than wool.

PAR. 5. After said wool products were delivered to the respondents and to the aforesaid corporation during its existence at the said stores and places of business as aforesaid, and before said wool products were offered for sale or sold by respondents and by the corporation during its existence, to the general public, said respondents and said corporation with intent to violate the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, did remove, and participate in and cause the removal of, the stamps, tags, labels or other means of identification which purported to contain the information required by the provisions of said act and said rules and regulations affixed to said wool products by the manufacturer thereof or by some person authorized or required by said act to affix such stamps, tags, labels, or other means of identification to said wool products.

PAR. 6. After said wool products were delivered to the respondents and to the aforesaid corporation at the said stores and places of business as aforesaid, and before said wool products were offered for sale or sold by respondents and by the said corporation to the general public, said respondents, and the said corporation with intent to violate the provisions of said Wool Products Labeling Act of 1939 and said rules and regulations promulgated thereunder, did mutilate and participate in and cause the mutilation of the stamps, tags, labels or other means of identification which purported to contain the information required by the provisions of said act and said rules and regulations affixed to said wool products by the manufacturer thereof, or by some person authorized or required by said act to affix such stamps, tags, labels or other means of identification to said wool products.

PAR. 7. Said respondents and the aforesaid corporation did not replace said stamps, tags, labels, or other means of identification with substitute stamps, tags, labels, or other means of identification containing the information required under the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations thereunder. As a result of respondents' and the said corporation's said acts and practices in removing and mutilating said stamps, tags, labels or other means of identification affixed to said wool products, said wool products, when offered for sale and sold by respondents and by the said corporation to the general public at the said stores and places of business, did not have affixed thereto stamps, tags, labels, or other means of identification containing the information required by said act and said rules and regulations.

PAR. 8. The aforesaid acts, practices and methods of the respondents and the aforesaid corporation as herein alleged, were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning 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 the Wool Products Labeling Act of 1939, the Federal Trade Commission on September 4, 1943, issued and subsequently served its complaint in this proceeding upon respondents, Benjamin Chaitt, Isaac Chaitt, Max Chaitt, and Mrs. Elizabeth Carl, individuals, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939. After the issuance of said complaint and the filing of respondents' answer thereto, the matter was set down for hearing on November 10, 1943, at which hearing respondents made a motion of record for permission to withdraw their answer to the complaint and to file in lieu thereof an answer admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which motion was granted by the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and respondents' substitute 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 respondents are now, and for more than one year last past have been, engaged in the business of purchasing for resale and selling ladies' ready-to-wear, including coats, suits, dresses, and other wearing apparel.

Respondent, Benjamin Chaitt, operates a store under the trade name Logan-Rogers at 134 West Water Street, Elmira, N. Y., where he sells said merchandise direct to the general public.

Respondent, Isaac Chaitt, operates a store in Harrisburg, Pa., where he sells said merchandise to the general public.

Respondent, Max Chaitt, operates a store at 7 East King Street, Lancaster, Pa., where he sells said merchandise to the general public.

Respondent, Mrs. Elizabeth Carl, operates a store at 816 Cumberland Street, Lebanon, Pa., where she sells said merchandise to the general public.

PAR. 2. For more than one year prior to August, 1942, the aforesaid stores were owned and operated by Logan's, Inc., a Pennsylvania corporation of which respondents, Benjamin Chaitt and his brothers, Max Chaitt and Isaac Chaitt, were officers and stockholders, and their sister, respondent, Mrs. Elizabeth Carl, was a stockholder. All of the capital stock of said corporation was owned by the aforesaid respondents and Mrs. Benjamin Chaitt, wife of respondent, Benjamin Chaitt. The aforesaid respondents were in active control of the aforesaid stores during the existence of the corporation, and since the dissolution of the corporation the respondents have continued to operate their respective stores, and they have acted, during all of the time aforementioned, in concert in carrying out the policies and practices hereinafter described.

PAR. 3. Respondents now purchase, and while the stores were operated by the aforesaid corporation it purchased, for resale in the respective stores, women's clothing, including coats, suits, dresses, and other wearing apparel, from various manufacturers of women's apparel located in States other than the States in which said stores are located, and caused such clothing to be transported in commerce through regular and continuous channels of trade in which such apparel, through respondents, reached the ultimate purchaser-consumer in a State other than the State of manufacture or first introduction into such commerce. Respondents also purchase, and during the life of the corporation it purchased, said clothing from various manufacturers located in the State in which said stores are located who manufacture such clothing for introduction into said commerce.

Said clothing transported in commerce as aforesaid and also clothing manufactured for introduction into said commerce is thereafter offered for sale and sold by the respondents, and prior to August, 1942, by the aforesaid corporation, to the general public at said places of business. Respondents maintain, and during the life of the corporation it maintained, a regular course of trade in said clothing in commerce as aforesaid.

PAR. 4. Among the clothing purchased and transported in commerce as aforesaid by respondents, and prior to August, 1942, by the aforesaid corporation, and also among the clothing manufactured for introduction into said commerce and thereafter offered for sale and sold by respondents and by the aforesaid corporation during its existence, since July 15, 1941, are many articles which are wool products within the intent and meaning of the Wool Products Labeling Act of 1939 in that such articles are composed in whole or in part of wool, reprocessed wool, and reused wool as those terms are defined in said act.

All of said wool products purchased and transported in said commerce as aforesaid, and all of said wool products manufactured for introduction

into said commerce, were subject to the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and all of said wool products had affixed thereto by the manufacturer thereof or by some person authorized under the provisions of said act and said rules and regulations, a stamp, tag, label, or other means of identification purporting to show (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation, not exceeding 5 per centum of said total fiber weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentages by weight of such fiber were 5 per centum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of non-fibrous loading, filling, or adulterating matter; (c) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a subsequent seller or reseller of the product, as provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to Section 3 of said act with respect to such wool product; (d) the percentages, in words and figures plainly legible, by weight of the wool contents of said wool product where said wool product contained a fiber other than wool.

PAR. 5. After said wool products were delivered to the respondents, and to the aforesaid corporation during its existence, at the said stores and places of business as aforesaid, and before said wool products were offered for sale or sold by respondents, and by the corporation during its existence, to the general public, said respondents and said corporation, with intent to violate the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, did remove, and participate in and cause the removal of, the stamps, tags, labels, or other means of identification which purported to contain the information required by the provisions of said act and said rules and regulations affixed to said wool products by the manufacturer thereof or by some person authorized or required by said Act to affix such stamps, tags, labels, or other means of identification to said wool products.

PAR. 6. After said wool products were delivered to the respondents and to the aforesaid corporation at the said stores and places of business as aforesaid, and before said wool products were offered for sale or sold by respondents and by the said corporation to the general public, said respondents, and the said corporation, with intent to violate the provisions of said Wool Products Labeling Act of 1939 and said rules and regulations promulgated thereunder, did mutilate, and participate in and cause the mutilation of, the stamps, tags, labels, or other means of identification which purported to contain the information required by the provisions of said Act and said Rules and Regulations affixed to said wool products by the manufacturer thereof or by some person authorized or required by said Act to affix such stamps, tags, labels, or other means of identification to said wool products.

PAR. 7. Said respondents and the aforesaid corporation did not replace said stamps, tags, labels, or other means of identification with substitute stamps, tags, labels, or other means of identification containing the information required under the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations thereunder. As a result of respondents' and the said corporation's said acts and practices in removing and

mutilating said stamps, tags, labels, or other means of identification affixed to said wool products, said wool products, when offered for sale and sold by respondents and by the said corporation to the general public at the said stores and places of business, did not have affixed thereto stamps, tags, labels, or other means of identification containing the information required by said act and said rules and regulations.

CONCLUSION

The aforesaid acts, practices, and methods of respondents, as herein found, were and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder and are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of 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 and the provisions of the Wool Products Labeling Act of 1939.

It is ordered, That respondents, Benjamin Chaitt, Isaac Chaitt, Max Chaitt, and Mrs. Elizabeth Carl, individuals, jointly or severally, their respective agents, representatives, and employees, directly or indirectly, in connection with the purchase, offering for sale, sale, or distribution of women's coats, suits, dresses, and wearing apparel, or any other "wool product" as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from causing or participating in the removal or mutilation of any stamp, tag, label, or other means of identification affixed to any such "wool product" pursuant to the provisions of the Wool Products Labeling Act of 1939, with intent to violate the provisions of said act, and which stamp, tag, label, or other means of identification purports to show all or any part of the following:

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation, not exceeding 5 per centum of said total fiber weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 per centum or more, and (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such wool product of any non-fibrous loading, filling, or adulterating matter.

(c) The name of the manufacturer of such wool product; or the manufacturer's registered identification number and the name of a seller of such wool product; or the name of one or more persons introducing such wool product into commerce, or engaged in the sale, transportation, or distribu-

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tion thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939.

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
AMERICAN ASSOCIATION OF LAW BOOK
PUBLISHERS ET AL.

ORDER MODIFYING MODIFIED ORDER TO CEASE AND DESIST¹¹ For findings, and cease and desist order as modified June 26, 1944, see 38 F. T. C. 319.

Docket 4526. Order, August 23, 1944

Order, modifying prior modified order requiring respondent association, its members, their officers, etc., in connection with the offer, etc., in commerce, of law books and related publications to cease and desist from concertedly or cooperatively establishing, fixing or maintaining discounts and terms or conditions of sale therefor, etc., as in detail there set forth and subject to the provisos there set out; so as to make such order subject to the proviso that it is not to be construed as prohibiting joint publishers of any specific law book, set of law books or related legal publication, from engaging in the cooperative activities otherwise prohibited by this order, provided that such activities are pursued in good faith and solely with respect to publishing and selling such jointly published law book, set of law books, or related legal publications in the usual and ordinary course of business and are not used for the purpose of evading the terms of the order, it appearing that the record did not specifically raise any issue of the legality of joint publication ventures, and that it was not necessary to determine any such issue in the present proceeding, and the Commission's instant action being taken without passing upon the legality or illegality thereof and without prejudice to the Commission's right to institute a new proceeding at any time with respect to such legality.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Lynn C. Paulson, *Mr. James H. Boyle* and *Mr. Karl E. Steinhauer* for the Commission.

Lundgren & Lincoln, of New York City, for *James R. Spillane*, *The American Law Book Co.*, *Burdette Smith Co.*, *Edward Thompson Co.*, *Vernon Law Book Co.*, *Washington Law Book Co.* and *West Publishing Co.*

Paxton & Seasongood, of Cincinnati, Ohio, for *Clifford W. Mueller*.

Mr. Neile F. Towner, of Albany, N. Y., for *Richard Reiner*.

Goodwin, Nixon, Hargrave, Middleton & Devans, of Rochester, N. Y., for *R. Walter White*.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., for *Baker, Voorhis and Co.*, *Bancroft-Whitney Co.*, *Bender-Moss Co.*, *The Michie Co.* and *Thomas Law Book Co.*, and along with—

Paxton & Seasongood, of Cincinnati, Ohio, for *The W. H. Anderson Co.*;

Mr. Neile F. Towner, of Albany, N. Y., for *Matthew Bender and Co., Inc.* and *Fallon Law Book Co.*;

Walton, Bannister & Stitt, of New York City, for *Clark Boardman Co., Ltd.*;

Mr. Julius Birge, of Indianapolis, Ind., for *Bobbs-Merrill Co.*;

Mr. Henry Ward Beer, of New York City, for *John Byrne and Co.*;

Garono, Jaekle & Kelly, of Buffalo, N. Y., for *Dennis and Co., Inc.*;

Dorsey, Stubbs & Dorsey, of Atlanta, Ga., for *The Harrison Co.*;

Goodwin, Nixon, Hargrave, Middleton & Devans, of Rochester, N. Y., for The Lawyers Co-Operative Publishing Co.; and
Mr. Clifton P. Williamson, of New York City, for Williamson Law Book Co.

Saul, Ewing, Remick & Harrison, of Philadelphia, Pa., for George T. Bisel.

Haussermann, Davison & Shattuck, of Boston, Mass., for Little, Brown and Co.

Sullivan & Cromwell, of New York City, for The Frank Shepard Co.

Colie & Waltzinger, of Newark, N. J., for Soney and Sage Co.

Isham, Lincoln & Beale, of Chicago, Ill., for Callaghan & Co.

ORDER MODIFYING 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; a stipulation as to the facts and a supplemental stipulation as to the facts entered into between W. T. Kelley, Chief Counsel for the Federal Trade Commission, and the following corporate respondents: The W. H. Anderson Company, Baker, Voorhis and Co., Bancroft-Whitney Co., Matthew Bender and Co., Inc., Bender-Moss Co., Clark Boardman Co., Ltd., Bobbs-Merrill Co., John Bryne and Co., Dennis and Co., Inc., The Harrison Co., The Lawyers Co-Operative Publishing Co., Little, Brown and Co., The Michie Co., National Law Book Co., Public Utilities Reports, Inc., Soney and Sage Co., Thomas Law Book Co., Williamson Law Book Co., and Fallon Law Book Co., which stipulations provide, 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 further testimony, argument, filing of briefs, or other intervening procedure; and also upon testimony and other evidence taken in support of the allegations of said complaint and in opposition thereto as to the respondents American Association of Law Book Publishers, and unincorporated association, and its officers, James R. Spillane, president, Clifford W. Mueller, vice president, Richard Reiner, treasurer, and R. Walter White, secretary, and The American Law Book Co., George T. Bisel, an individual, trading as George T. Bisel Co., The Frank Shepard Co., Burdette Smith Co., Edward Thompson Co., Vernon Law Book Co., Washington Law Book Co., West Publishing Co., and Callaghan & Co., 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 in support of the complaint and in opposition thereto; and oral argument of counsel; and the Commission having made and entered its findings as to the facts, conclusion, and order to cease and desist April 26, 1944, and modified order to cease and desist June 26, 1944, and thereafter, upon motion by counsel for certain of the respondents, the Commission reconsidered the modified order to cease and desist heretofore entered and being of the opinion that an order modifying such modified order to cease and desist should be issued in said cause and having duly considered the record and being now fully advised in the premises issues this its order modifying its modified order to cease and desist.

It is ordered, That the respondents, American Association of Law Book Publishers, an unincorporated association; The American Law Book Co., a corporation, the W. H. Anderson Co., a corporation; Baker, Voorhis and Co., a corporation; Bancroft-Whitney Co., a corporation; Matthew Bender and Co., Inc., a corporation; Bender-Moss Co., a corporation; Clark Boardman Co., Ltd., a corporation; Bobbs-Merrill Co., a corporation; John Byrne and Co., a corporation; Dennis and Co., Inc., a corporation; The Harrison Co., a corporation; The Lawyers Co-Operative Publishing Co., a corporation; Little, Brown and Co., a corporation; The Michie Co., a corporation; National Law Book Co., a corporation; Public Utilities Reports, Inc., a corporation; The Frank Shepard Co., a corporation; Burdette Smith Co., a corporation; Soney and Sage Co., a corporation; Thomas Law Book Co., a corporation; Edward Thompson Co., a corporation; Vernon Law Book Co., a corporation; Washington Law Book Company, a corporation; West Publishing Company, a corporation; Williamson Law Book Co., a corporation; Callaghan & Co., a corporation; and Fallon Law Book Co., a corporation, and their respective officers, agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of law books and related legal publications 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, or directing, instigating, or cooperating in, any planned common course of action, mutual 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 discounts, terms, or conditions of sale for law books and related legal publications or adhering to or promising to adhere to the discounts, terms, or conditions of sale so fixed.

2. Maintaining or adhering to the selling price, terms, and conditions of sale of law books and related publications fixed and established by the respondent who publishes such books.

3. Holding or participating in any meeting, discussion, or exchange of information among themselves or under the auspices of the respondent American Association of Law Book Publishers or any other medium or agency concerning proposed or future discounts, terms, or conditions of sale or concerning bids and price quotations in advance of the submission of such bids or price quotations to purchasing officials of the Federal Government or to awarding authorities of other governmental units or subdivisions or to any buyer of law books and related legal publications.

4. Arriving at the amount of any bid or the discount, terms, or conditions of sale to be submitted to purchasing officials of the Federal Government, to awarding authorities of other governmental units or subdivisions, or to any buyer of law books and related legal publications through agreement, understanding, or collusion with other bidders.

5. Establishing, fixing, or maintaining the rates of allowances to be made, used, and applied on books and other publications received in trade, or fixing and maintaining the prices, terms, or conditions of sale governing the resale of such law books and related legal publications taken in trade.

6. Jointly or cooperatively inducing or promoting adherence to, or attempting to induce or promote adherence to, agreements and understand-

ings relative to the sale and distribution of law books and related legal publications by interchange of correspondence, by personal contact with one another individually or in groups, or by policing the bids or sales transactions of respondent members through the respondent Association or otherwise.

7. Employing or utilizing any of the actual practices specifically prohibited herein as a means or instrumentality of otherwise restricting, restraining, or eliminating competition in the sale and distribution of law books and related legal publications.

8. Employing or utilizing American Association of Law Book Publishers or any other medium or central agency as an instrument, vehicle, or aid in performing or doing any of the acts and practices prohibited by this order.

It appearing to the Commission that the record herein does not directly and specifically raise any issue of the legality of joint publication ventures and that it is not necessary to determine any such issue in the present proceeding, *It is therefore further ordered* that the order to cease and desist herein shall not be construed as prohibiting joint publishers of any specific law book, set of law books or related legal publication, from engaging in the cooperative activities otherwise prohibited by this order, provided that such activities are pursued in good faith and solely with respect to publishing and selling such jointly published law book, set of law books, or related legal publications in the usual and ordinary course of business and are not used for the purpose of evading the terms of the order. By this action the Commission does not now pass upon the legality or illegality of joint publication ventures as such, and this action is without prejudice to the Commission's right to institute a new proceeding at any time with respect to the legality of such ventures.

It is further ordered, That nothing herein contained shall be construed as prohibiting a parent corporation from directing the prices or terms at which any of its subsidiary corporations shall sell any law book or related legal publication published by the parent corporation or by any of its subsidiaries when such prices or terms have been arrived at by the parent corporation acting separately and independently of any competitor of the parent corporation or of any of its subsidiary corporations.

It is further ordered, That nothing in this order is to be construed as prohibiting any of said corporate respondents from entering into such contracts or agreements relating to the maintenance of resale prices as are not prohibited by the provisions of an Act entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890 (the Sherman Act), as amended.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to George T. Bisel, an individual, trading as George T. Bisel Company.

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

Order

IN THE MATTER OF

ULTRA-VIOLET PRODUCTS, INC.

ORDER MODIFYING CERTAIN PORTIONS OF ORDER TO CEASE AND DESIST

Docket 4407. Order, August 26, 1944

Order modifying prior order, in connection with respondent's advertisement of its "Life Lite" therapeutic lamp, pursuant to provision of Sec. 5 (i) of the Federal Trade Commission Act and in accordance with decision below referred to, in proceeding in question, in which original order issued on June 8, 1942, 34 F. T. C. 1325, and in which Circuit Court of Appeals for the Ninth Circuit on June 30, 1944, 143 F. (2d) 814, 38 F. T. C. 923, handed down its opinion, which decreed the enforcement of the Commission's order with respect to certain items, modified it with respect to another item, and set it aside with respect to two others, but without prejudice to the Commission's right to treat the proceeding as submitted upon said items and to make such order with respect thereto as it may be advised to make; so as to modify such prior order with respect to the aforesaid two items in accordance with opinion and decision, as below set forth.

ORDER MODIFYING CERTAIN PORTIONS OF ORDER TO CEASE
AND DESIST

The Commission having on July 20, 1944, issued and subsequently served upon the respondent and its attorney of record an order requiring the respondent to show cause, if any it had, why subsections 1(a) and 1(f) of the Commission's order to cease and desist issued on June 8, 1942, should not, in conformity with the decision of the United States Circuit Court of Appeals for the Ninth Circuit, be modified as set forth in said order to show cause;

And the respondent having on August 12, 1944, filed with the Commission its return to said order to show cause;

And the Commission having duly considered said return and having further considered said subsections of said order to cease and desist and the record herein, and being of the opinion that said subsections should be modified as set forth below:

It is therefore ordered that subsections 1(a) and 1(f) of said order to cease and desist be, and they hereby are, modified to read as follows:

1 (a) that said lamp is a sun lamp; or that it affords benefits to the user comparable to those afforded by natural sunlight, other than the benefits resulting from the production of vitamin D, the benefits resulting from the bactericidal action of said lamp upon bacteria existing at the surface of the skin, and the benefits resulting from such stimulation of the skin as may be caused by the irritating effect of said lamp.

1 (f) that said lamp builds up in the body resistance to any diseases other than those, such as rickets, due to disorders of calcium and phosphorus metabolism arising from vitamin D deficiency.

Note: The original order reported with the complaint and findings in 34 F. T. C. 1325, follows:

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner upon the evidence, briefs in support of and in opposition to the complaint, and oral argument, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Ultra-Violet Products, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of respondent's therapeutic lamp designated as "Life Lite," or any other lamp of substantially similar construction, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

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

(a) that said lamp is a sun lamp, or that it affords benefits to the skin or to the general health of the user comparable to those afforded by natural sunlight;

(b) that said lamp constitutes a cure or remedy or a competent or adequate treatment for barber's itch, ringworm, athlete's foot, acne, eczema, psoriasis, shingles, or erysipelas;

(c) that said lamp constitutes a cure or remedy for sores or ulcers, or that it constitutes a competent treatment therefor except insofar as it may stimulate the healing process in those cases in which the infection causing such conditions is confined to the surface of the skin;

(d) that said lamp possesses any therapeutic value in the treatment of asthma, hay fever, bronchitis, colds, sinus trouble, or discharge from the ears;

(e) that said lamp possesses any therapeutic value in the treatment of anemia;

(f) that said lamp builds up in the body resistance to disease;

(g) that said lamp has any tonic effect upon the blood, that it produces any chemical reaction with respect to the blood stream, or that it is of any assistance in overcoming a deficiency of white or red corpuscles;

(h) that said lamp builds up the resistance of the body to infection, or that it stimulates the endocrine glands;

(i) that said lamp affords any stimulation to the tissues of the skin in excess of such stimulation as may result from its irritating effect;

(j) that said lamp quiets or soothes the nerves or the nerve endings in the skin;

(k) that said lamp acts as an antacid or has any alkalizing effect upon the body;

(l) that said lamp improves the general tone of the body, makes the body strong, increases vitality, or improves mental reaction;

(m) that said lamp tones up the nervous system, induces sleep, or relieves pain;

(n) that said lamp normalizes the chemistry of the body, improves metabolism, or builds new tissues, except insofar as its use may result in the production of vitamin D.

2. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which fails to reveal that excessive exposure to said lamp either with respect to proximity or length of time may result in injury to the user; that said lamp should not be used in the case of pellagra, lupus erythematosus, or certain types of eczema; and that said lamp should never be used unless goggles are worn to protect the eyes; provided, however, that such advertisement need contain only the statement, "CAUTION: Use Only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling, or both on the label and in 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 lamp, which contains any representation prohibited in paragraph 1 hereof, or which fails to comply with the affirmative requirements set forth in paragraph 2 hereof.

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

IN THE MATTER OF

FREDERICK J. SCHENCK AND MARY V. SCHENCK,
TRADING AS RUB-R-LYFE COMPANY

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

Docket 4775. Complaint, June 24, 1942—Decision, Aug. 26, 1944

Where two individuals engaged in the interstate sale and distribution of their "Rub-R-Lyfe" preparation for the treatment of rubber products; through statements in leaflets, circulars and other written or printed matter, directly and by implication—

Falsely represented that said preparation softened hardest rubber for commercial use; preserved and renovated rubber against atmospheric conditions; stopped checking, cracking, oxidation, or frictional heat; and restored the resiliency and original elasticity of rubber;

With tendency and capacity to mislead and deceive a substantial number of the purchasing public into the erroneous belief that said representations were true, whereby it was induced to purchase substantial quantities of their said product:

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. Carrel F. Rhodes for the Commission.

Ogden & Ogden, of Seattle, Wash., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Frederick J. Schenck and Mary V. Schenck, 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, Frederick J. Schenck and Mary V. Schenck, jointly and severally, trading as Rub-R-Lyfe Co., have their principal office and place of business at 1025 Medical-Dental Building, Seattle, Wash.

PAR. 2. Respondents now are, and for more than three years last past, have been engaged in the business of selling a preparation under the trade name "Rub-R-Lyfe" for the treatment of rubber products. Respondents cause said product when sold to be shipped from their place of business in the State of Washington to the purchasers thereof at their respective points of location in States other than the State of Washington and in the District of Columbia. Respondents now maintain, and at all times mentioned herein have maintained, a course of trade in said preparation in commerce between and among the several 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 said preparation by the purchasing public, respondents, in leaflets, circulars, and other written or printed matter, have made many false, misleading and deceptive statements and representations with reference to its said preparation. Among, and typical of, the statements and representations used and caused to be disseminated are the following:

- The scientific miracle for revitalizing rubber—old or new.
- Softens hardest rubber for commercial use.
- Tested and approved by leading chemists—.
- Preserves and renovates rubber against atmospheric conditions.
- Stops checking—cracking.
- Stops checking, oxidation and frictional heat, tires' worst enemies.
- Restores resiliency of rubber.
- Restores original elasticity.

PAR. 4. By the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondents directly and by implication represent and have represented to customers and prospective customers that its preparation "Rub-R-Lyfe" preserves and renovates rubber against atmospheric conditions; stops checking, cracking, oxidation or frictional heat; restores resiliency of rubber; softens hardest rubber for commercial use; restores original elasticity of rubber; has been tested and approved by leading chemists; and that use of said preparation is a competent scientific method for revitalizing old or new rubber.

PAR. 5. The statements and representations so made and used by respondents are grossly exaggerated, false, deceptive and misleading. In truth and in fact, respondents' preparation "Rub-R-Lyfe" will not preserve and renovate rubber against atmospheric conditions, will not stop checking or cracking or oxidation or frictional heat, nor will it restore resiliency of rubber or soften hardest rubber for commercial use. Respondents' preparation will not restore the original elasticity to rubber, and its use does not constitute a competent scientific method for revitalizing old or new rubber. Said preparation has not been tested and approved by leading chemists.

PAR. 6. The acts and practices of the respondent as hereinabove set forth have had and now have the tendency and capacity to and do mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said statements and representations are true. As a result of such erroneous and mistaken belief engendered as herein set forth, the purchasing public has been induced to and has purchased substantial quantities of respondents' product.

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 June 24, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Frederick J. Schenck and Mary V. Schenck, trading as Rub-R-Lyfe Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Subsequent thereto, on July 16, 1942, the respondents filed their answer to said complaint. Thereafter a stipulation, approved by the Commission on June 1, 1943, was entered into by the respondents and Richard P. Whiteley, Assistant Chief Counsel for the Commission, by which it was stipulated and agreed, subject to the approval of the Commission, that the facts stipulated 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 charges stated in the complaint or in opposition thereto; that the Commission may proceed upon said statement of facts to make its findings as to the facts (including inferences which it may draw from the said stipulated facts and its conclusion based thereon), and enter its order disposing of the proceeding without the presentation of oral arguments or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and the facts stipulated; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest 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, Frederick J. Schenck and Mary V. Schenck, jointly and severally, trading as Rub-R-Lyfe Co., have their principal office and place of business at 1025 Medical-Dental Building, Seattle, Wash.

PAR. 2. Respondents now are and for more than three years last past have been engaged in the business of selling a preparation under the trade name "Rub-R-Lyfe" for the treatment of rubber products. Respondents cause said product, when sold, to be shipped from their place of business in the State of Washington to purchasers at their respective points of location in States other than the State of Washington and in the District of Columbia. Respondents now maintain, and at all times mentioned herein have maintained, a course of trade in said preparation in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of said preparation by the purchasing public, respondents, in leaflets, circulars and other written or printed matter, have made various statements and representations with reference to their said preparation. Among and typical of such statements and representations were the following:

Softens hardest rubber for commercial use.

Preserves and renovates rubber against atmospheric conditions.

Stops checking—cracking.

Stops checking, oxidation and frictional heat, tires' worst enemies.

Restores resiliency of rubber.

Restores original elasticity.

PAR. 4. By the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondents, directly and by implication, have represented to customers and prospective customers that said preparation softens hardest rubber for commercial use; that it preserves and renovates rubber against atmospheric conditions; that it stops checking, cracking, oxidation, or frictional heat; and that it restores the original resiliency or elasticity of rubber.

PAR. 5. The statements and representations so made and used by respondents are grossly exaggerated, deceptive, and misleading. In truth and in fact, respondents' preparation will not soften hardest rubber for commercial use; it will not preserve or renovate rubber against atmospheric conditions; it will not stop checking, cracking, oxidation, or frictional heat; nor will it restore the original resiliency or elasticity of rubber.

PAR. 6. The acts and practices of the respondents, as hereinabove set forth, have had the tendency and capacity to mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said statements and representations were true. As a result of such erroneous and mistaken belief, the purchasing public has been induced to purchase substantial quantities of respondents' product "Rub-R-Lyfe."

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, and a stipulation as to the facts entered into between the respondents herein and Richard P. Whiteley, Assistant Chief Counsel for the Commission, which provides among other things that, without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Frederick J. Schenck and Mary V. Schenck, individually, and trading as Rub-R-Lyfe Co., or trading under any other name, and their agents, representatives, and employees, directly

or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' product designated "Rub-R-Lyfe," 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 representing, directly or indirectly:

1. That said product softens hardest rubber for commercial use.
2. That said product preserves or renovates rubber against atmospheric conditions, or that it stops checking, cracking, oxidation, or frictional heat in rubber.
3. That said product restores the original resiliency or original elasticity of rubber.

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

GRATER-BODEY COMPANY, ET AL.¹

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

Docket 4799. Complaint, Aug. 6, 1942—Decision, Sept. 6, 1944

Where a corporation engaged in the interstate purchase, milling and sale of "mill-work and lumber," including, among other products, panelling, panels, trim, doors, sash, screens, cabinets, steps and stairs and parts thereof, and unmilled lumber, in competition with others except insofar as such competition had been lessened or forestalled as below set forth; and an individual, its president, who was instrumental in effecting such purchase and sale;

Following arrangements by the Navy with a shipbuilding company under which the company was to undertake construction of naval vessels, and pursuant to which (1) the Navy agreed to arrange for the advancing of the necessary funds to rehabilitate its shipyards, to be expanded under the general supervision of the Navy and subject to its approval, and (2) the company contracted for the reconstruction by a general contractor of certain office buildings on a cost-plus-a-fixed-fee basis, with the understanding that in securing materials or services, said contractor would obtain competitive offers from as many as practicable, but not less than two—or three where specified—reputable firms and would award a contract to the firm quoting the minimum price; the bids to be opened by or in the presence of the Supervisor of the Shipbuilding of the Navy, or his representative, and to be subject to his approval before award of the sub-contract;

With intent and effect of deceiving and misleading buyers and prospective buyers into believing, considering and approving bids submitted as genuine bids of three competitive sellers of millwork and lumber—

Prepared and submitted to such buyers over a period of some fifteen months, fictitious and noncompetitive bids, which said individual prepared on stationery procured by him, bearing the letterheads of two firms considered to be in competition with aforesaid corporation, and which, over the false, but purported signatures of officials of said firms written by said individual or at his direction, tendered higher and noncompetitive bids than those he prepared in each comparable instance in the name and on the stationery of his aforesaid corporation;

With the result that said corporation enjoyed awards of numerous contracts to it by said contractor, his employees and agents, with the approval of officials of said shipbuilding company and representatives of the aforesaid Supervisor of Ship-

¹ This case is one of a group of eight complaints, findings and cease and desist orders in regard to the use of unfair and deceptive acts, practices and methods in violation of Section 5 of the Federal Trade Commission Act in connection with the preparation and submission of sham, false, fictitious, fraudulent and non-competitive bids to the Cramp Shipbuilding Co. at Philadelphia, following arrangements and contracts made by the Navy with it looking to the construction by said company of naval vessels at its shipyards and the expenditure of funds in said connection for the rehabilitation of its facilities at said shipyards.

Said cases, in addition to the instant one, are reported in this volume as follows, namely: Grater-Bodey Co., et al., Docket 4804, September 6, 1944, p. 122; Delta Equipment Co., Docket 4803, September 25, 1944, p. 202; The O'Brien Machinery Co., Docket 4805, September 25, 1944, p. 211; Westinghouse Electric Supply Co., et al., Docket 4798, September 29, 1944, p. 258; J. P. Rainey & Co., Docket 4800, October 9, 1944, p. 309; Charles F. Rohleder, et al., Docket 4806, October 10, 1944, p. 332; and James A. Clancy, et al., Docket 4801, October 21, 1944, p. 374.

Complaint

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building of the Navy, secured through deception as aforesaid; and with the effect of depriving buyers and prospective buyers of "millwork and lumber," including contractors and subcontractors with the United States Government, of the benefit of competition in commerce:

Held, That said acts, practices and methods, under the circumstances set forth, were all to the prejudice of the public; had a dangerous tendency to and did actually restrain and eliminate competition in the sale of said products in commerce, and restrained unreasonably commerce in said products; had a dangerous tendency to create in said corporation a monopoly in the sale and distribution of said products; and constituted 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.

Mr. Everette MacIntyre and *Mr. V. W. Summers* for the Commission.
Mr. Russell J. Brownback, of Norristown, Pa., and *Mr. Myron Jacoby*, of Philadelphia, Pa., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Grater-Bodey Company and S. W. Roberts named in the caption hereof and more particularly hereinafter described and referred to as respondents, have violated the provisions of Section 5 of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint against each of the said parties, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Grater-Bodey Co., is a Pennsylvania corporation, with its office and principal place of business located at Main and Astor Streets, Norristown, Pa.

Respondent, S. W. Roberts is an individual, who during the period covered by the activities involved in the charges in this complaint, served as president of respondent, Grater-Bodey Co., Main and Astor Streets, Norristown, Pa.

PAR. 2. Charles F. Rohleder, is an individual, engaged in general contracting and construction work, in Philadelphia, Pa. Allen McLaine Ward and J. R. Baldrige, Jr., during the period covered by the activities involved in the charges of this complaint, served as employees and agents of said Charles F. Rohleder.

PAR. 3. At all times herein mentioned, said Charles F. Rohleder, directly and through his said agents, Allen McLaine Ward and J. R. Baldrige, Jr., has been engaged in negotiating with and buying from respondent, Grater-Bodey Co., Main and Astor Streets, Norristown, Pa., directly and through its president and agent, respondent, S. W. Roberts, "millwork and lumber" which was shipped or caused to be shipped by said respondent, Grater-Bodey Co., from many points located in States other than the State of Pennsylvania to Norristown, Pa., and subsequently re-shipped to said Charles F. Rohleder or his agents at Cramp Shipbuilding Co.'s shipyards, Richmond and Norris Streets, Philadelphia, Pa.

At all times hereinafter mentioned, respondent, Grater-Bodey Co., has been engaged in Norristown, Pa., in the business of purchasing, milling, and selling "millwork and lumber" and in doing so caused such "millwork and lumber" to be shipped from locations in Florida, Ohio, New York, and various other States to Norristown, Pa., from which it subsequently was shipped to Philadelphia, Pa., Wilmington, Del., Bridgeport, Conn., Front Royal, Va., and numerous other points, in some instances without further milling, and in other instances after milling to varying extents.

At all times hereinafter mentioned, respondent, S. W. Roberts, as president and agent of respondent, Grater-Bodey Co., has been instrumental in effecting purchase and sale of "millwork and lumber" by respondent, Grater-Bodey Co., and in doing so caused the same to be shipped from points located in various States other than the State of Pennsylvania, to Norristown, Pa., and subsequently from there to Philadelphia, Pa., other locations in Pennsylvania, and to points in other States.

At all times herein mentioned, Russell Keely and F. Oliver Keely, co-partners, trading as S. S. Keely & Sons (sometimes hereinafter referred to as S. S. Keely & Sons) have been engaged at Main Street and Leverington Avenue, Manayunk, Philadelphia, Pa., in the purchasing, milling, and sale of "millwork and lumber" and in doing so cause such "millwork and lumber" to be shipped from locations in States other than the State of Pennsylvania to them in Manayunk, Philadelphia, Pa., and in turn subsequently shipped from that point to Philadelphia, Pa., and to other locations in Pennsylvania and other States.

At all times hereinafter mentioned, A. Wilt & Sons Co., has been engaged in Philadelphia, Pa., in purchasing, milling, and selling "millwork and lumber" and in doing so caused such "millwork and lumber" to be shipped from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and subsequently shipped to its customers located in Philadelphia, Pa., and at other locations in Pennsylvania and other States.

PAR. 4. Respondent, Grater-Bodey Co., S. S. Keely & Sons, A. Wilt & Sons Co., and others not named herein are engaged in the purchase and sale of "millwork and lumber" in States of Pennsylvania, Delaware, and New Jersey, and in doing so have been and are in competition between and among themselves and with one or more other purchasers and sellers of "millwork and lumber" in making or seeking to make sales in "commerce" (as "commerce" is defined in the Federal Trade Commission Act), between and among the various States of the United States of "millwork and lumber" except insofar as said competition has been hindered, lessened, restricted, or forestalled by the acts, things, practices, policies, and methods done and carried on as hereinafter set forth.

PAR. 5. The term "millwork and lumber" as used herein includes lumber in the unmilled state, as well as milled into various products, including, but not limited to, paneling, panels, trim, doors, sash, screens (doors and windows), cabinets, steps, and stairs, including treads, risers, balusters, rails and balustrades.

PAR. 6. During 1940, as a part of its work in the Defense Program of the United States of America, the Navy Department arranged with Cramp Shipbuilding Co., whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of

naval vessels, and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities at the said shipyard, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon the said Cramp Shipbuilding Co. contracted with Charles F. Rohleder for the latter to reconstruct certain office buildings and shipways on a cost plus a fixed fee basis with the understanding that the said Rohleder in securing materials or services would obtain competitive offers from as many as practicable but not less than two (not less than three where specified) reputable firms in a position to provide the material, equipment, or services as required at a reasonable cost, and to award a contract to that firm quoting the minimum price, and with the further understanding that the said offers, proposals, or bids were to be opened by, or in the presence of, the Supervisor of Shipbuilding, U. S. Navy, or his representative, and subject to his approval before award of the subcontract for materials or services.

In connection with his aforesaid contract with the Cramp Shipbuilding Co., Charles F. Rohleder negotiated with and made awards of contracts directly and through agents to respondent, Grater-Bodey Co., for the purchase of "millwork and lumber."

PAR. 7. Throughout a period of time beginning on or about the first day of October, 1940, and continuing thereafter until subsequent to January 1, 1942, respondent, S. W. Roberts, in his capacity as an individual and in his capacity as president and agent of respondent, Grater-Bodey Co., indulged in a practice of preparing and submitting sham, false, fictitious, fraudulent, and non-competitive bids to buyers and prospective buyers of "millwork and lumber." As a part of the aforesaid practice on each of a number of occasions in response to invitations which he received as president and agent of respondent, Grater-Bodey Co., from buyers and prospective buyers of "millwork and lumber" for bids and quotations, he procured stationery bearing the letterheads of firms other than Grater-Bodey Co. when said firms were considered to be in competition with Grater-Bodey Co., and used such stationery in preparing bids and price quotations at different, higher and non-competitive levels compared with the bids and price quotations he prepared in each comparable instance in the name and on the stationery of the respondent, Grater-Bodey Co. When respondent, S. W. Roberts, thus prepared bids on the letterheads of other firms, including said S. S. Keely & Sons and said A. Wilt & Sons Co., he did so over the false but purported signatures of officials of those respective firms as written by respondent, S. W. Roberts, or at his direction. In each instance when three bids, one purporting to be the bid of respondent, Grater-Bodey Co., one the bid of S. S. Keeley & Sons, and one the bid of A. Wilt & Sons Co., were thus prepared or caused to be prepared by respondent, S. W. Roberts, he submitted or caused the same to be submitted to buyers and prospective buyers of "millwork and lumber" for the purpose and with the result of deceiving and misleading such buyers and prospective buyers into believing, considering, and approving such bids as genuine and competitive bids of three competing sellers of "millwork and lumber."

Respondent, Grater-Bodey Co., as a result of the submission of aforesaid sham, false, fictitious, fraudulent, and non-competitive bids by its president and agent, respondent, S. W. Roberts, as aforesaid, enjoyed awards of numerous contracts to it by said Charles F. Rohleder, his employees and agents, with the approval of officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, United States Navy, secured through deception as aforesaid.

PAR. 8. The doing and performing of the acts and things and the use of the method set forth in the immediately preceding paragraph hereof tend to have and have had the effect of depriving buyers and prospective buyers, including contractors and subcontractors with the United States Government of "millwork and lumber" of the benefit of competition in commerce between and among sellers of electrical supplies and equipment and between them and their competitors.

PAR. 9. The acts, practices and methods, as hereinbefore alleged, are all to the prejudice of the public; have a dangerous tendency and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the sale of "millwork and lumber" in commerce within the intent and meaning of the Federal Trade Commission Act; have the tendency and capacity to restrain unreasonably and have restrained unreasonably such commerce in such products; have a dangerous tendency to create in respondent, Grater-Bodey Co., a monopoly in the sale and distribution of such 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 August 6, 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 and unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act. After the issuance 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 substitute therefor an answer admitting all of the material allegations of fact set forth in the said complaint and waiving all intervening procedure and further hearing as to the 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. (a) Respondent, Grater-Bodey Co., is a corporation, organized and existing under the laws of the State of Pennsylvania, with its office and principal place of business located at Main and Astor Streets, Norristown, Pa.

(b) Respondent, S. W. Roberts, is an individual, who during the period covered by the activities hereinafter specified, served as president of respondent, Grater-Bodey Co.

PAR. 2. Charles F. Rohleder, is an individual, engaged in general contracting and construction work in Philadelphia, Pa. Allen McLaine Ward and J. R. Baldrige, Jr., during the period covered by the activities hereinafter specified, served as employees and agents of said Charles F. Rohleder.

PAR. 3. (a) At all times hereinafter mentioned said Charles F. Rohleder, directly and through his said agents, Allen McLaine Ward and J. R. Baldrige, Jr., has been engaged in negotiating with and buying from respondent, Grater-Bodey Co., directly and through its president and agent, respondent, S. W. Roberts, "millwork and lumber" which was shipped or caused to be shipped by said respondent, Grater-Bodey Co., from many points located in States other than the State of Pennsylvania to Norristown, Pa., and subsequently reshipped to said Charles F. Rohleder or his agents at Cramp Shipbuilding Co.'s shipyards, Richmond and Norris Streets, Philadelphia, Pa.

(b) At all times hereinafter mentioned respondent, Grater-Bodey Company, has been engaged in Norristown, Pennsylvania, in the purchase, milling, and sale of "millwork and lumber" and has caused such "millwork and lumber" to be shipped from locations in Florida, Ohio, New York, and various other States to Norristown, Pa., from which it subsequently was shipped to Philadelphia, Pa.; Wilmington, Del.; Bridgeport, Conn.; Front Royal, Va.; and numerous other points, in some instances without further milling, and in other instances after milling.

(c) At all times hereinafter mentioned respondent, S. W. Roberts, as president and agent of respondent, Grater-Bodey Co., has been instrumental in effecting purchase and sale of "millwork and lumber" by the Grater-Bodey Co., and in so doing caused the same to be shipped from points located in various States other than the State of Pennsylvania to Norristown, Pa., and subsequently from there to Philadelphia and other locations in Pennsylvania, and to points in other States.

(d) At all times hereinafter mentioned Russell Keely and F. Oliver Keely, copartners, trading as S. S. Keely & Sons (sometimes hereinafter referred to as S. S. Keely & Sons) have been engaged at Main Street and Leverington Avenue, Manayunk, Philadelphia, Pa., in the purchase, milling, and sale of "millwork and lumber" and in so doing caused such "millwork and lumber" to be shipped from locations in States other than the State of Pennsylvania to them in Manayunk, Philadelphia, Pa., and, in turn, subsequently shipped from that point to Philadelphia and other locations in Pennsylvania and other States.

(e) At all times hereinafter mentioned, A. Wilt & Sons Company, has been engaged in Philadelphia, Pa., in the purchase, milling, and sale of "millwork and lumber" and in so doing caused such "millwork and lum-

ber" to be shipped from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and subsequently shipped to its customers located in Philadelphia and other locations in Pennsylvania and other States.

PAR. 4. Respondent, Grater-Bodey Co., S. S. Keely & Sons, A. Wilt & Sons Co., and others not named herein are engaged in the purchase and sale of "millwork and lumber" in the States of Pennsylvania, Delaware, and New Jersey, and in so doing have been, and are, in competition between and among themselves and with one or more other purchasers and sellers of "millwork and lumber" in making or seeking to make sales of "millwork and lumber" in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States, except insofar as said competition has been hindered, lessened, restricted, or forestalled by the acts, things, practices, policies, and methods done and carried on as hereinafter set forth.

PAR. 5. The term "millwork and lumber" as used herein includes lumber in the unmilled state as well as lumber milled into various products, including but not limited to paneling, panels, trim, doors, sash, screens (door and window), cabinets, steps and stairs, including treads, risers, balusters, rails, and balustrades.

PAR. 6. During 1940, as a part of its work in the defense program of the United States of America, the Navy Department arranged with Cramp Shipbuilding Company, whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels, and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities at the said shipyards, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon, the said Cramp Shipbuilding Co. contracted with Charles F. Rohleder for the latter to reconstruct certain office buildings and shipways on a cost-plus-a-fixed-fee basis, with the understanding that the said Rohleder, in securing materials or services, would obtain competitive offers from as many as practicable but not less than two (not less than three where specified) reputable firms in a position to provide the material, equipment, or services as required, at a reasonable cost, and to award a contract to that firm quoting the minimum price, and with the further understanding that the said offers, proposals, or bids were to be opened by, or in the presence of, the Supervisor of Shipbuilding, United States Navy, or his representative, and were to be subject to his approval before award of the subcontract for materials or services. In connection with his aforesaid contract with the Cramp Shipbuilding Co., Charles F. Rohleder negotiated with and made awards of contracts, directly and through agents, to respondent, Grater-Bodey Co., for the purchase of "millwork and lumber."

PAR. 7. Throughout a period of time beginning on or about the first day of October 1940 and continuing thereafter until subsequent to January 1, 1942, respondent, S. W. Roberts, in his capacity as an individual, and in his capacity as president and agent of respondent, Grater-Bodey Co., indulged in a practice of preparing and submitting sham, false, fictitious, fraudulent, and non-competitive bids to buyers and prospective buyers of

"millwork and lumber." As a part of the aforesaid practice, on each of a number of occasions, in response to invitations which he received as president and agent of the Grater-Bodey Co., from buyers and prospective buyers of "millwork and lumber" for bids and quotations, he procured stationery bearing the letterheads of firms other than Grater Bodey Co., which firms were considered to be in competition with the Grater-Bodey Co., and used such stationery in preparing bids and price quotations at different, higher, and non-competitive levels compared with the bids and price quotations he prepared in each comparable instance in the name and on the stationery of the Grater-Bodey Co. When the said S. W. Roberts thus prepared bids on the letter-heads of other firms, including said S. S. Keely & Sons and said A. Wilt & Sons Co., he did so over the false but purported signatures of officials of those respective firms as written by S. W. Roberts or at his direction. In each instance when three bids, one purporting to be the bid of respondent, Grater-Bodey Co., one the bid of S. S. Keely & Sons, and one the bid of A. Wilt & Sons Co., were thus prepared or caused to be prepared by S. W. Roberts, he submitted or caused the same to be submitted to buyers and prospective buyers of "millwork and lumber" for the purpose and with the result of deceiving and misleading such buyers and prospective buyers into believing, considering, and approving such bids as genuine and competitive bids of three competing sellers of "millwork and lumber." As a result of the submission of aforesaid sham, false, fictitious, fraudulent, and non-competitive bids by its president and agent, the Grater-Bodey Co. enjoyed awards of numerous contracts to it by said Charles F. Rohleder, his employees and agents, with the approval of officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Shipbuilding, United States Navy, secured through deception as aforesaid.

PAR. 8. The doing and performing of the acts and things and the use of the methods set forth above tend to have, and have had, the effect of depriving buyers and prospective buyers of "millwork and lumber," including contractors and subcontractors with the United States Government, of the benefit of competition in commerce between and among sellers of such products.

CONCLUSION

The acts, practices and methods, as hereinbefore found, are all to the prejudice of the public; have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the sale of "millwork and lumber" in commerce within the intent and meaning of the Federal Trade Commission Act; have the tendency and capacity to restrain unreasonably, and have restrained unreasonably, such commerce in such products; have a dangerous tendency to create a respondent, Grater-Bodey Company, a monopoly in the sale and distribution of such 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 substitute answer of the respondents, in which answer respondents admit all of the material allegations 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 respondents have violated the provisions of Section 5 of the Federal Trade Commission Act.

It is ordered, That respondents, Grater-Bodey Co., a corporation, and S. W. Roberts, individually, and as president of Grater-Bodey Co., their respective representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of "millwork and lumber" in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from doing or performing any of the following acts, things, or practices:

1. Submitting or procuring, assisting, or cooperating in the submission to any buyer of multiple bids or price quotations for the same materials for use on the same project but in the names of different or apparently different prospective sellers.

2. Aiding, assisting, or cooperating in any manner in the submission of any sham, fictitious, fraudulent, or non-competitive bids or price quotations to any buyer or prospective buyer, or to any official or awarding authority of any Federal agency or to any one acting for or on its behalf, or for or on behalf of any contractor with such agency.

3. Interfering with or assisting in interfering with the procurement or consideration of genuinely competitive bids or price quotations by any Federal agency or any official or awarding authority of such agency, or by any buyer or prospective buyer.

4. Promoting, establishing, carrying out, or continuing any act or practice for the purpose or with the effect of maintaining or presenting a false appearance of competition between or among sellers in the submission of price quotations or bids to buyers or prospective buyers.

5. Arranging or attempting to arrange for the filing of any bid in the name of one ostensibly competing bidder when the prices and terms are in fact determined by some other bidder or when in fact the bid is not a bona fide bid.

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

IN THE MATTER OF
GRATER-BODEY COMPANY, ET AL.¹

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

Docket 4804. Complaint, Aug. 6, 1942—Decision, Sept. 6, 1944

Where (1) a corporation engaged in the interstate purchase, milling and sale of "millwork and lumber," and two partners, and a second corporation, similarly engaged, in competition among themselves and with others except insofar as said competition had been lessened or forestalled as below set forth; (2) two individuals who were presidents of aforesaid corporations and instrumental in effecting their said purchases and sales; (3) a general contractor engaged directly and through his two agents in negotiating with and buying from said first corporation and its said president, such "millwork and lumber," including, among other products, paneling, panels, trim, doors, sash, screens, cabinets, steps and stairs and unmilled lumber; and (4) the two agents of the aforesaid contractor;

Following arrangements by the Navy with a ship-building company under which said company was to undertake construction of naval vessels, and pursuant to which (1) the Navy agreed to arrange for the advancing of the necessary funds to rehabilitate its shipyards, to be expended under the general supervision of the Navy and subject to its approval, and (2) the company contracted with said general contractor for the reconstruction by him of certain office buildings and shipways on a cost-plus-fixed-fee-basis, with the understanding that in securing materials or services he would obtain competitive offers from as many as practicable, but not less than two—or three where specified—reputable firms and would award a contract to the concern quoting the minimum price; bids to be opened by or in the presence of the Supervisor of Shipbuilding of the Navy, or his representative, and to be subject to his approval before awarding of the subcontract—Cooperated, combined, agreed, and conspired, during a period of some fifteen months or more, to, and did, restrain and suppress competition in the purchase and sale of the aforesaid products; and pursuant to and as a part of the aforesaid understanding, etc.—

- (a) Promoted, established and carried out a practice of maintaining a false appearance of competition between said corporations and partnership and other sellers of millwork and lumber in their submission of price quotations and bids to buyers and prospective buyers;
- (b) Conveyed to such buyers, including official awarding authorities of the United States Government, and others involved in the purchase of said products, the representation that said corporations and firm were rival bidders and competitors, when in fact they were acting collusively in the preparing and submitting of bids; and
- (c) Avoided and prevented competition in the sale and distribution of said products, and prevented the quotation of genuine competitive bids thereon to purchasers; and

¹ The instant case is one of a group of eight having to do with the preparation and submission of sham, false, fictitious, fraudulent and noncompetitive bids in connection with the Navy's arrangements for the construction of ships by the Cramp Shipbuilding Co. at its shipyards in Philadelphia. For list of these cases, see footnote to the case of the Grater-Bodey Co., et al., Docket 4799, p. 113.

Where said contractor, on numerous occasions, acting directly or through his aforesaid two agents—

- (d) Cooperated with the president of said first corporation in the preparation and submission to said contractor and his agents and employees, of fictitious bids for the furnishing of said products for his use in rehabilitating said company's ship-yards, and directly or through his said two agents submitted such bids to purchasing officials of said ship-building company and representatives of the Navy Supervisor of Ships, for consideration and approval as genuine competitive price quotations; and

Where said president—

- (e) With the knowledge and cooperation of said contractor and his employees and agents, including the two aforesaid, secured from the offices of said partners and said second corporation, printed stationery bearing said concerns' respective letterheads, and made use thereof in the preparation and submission over the names of said concerns and over the purported but false signatures of officials thereof, of fictitious or sham bids specifying prices which were higher than, and noncompetitive with, those he submitted in each comparable instance as the quotations of his said corporation, concern he was then known to represent; and

Where said contractor, in each of the instances in which such sham bids were thus submitted to him,

- (f) In turn submitted as and for genuine competitive bids, such bids to officials of said shipbuilding company and to representatives of the Navy Supervisor of Ships, who were thereby misled and deceived into considering and approving them as genuine and competitive; and

Where said two partners and the president of said second corporation,—

- (g) Knowingly cooperated with aforesaid president of said first corporation in the submission of such fictitious bids, by furnishing him with stationery bearing letterheads of their respective firms for his use in the preparation of such bids;

With the result that aforesaid first corporation enjoyed awards of numerous contracts to it by said contractor, his employees and agents, with the approval of officials of said shipbuilding company and representatives of the Navy Supervisor of Ships, secured through deception, as aforesaid; and with the effect of depriving buyers and prospective buyers of "millwork and lumber," including contractors and subcontractors with the Government, and the public in general, of the benefit of price competition in commerce between and among said corporations and said firm, and others with whom they normally would be in competition, in the making of bids and price quotations:

Held, That said acts, practices and methods, under the circumstances set forth, were all to the prejudice of the public; had a dangerous tendency to and did actually restrain and eliminate competition in the purchase and sale of said products in commerce; restrained commerce unreasonably therein, and tended so to do; had a dangerous tendency to create a monopoly in the purchase, sale and distribution of products concerned; and constituted 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.

Mr. Everette MacIntyre and Mr. V. W. Summers for the Commission.

Mr. Russell J. Brownback, of Norristown, Pa., and *Mr. Myron Jacoby*, of Philadelphia, Pa., for Grater-Bodey Co. and S. W. Roberts.

Byron, Longbottom, Kirby & Pape, of Philadelphia, Pa., for Russell Keely and F. Oliver Keely.

Complaint

39 F. T. C.

Mr. Henry Wessel, Jr., of Philadelphia, Pa., for A. Wilt & Sons Co. and Frank R. Bowers.

Mr. James F. Masterson, of Philadelphia, Pa., for Charles F. Rohleder, Allen McLaine Ward and J. R. Baldrige, Jr.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that the persons, partnerships and corporations named or included by reference in the caption hereof, and more particularly hereinafter described and referred to as respondents, have violated the provisions of Section 5 of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint in that respect as follows:

PARAGRAPH 1. Respondent, Grater-Bodey Co., is a Pennsylvania Corporation with its office and principal place of business located at Main and Astor Streets, Norristown, Pa.

Respondent, S. W. Roberts, is an individual, who during the period covered by the activities involved in the charges in this complaint served as president of said respondent, Grater-Bodey Co.

Respondents, Russell Keely and F. Oliver Keely, are individuals, who during the period covered by the activities involved in the charges in this complaint, constituted a partnership, trading under the name and style of S. S. Keely & Sons, with office and principal place of business located at Main Street and Leverington Avenue, Manayunk, Philadelphia, Pa. Said respondents, Russell Keely and F. Oliver Keely, are sometimes hereinafter referred to as respondents, S. S. Keely & Sons.

Respondent, A. Wilt & Sons Company, is a Pennsylvania corporation, with its office and principal place of business located at 711 North Front Street, Philadelphia, Pa.

Respondent, Frank R. Bowers, is an individual, who during the period covered by the activities involved in the charges in this complaint, served as president of said respondent, A. Wilt & Sons Co.

Respondent, Charles F. Rohleder, is an individual, engaged in general contracting and construction work, with office and principal place of business located at 2134 Cherry Street, Philadelphia, Pa.

Respondent, Allen McLaine Ward, whose residence address is 7415 Bingham Street, Philadelphia, Pa., is an individual, who during the period covered by the activities involved in the charges of this complaint, served as an employee and agent of respondent, Charles F. Rohleder.

Respondent, J. R. Baldrige, Jr., whose residence address is 111 East Cliveden Avenue, Philadelphia, Pa., is an individual, who during the period covered by the activities involved in the charges of this complaint, served as an employee and agent of respondent, Charles F. Rohleder.

PAR. 2. At all times hereinafter mentioned, respondent, Charles F. Rohleder, directly and through his agents, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., has been engaged in negotiating with and buying from respondents, Grater-Bodey Co., and S. W. Roberts "mill-work and lumber" which was, as a result of such negotiations and pur-

chases, shipped and caused to be shipped from many points located in States other than the State of Pennsylvania across State lines to Norristown, Pa., and subsequently to Philadelphia, Pa.

At all times hereinafter mentioned, respondent, Grater-Bodey Co., has been engaged in Norristown, Pa., in the business of purchasing, milling, and selling "millwork and lumber" and in doing so caused such "millwork and lumber" to be shipped from locations in Florida, Ohio, New York, and various other States to Norristown, Pa., from which it subsequently was shipped to Philadelphia, Pa., Wilmington, Del., Bridgeport, Conn., Front Royal, Va., and numerous other points, in some instances without further milling, and in other instances after milling to varying specifications.

At all times hereinafter mentioned, respondent, S. W. Roberts, as president and agent of respondent, Grater-Bodey Co., has been instrumental in effecting the purchase and sale of "millwork and lumber" by respondent, Grater-Bodey Co., and in doing so caused the same to be shipped from points located in various States other than the State of Pennsylvania to Norristown, Pa., and subsequently from there to Philadelphia, Pa., other locations in Pennsylvania, and to points in other States.

At all times hereinafter mentioned, said respondents, Russell Keely and F. Oliver Keely, partners, trading as S. S. Keeley & Sons, have been engaged at their said place of business in the purchasing, milling, and sale of "millwork and lumber" and in doing so caused such "millwork and lumber" to be shipped from locations in States other than the State of Pennsylvania to themselves in Philadelphia, Pa., and in turn subsequently shipped from that point to other locations in Pennsylvania and other States.

At all times hereinafter mentioned, respondent, A. Wilt & Sons Co., has been engaged in Philadelphia, Pa., in purchasing, milling, and selling "millwork and lumber" and in doing so caused such "millwork and lumber" to be shipped from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and subsequently shipped to its customers located in Philadelphia, Pa., and at other locations in Pennsylvania and other States.

At all times hereinafter mentioned, respondent, Frank R. Bowers, as president and agent of respondent, A. Wilt & Sons Co., has been instrumental in effecting the purchasing, milling and sale of "millwork and lumber" by respondent, A. Wilt & Sons Co., in Philadelphia, Pa., and causing the same to be shipped from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and subsequently to customers of A. Wilt & Sons Co. in Philadelphia, Pa., and to other locations in Pennsylvania and other States.

PAR. 3. Respondents, Grater-Bodey Co., S. S. Keely & Sons, and A. Wilt & Sons Co., and others not named herein as respondents, engaged in the purchase, milling, and sale of "millwork and lumber" in the States of Pennsylvania, Delaware, and New Jersey, have been and are in competition between and among themselves and with one or more other purchasers, millers, and sellers of "millwork and lumber" in making or seeking to make sales in "commerce" (as "commerce" is defined in the Federal Trade Commission Act) between and among the various States of the United States, of "millwork and lumber," except in so far as said competition has been hindered, lessened, restricted, or forestalled by the coopera-

tion, concert or common course of action, understanding, confederation, combination, agreement, or conspiracy, or the acts, things, practices, policies, or methods done in pursuance thereto or in furtherance thereof as hereinafter set forth.

PAR. 4. The term "millwork and lumber" as used herein includes lumber in the unmilled state, as well as milled into various products, including, but not limited to, paneling, panels, trim, doors, sash, screens (doors and windows), cabinets, steps, and stairs, including treads, risers, balusters, balustrades and rails.

PAR. 5. During 1940, as a part of its work in the Defense Program of the United States of America, the Navy Department arranged with Cramp Shipbuilding Co., whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels, and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities at the said shipyard, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon the said Cramp Shipbuilding Co. contracted with respondent, Charles F. Rohleder, for the latter to reconstruct certain office buildings and shipways on a cost plus a fixed fee basis with the understanding that the said Rohleder in securing materials or services would obtain competitive offers from as many as practicable but not less than two (not less than three where specified) reputable firms in a position to provide the material, equipment, or services as required at a reasonable cost, and to award a contract to that firm quoting the minimum price, and with the further understanding that the said offers, proposals, or bids were to be opened by, or in the presence of, the Supervisor of Shipbuilding, U. S. Navy, or his representative, and subject to his approval before award of the subcontract for materials or services.

In connection with his aforesaid contract with the Cramp Shipbuilding Co., respondent, Charles F. Rohleder, negotiated with and made awards of contracts directly and through agents to respondent Grater-Bodey Co. for the purchase of "millwork and lumber."

PAR. 6. Throughout a period of time beginning on or about the first day of October, 1940, and continuing thereafter until subsequent to January 1, 1942, the respondents as named in the caption hereof have, through understandings together and with each other, cooperated, confederated, combined, agreed, and conspired to frustrate, hinder, restrain and suppress competition in the purchase and sale of "millwork and lumber" in "commerce" (as "commerce" is defined in the Federal Trade Commission Act), and have in fact through such cooperation, confederation, combination, agreement, and conspiracy, frustrated, hindered, restrained, and suppressed competition in the purchase and sale of "millwork and lumber" in commerce.

Pursuant to, in furtherance of, and as a part of the aforesaid understanding, cooperation, confederation, combination, agreement, and conspiracy, the aforesaid respondents have done, performed, and used, among other acts, things, practices, policies and methods, the following:

1. Promoted, established, carried out, and continued a practice of maintaining a false appearance of competition between and among re-

spondents, Grater-Bodey Co., S. S. Keely & Sons, A. Wilt & Sons Co., and other sellers of "millwork and lumber" in their submission of price quotations and bids to buyers and prospective buyers;

2. Conveyed to buyers and prospective buyers, including official awarding authorities of the United States Government, and others involved in the purchase of "millwork and lumber" the representation that said respondents, Grater-Bodey Co., S. S. Keely & Sons, and A. Wilt & Sons Co., were rival bidders and competitors when they in reality were acting collusively between and among themselves in preparing and submitting bids;

3. Avoided and prevented competition in the sale and distribution of "millwork and lumber";

4. Prevented quotation of genuine competitive bids or price quotations on said commodities to purchasers thereof;

5. On numerous occasions, the exact number and dates of which are unknown to the Commission, respondent, Charles F. Rohleder, acting directly or through his agents, respondents, Allen McLaine Ward, and J. R. Baldrige, Jr., cooperated with respondent, S. W. Roberts, in the preparation and submission to said respondent, Charles F. Rohleder, his agents and employees, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., of sham, false, fictitious, fraudulent, and noncompetitive bids and price quotations for the furnishing of "millwork and lumber" for the said Rohleder's use in rehabilitating the facilities of the Cramp Shipbuilding Co.'s shipyards, Norris and Richmond Streets, Philadelphia, Pa.; and in turn said respondent, Rohleder, directly or through said respondent's agents, Ward and Baldrige, submitted such sham, false, fictitious, fraudulent, and noncompetitive bids and price quotations to purchasing officials of the Cramp Shipbuilding Co., and representatives of the Supervisor of Ships, United States Navy Department, for consideration and approval as genuine competitive bids and price quotations.

6. On numerous occasions, the exact number and dates of which are unknown to the Commission, respondent, S. W. Roberts, acting in his capacity as president and agent of respondent, Grater-Bodey Co., with the knowledge and cooperation of respondent, Charles F. Rohleder, his employees and agents, including respondents, Allen McLaine Ward and J. R. Baldrige, Jr., secured from the respective offices of respondents, S. S. Keely & Sons and A. Wilt & Sons Co., printed stationery of said respondents bearing their respective letterheads, and used the same in the preparation and submission of sham, false, fictitious, fraudulent, and noncompetitive bids and price quotations over the names of S. S. Keely & Sons and A. Wilt & Sons Co. and over the purported but false signatures of officials of those firms to said respondent, Charles F. Rohleder, and his agents and employees in furtherance of the aforesaid deception, the prices specified therein being different from, higher than, and noncompetitive with, the bid and price quotation submitted in each comparable instance by the said S. W. Roberts as the bid or price quotation of the firm he was then known to be representing, namely, respondent, Grater-Bodey Co. Thereupon in each of the number of instances where said S. W. Roberts thus submitted to Charles F. Rohleder, his agents and employees, different bids on stationery bearing the letterheads of respondents, S. S. Keely & Sons and A. Wilt & Sons Co., such bids were in turn submitted by Charles F. Roh-

leder, his agents and employees, as and for genuine and competitive bids to officials of Cramp Shipbuilding Co. and to representatives of the Supervisor of Ships, United States Navy, who were, through the appearance of such bids, misled and deceived in considering and approving them as genuine and competitive.

7. Respondents, Russell Keely and F. Oliver Keely, acting in their capacity as partners in the firm of S. S. Keely & Sons, and respondent, Frank R. Bowers, acting in his capacity as president of respondent, A. Wilt & Sons Co., knowingly cooperated with respondent, S. W. Roberts in his submission of sham, false, fictitious, fraudulent, and noncompetitive bids as aforesaid in furnishing him with stationery bearing letterheads of their respective firms for his use in preparation of said bids.

8. Respondent, Grater-Bodey Co., as a result of the submission of aforesaid sham, false, fictitious, fraudulent, and noncompetitive bids by its president and agent, respondent, S. W. Roberts, as aforesaid, enjoyed awards of numerous contracts to it by said Charles F. Rohleder, his employees and agents, with the approval of officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, United States Navy, secured through deception as aforesaid.

PAR. 7. The aforesaid understandings, agreements, combination, and conspiracy, and the doing and performing of the acts and things and the use of the methods set forth in the preceding paragraphs hereof tend to have and had the effect of depriving buyers and prospective buyers of "millwork and lumber," including contractors and subcontractors, of the United States Government, and the public in general, of the benefit of competition in commerce between and among respondents, Grater-Bodey Co., S. S. Keely & Sons, A. Wilt & Sons Co., and others with whom they normally would be in competition in making bids and price quotations.

PAR. 8. The acts, practices, methods, understandings, agreements, combination and conspiracy of the respondents as hereinbefore alleged are all to the prejudice of the public, have a dangerous tendency to, and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the purchase and sale of "millwork and lumber" in commerce within the intent and meaning of the Federal Trade Commission Act, and have the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said products, have a dangerous tendency to create a monopoly in the purchase, sale, and distribution of such 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 August 6, 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 and unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act. After the issuance of the said complaint, certain of the respondents filed answers and the

other respondents filed substitute answers, in which answers and substitute answers the several respondents admitted all of the material allegations of fact set forth in the said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the said answers and substitute answers of the respondents; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (a) Respondent, Grater-Bodey Co., is a corporation, organized and existing under the laws of the State of Pennsylvania, with its office and principal place of business located at Main and Astor Streets, Norristown, Pa.

(b) Respondent, S. W. Roberts, is an individual, who during the period covered by the activities hereinafter specified, served as president of said Grater-Bodey Co.

(c) Respondents, Russell Keely and F. Oliver Keely, are individuals, who during the period covered by the activities hereinafter specified, constituted a partnership trading under the name and style of S. S. Keely & Sons, with their office and principal place of business located at Main Street and Leverington Avenue, Manayunk, Philadelphia, Pa. Said Russell Keely and F. Oliver Keely are sometimes hereinafter referred to as S. S. Keely & Sons.

(d) Respondent, A. Wilt & Sons Co., is a corporation, organized and existing under the laws of the State of Pennsylvania, with its office and principal place of business located at 711 North Front Street, Philadelphia, Pa.

(e) Respondent, Frank R. Bowers, is an individual, who during the period covered by the activities hereinafter specified, served as president of said A. Wilt & Sons Co.

(f) Respondent, Charles F. Rohleder, is an individual, engaged in general contracting and construction work, with his office and principal place of business located at 2134 Cherry Street, Philadelphia, Pa.

(g) Respondent, Allen McLaine Ward, whose residence address is 7415 Bingham Street, Philadelphia, Pa., is an individual, who during the period covered by the activities hereinafter specified, served as an employee and agent of respondent, Charles F. Rohleder.

(h) Respondent, J. R. Baldrige, Jr., whose residence address is 111 East Cliveden Avenue, Philadelphia, Pa., is an individual who, during the period covered by the activities hereinafter specified, served as an employee and agent of respondent, Charles F. Rohleder.

PAR. 2. (a) At all times hereinafter mentioned, Charles F. Rohleder, directly and through his agents, Allen McLaine Ward and J. R. Baldrige, Jr., has been engaged in negotiating with and buying from the Grater-Bodey Co. and S. W. Roberts "millwork and lumber" which was, as a result of such negotiations and purchases, shipped and caused to be shipped from many points located in States other than the State of Pennsylvania

across State lines to Norristown, Pa., and subsequently to Philadelphia, Pa.

(b) At all times hereinafter mentioned, the Grater-Bodey Co., has been engaged in Norristown, Pa., in the purchase, milling, and sale of "millwork and lumber" and in so doing caused such "millwork and lumber" to be shipped from locations in Florida, Ohio, New York, and various other States to Norristown, Pa., from which it subsequently was shipped to Philadelphia, Pa.; Wilmington, Del.; Bridgeport, Conn.; Front Royal, Va.; and numerous other points, in some instances without further milling and in other instances after milling to varying specifications.

(c) At all times hereinafter mentioned, S. W. Roberts, as president and agent of the Grater-Bodey Co., has been instrumental in effecting the purchase and sale of "millwork and lumber" by said Grater-Bodey Co., and in so doing caused the same to be shipped from points located in various States other than the State of Pennsylvania to Norristown, Pa., and subsequently from there to Philadelphia, Pa., other locations in Pennsylvania, and to points in other States.

(d) At all times hereinafter mentioned said Russell Keely and F. Oliver Keely, partner, trading as S. S. Keely & Sons, have been engaged at their said place of business in the purchase, milling, and sale of "millwork and lumber" and in so doing caused such "millwork and lumber" to be shipped from locations in States other than the State of Pennsylvania to themselves in Philadelphia, Pa., and, in turn, subsequently shipped from that point to other locations in Pennsylvania and other States.

(e) At all times hereinafter mentioned, A. Wilt & Sons Co., has been engaged in Philadelphia, Pa., in the purchase, milling, and sale of "millwork and lumber" and in so doing caused such "millwork and lumber" to be shipped from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and subsequently shipped to its customers located in Philadelphia, Pa., and at other locations in Pennsylvania and other States.

(f) At all times hereinafter mentioned, Frank R. Bowers, as president and agent of A. Wilt & Sons Co., has been instrumental in effecting the purchase, milling, and sale of "millwork and lumber" by A. Wilt & Sons Co. in Philadelphia, Pa., and causing the same to be shipped from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and subsequently to customers of A. Wilt & Sons Co. in Philadelphia, Pa., and to other locations in Pennsylvania and other States.

PAR. 3. Respondents, Grater-Bodey Co., S. S. Keely & Sons, A. Wilt & Sons Co., and others not named herein as respondents engaged in the purchase, milling, and sale of "millwork and lumber" in the States of Pennsylvania, Delaware, and New Jersey, have been, and are, in competition between and among themselves and with one or more other purchasers, millers, and sellers of "millwork and lumber" in making or seeking to make sales of "millwork and lumber" in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among various States of the United States, except insofar as said competition has been hindered, lessened, restricted, or forestalled by the cooperation, concert or common course of action, understanding, confederation, combination, agreement, or conspiracy, or the acts and things done and the practices, policies, and methods followed pursuant thereto or in furtherance thereof, as hereinafter set forth.

PAR. 4. The term "millwork and lumber" as used herein includes lumber in the unmilled state as well as lumber milled into various products, including but not limited to paneling, panels, trim, doors, sash, screens (door and window), cabinets, steps and stairs, including treads, risers, balusters, balustrades, and rails.

PAR. 5. During 1940, as a part of its work in the defense program of the United States of America, the Navy Department arranged with the Cramp Shipbuilding Co., whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels, and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities of said shipyards, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon, the said Cramp Shipbuilding Co., contracted with respondent, Charles F. Rohleder, for the latter to reconstruct certain office buildings and shipways on a cost-plus-a-fixed-fee basis, with the understanding that the said Rohleder, in securing materials or services, would obtain competitive offers from as many as practicable but not less than two (not less than three where specified) reputable firms in a position to provide the material, equipment, or services as required, at a reasonable cost, and to award a contract to that firm quoting the minimum price, and with the further understanding that the said offers, proposals, or bids were to be opened by or in the presence of the Supervisor of Shipbuilding, U. S. Navy, or his representative, and were to be subject to his approval before award of the subcontract for materials or services. In connection with his contract with the Cramp Shipbuilding Co., respondent, Charles F. Rohleder, negotiated with and made awards of contracts, directly and through agents, to respondent, Grater-Bodey Co. for the purchase of "millwork and lumber."

PAR. 6. Throughout a period of time beginning on or about the first day of October 1940 and continuing thereafter until subsequent to January 1, 1942, the respondents herein have, through understandings together and with each other, cooperated, confederated, combined, agreed, and conspired to frustrate, hinder, restrain, and suppress competition in the purchase and sale of "millwork and lumber" in commerce, as "commerce" is defined in the Federal Trade Commission Act, and have in fact, through such cooperation, confederation, combination, agreement, and conspiracy, frustrated, hindered, restrained, and suppressed competition in the purchase and sale of "millwork and lumber" in commerce. Pursuant to, in furtherance of, and as a part of the aforesaid understanding, cooperation, confederation, combination, agreement, and conspiracy, the aforesaid respondents have done, performed, and used, among other acts, things, practices, policies, and methods, the following:

(a) Promoted, established, carried out, and continued a practice of maintaining a false appearance of competition between and among respondents, Grater-Bodey Co., S. S. Keely & Sons, A. Wilt & Sons Co., and other sellers of "millwork and lumber" in their submission of price quotations and bids to buyers and prospective buyers;

(b) Conveyed to buyers and prospective buyers, including official awarding authorities of the United States Government, and others in-

volved in the purchase of "millwork and lumber," the representation that said respondents, Grater-Bodey Co., S. S. Keely & Sons, and A. Wilt & Sons Co., were rival bidders and competitors, when in reality they were acting collusively between and among themselves in preparing and submitting bids;

(c) Avoided and prevented competition in the sale and distribution of "millwork and lumber";

(d) Prevented the quotation of genuine competitive bids or price quotations on said commodities to purchasers thereof;

(e) On numerous occasions respondent, Charles F. Rohleder, acting directly or through his agents, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., cooperated with respondent, S. W. Roberts, in the preparation and submission to the said Charles F. Rohleder, his agents and employees, Allen McLaine Ward and J. R. Baldrige, Jr., of sham, false, fictitious, fraudulent, and non-competitive bids and price quotations for the furnishing of "millwork and lumber" for the said Rohleder's use in rehabilitating the facilities of the Cramp Shipbuilding Co.'s shipyards in Philadelphia; and, in turn, the said Rohleder, directly or through his agents, Ward and Baldrige, submitted such sham, false, fictitious, fraudulent, and non-competitive bids and price quotations to purchasing officials of the Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, United States Navy Department, for consideration and approval as genuine competitive bids and price quotations.

(f) On numerous occasions, S. W. Roberts, acting in his capacity as president and agent of Grater-Bodey Co., with the knowledge and cooperation of Charles F. Rohleder, his employees and agents, including Allen McLaine Ward and J. R. Baldrige, Jr., secured from the respective offices of S. S. Keely & Sons and A. Wilt & Sons Co. printed stationery bearing their respective letterheads, and used the same in the preparation of sham, false, fictitious, fraudulent, and non-competitive bids and price quotations over the names of S. S. Keely & Sons and A. Wilt & Sons Co. and over the purported but false signatures of officials of those firms, which he submitted to the said Charles F. Rohleder and his agents and employees in furtherance of the aforesaid deception. The prices specified in such bids and price quotations were different from, higher than, and non-competitive with, the bid and price quotation submitted in each comparable instance by the said S. W. Roberts as the bid or price quotation of the firm he was then known to be representing; namely, the Grater-Bodey Co. Thereupon, in each of the number of instances where said S. W. Roberts thus submitted to Charles F. Rohleder, his agents and employees, different bids on stationery bearing the letterheads of respondents, S. S. Keely & Sons and A. Wilt & Sons Co., such bids were in turn submitted, as and for genuine competitive bids, by Charles F. Rohleder, his agents and employees, to officials of the Cramp Shipbuilding Co. and to representatives of the Supervisor of Ships, United States Navy, who were, through the appearance of such bids, misled and deceived into considering and approving them as genuine and competitive.

(g) Respondents, Russell Keely and F. Oliver Keely, acting in their capacity as partners in the firm of S. S. Keely & Sons, and respondent, Frank R. Bowers, acting in his capacity as president of respondent, A. Wilt & Sons Co., knowingly cooperated with respondent, S. W. Roberts, in his

submission of sham, false, fictitious, fraudulent, and non-competitive bids, as aforesaid, by furnishing him with stationery bearing letterheads of their respective firms for his use in the preparation of said bids.

(h) Respondent, Grater-Bodey Co., as a result of the submission of the aforesaid sham, false, fictitious, fraudulent, and non-competitive bids by its president and agent, respondent, S. W. Roberts, as aforesaid, enjoyed awards of numerous contracts to it by said Charles F. Rohleder, his employees and agents, with the approval of officials of the Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, United States Navy, secured through deception as aforesaid.

PAR. 7. The aforesaid understandings, agreements, combination, and conspiracy, and the doing and performing of the acts and things and the use of the methods set forth in the preceding paragraphs hereof tend to have, and have had, the effect of depriving buyers and prospective buyers of "millwork and lumber," including contractors and subcontractors with the United States Government, and the public in general, of the benefit of competition in commerce between and among respondents, Grater-Bodey Co., S. S. Keely & Sons, A. Wilt & Sons Co., and others with whom they normally would be in competition in making bids and price quotations.

CONCLUSION

The acts, practices, methods, understandings, agreements, combination, and conspiracy of the respondents as hereinbefore found are all to the prejudice of the public; have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the purchase and sale of "millwork and lumber" in commerce within the intent and meaning of the Federal Trade Commission Act; and have the capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said products; have a dangerous tendency to create a monopoly in the purchase, sale, and distribution of such 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 certain of the respondents and the substitute answers of other respondents, in which answers and substitute answers the several respondents admit all of the material allegations set forth in said complaint and waive all intervening procedure and further hearings as to the facts, and the Commission having made its findings as to the facts and its conclusion that the said respondents have violated the provisions of Section 5 of the Federal Trade Commission Act.

It is ordered, That respondents, Grater-Bodey Co., a corporation; S. W. Roberts, individually, and as president of Grater-Bodey Co.; Russell

Keely and F. Oliver Keely, individually, and as partners, trading as S. S. Keely & Sons; A. Wilt & Sons Co., a corporation; Frank R. Bowers, individually, and as president of A. Wilt & Sons Co.; Charles F. Rohleder; Allen McLaine Ward; and J. R. Baldrige, Jr., their respective representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of "millwork and lumber" 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, understanding, agreement, combination, or conspiracy between and among any two or more of the said respondents or between any one or more of the said respondents and any other person, partnership, or corporation not a party hereto, to do or perform any of the following acts, things, or practices:

1. Conveying or assisting in conveying to buyers or prospective buyers, or to any official or awarding authority of any Federal agency, or to any one contracting with such agency, or to any one acting for or on behalf of such agency or for or on behalf of any contractor with such agency, any representation that any two or more apparent sellers are rival bidders or competitors, when in reality they are acting collusively in preparing and submitting bids.

2. Aiding, assisting, or cooperating in any manner in the submission of any sham, fictitious, fraudulent, or non-competitive bids or price quotations to any buyer or prospective buyer, or to any Federal agency or any one acting for or on its behalf, or for or on behalf of any party purchasing material or equipment in fulfillment of a contract with such agency.

3. Interfering with or assisting in interfering with the procurement or consideration of genuinely competitive bids or price quotations by any Federal agency or any official or awarding authority of such agency, or by any buyer or prospective buyer.

4. Promoting, establishing, carrying out, or continuing any act or practice for the purpose or with the effect of maintaining or presenting a false appearance of competition between or among any of the respondents or other sellers in the submission of price quotations or bids to buyers or prospective buyers.

5. Arranging or attempting to arrange for the filing of any bid in the name of one ostensibly competing bidder when the prices and terms are in fact determined by some other bidder, or when in fact the bid is not a bona fide bid.

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

Syllabus

IN THE MATTER OF
GLADYS GOLDBERG, TRADING AS WAKITA HERB
COMPANY

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

Docket 5091. Complaint, Dec. 1, 1943—Decision, Sept. 7, 1944

Where an individual engaged in interstate sale and distribution of her "Indian Herbal Roots" medicinal preparations; through advertisements in newspapers, circulars and other advertising media, directly and by implication—

(a) Represented that nervousness, poor appetite, insomnia, back pains, dizziness, headaches, and gassy, sick and burning stomach are usually caused by or are symptomatic of faulty elimination, and that her said preparation as a competent and effective treatment for such conditions; that it would restore pep, energy and vitality, would purge the body of accumulated poisons, and was not habit forming;

The facts being that, while poor appetite, back pains, headaches and a gassy stomach may accompany faulty elimination or constipation, in which event the therapeutic value of said preparation would be limited to such temporary relief as might be provided by an evacuation of the bowels, in those more frequent cases in which the symptoms referred to are brought about by other conditions, use of said preparation would be of no therapeutic value whatever; frequent or continued use of the preparation might result in dependence on laxatives; and the other claims made by her, as above set forth, were false and misleading;

(b) Falsely represented through the use of the trade name "Indian Herb Roots," together with the depiction of the head of an American Indian in her advertising, that her said product was composed entirely of roots and was used by the American Indians;

The facts being, it was not entirely thus composed and its several ingredients were not used by the American Indians; and

(c) Failed to reveal facts material in the light of her said representations or with respect to the consequences which might result from the use of said preparation under usual and prescribed conditions, in that it was an irritant laxative and potentially dangerous when taken by one suffering from abdominal pains, stomach ache, or other symptoms of appendicitis;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and that her said preparation might be taken under all conditions without harmful effects, and into the purchase of substantial quantities thereof:

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

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

Mr. William L. Taggart for the Commission.

Sobell & Landesman, of New York City, for respondent.

Complaint

39 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 Gladys Goldberg, an individual, trading as Wakita Herb Company, 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, Gladys Goldberg, is an individual, trading under the name Wakita Herb Co., with her place of business located at 110 West 42nd Street, New York, N. Y.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of a medicinal preparation advertised and sold as "Indian Herbal Roots." Respondent causes the said preparation, when sold, to be transported from her said 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 her aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation 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 the typical of the false and misleading 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 by circulars and other advertising media, are the following:

AID NATURE With INDIAN HERBAL ROOTS

Are you satisfied with your health? Do you lack Pep, Energy and Vitality? Do you suffer from nervousness, discomfort, poor appetite, insomnia, back pains, dizziness, headaches or gassy, sick, burning stomach due to faulty elimination? Try INDIAN HERBAL ROOTS, made of concentrated derivations of Indian Herbs used from olden times. Easy to take, follow simple directions on package. Not habit forming. Useful for men and women. You will be amazed at the wonderful, pleasant action. After taking Indian Herbal Roots you will perform your daily duties with a smile. * *

Money back guarantee * * *

Don't Delay! The sooner you begin taking *Indian Herbal Roots*, the sooner you will notice the difference. After purging your body of accumulated poisons, you should feel more energetic and less sluggish.

In connection with the advertising of her preparation, respondent makes use of the depiction of the head of an American Indian.

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, the respondent represents, directly and by implication, that nervousness, poor appetite, insomnia, back pains, dizziness, headaches, and gassy, sick and burning stomach are usually and ordinarily caused by or are symptomatic of faulty elimination and that her said preparation is a competent and effective treatment for such conditions; that her said preparation will restore pep, energy and vitality; that its use will rid or purge the body of accumulated poisons and is not habit forming. Respondent through the use of its trade name "Indian Herb Roots" together with the depiction of the head of an American Indian in her advertising, represents that her said product is composed entirely of roots and was used by the American Indians.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact nervousness, insomnia, dizziness, and a sick burning stomach are not symptoms or conditions indicating faulty elimination or constipation and the existence of one or more of such symptoms and conditions do not indicate that the individual is suffering from faulty elimination or constipation. Respondent's preparation will not constitute a competent and effective treatment for such symptoms or conditions. Certain, but not all discomforts, poor appetite, back pains, headaches and a gassy stomach may, and sometimes do, accompany faulty elimination or constipation. When these symptoms or conditions are caused by faulty elimination or constipation, then respondent's preparation will have no therapeutic value in the treatment thereof in excess of such temporary relief as may be provided by an evacuation of the bowels. Moreover, these symptoms or conditions which may be symptomatic or the result of faulty elimination or constipation are more frequently brought about by conditions other than faulty elimination or constipation, in which event the use of respondent's product would be of no therapeutic value whatsoever. Said preparation will not restore pep, energy or vitality. Its use will not rid or purge the body of accumulated poisons. Frequent or continued use of the preparation may result in dependence on laxatives. Said preparation is not composed entirely of roots and its several ingredients were not used by the American Indian.

PAR. 6. Respondent's advertisements disseminated as aforesaid, constitute false advertising 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 respondents 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.

PAR. 7. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and depictions has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said

statements and representations are true and that said preparation may be taken under all conditions without harmful effects and into the purchase of substantial quantities of respondent's preparation.

PAR. 8. The aforesaid acts and practices of the respondent, as hereinabove alleged, are all to the prejudice of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 1st day of December, 1943, issued and subsequently served its complaint in this proceeding upon respondent, Gladys Goldberg, an individual, trading as Wakita Herb Co., 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 the 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, Gladys Goldberg, is an individual, trading under the name Wakita Herb Co., with her place of business located at 110 West 42nd Street, New York, N. Y.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of a medicinal preparation advertised and sold as "Indian Herbal Roots." Respondent causes the said preparation, when sold, to be transported from her said 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 her aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and

is now causing the dissemination of, false advertisements concerning said preparation 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 and misleading 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 by circulars and other advertising media, are the following:

AID NATURE With INDIAN HERBAL ROOTS

Are you satisfied with your health? Do you lack Pep, Energy and Vitality? Do you suffer from nervousness, discomfort, poor appetite, insomnia, back pains, dizziness, headaches or gassy, sick, burning stomach due to faulty elimination? Try INDIAN HERBAL ROOTS, made of concentrated derivations of Indian Herbs used from olden times. Easy to take, follow simple directions on package. Not habit forming. Useful for men and women. You will be amazed at the wonderful, pleasant action. After taking Indian Herbal Roots you will perform your daily duties with a smile. * * * Money back guarantee * * *

Don't Delay! The sooner you begin taking *Indian Herbal Roots*, the sooner you will notice the difference. After purging your body of accumulated poisons, you should feel more energetic and less sluggish.

In connection with the advertising of her preparation respondent makes use of the depiction of the head of an American Indian.

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, the respondent represents, directly and by implication, that nervousness, poor appetite, insomnia, back pains, dizziness, headaches, and gassy, sick and burning stomach are usually and ordinarily caused by or are symptomatic of faulty elimination and that her said preparation is a competent and effective treatment for such conditions; that her said preparation will restore pep, energy and vitality; that its use will rid or purge the body of accumulated poisons and is not habit forming. Respondent through the use of the trade name "Indian Herb Roots," together with the depiction of the head of an American Indian in her advertising, represents that her said product is composed entirely of roots and was used by the American Indians.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, nervousness, insomnia, dizziness, and a sick, burning stomach are not symptoms or conditions indicating faulty elimination or constipation and the existence of one or more of such symptoms and conditions does not indicate that the individual is suffering from faulty elimination or constipation. Respondent's preparation will not constitute a competent and effective treatment for such symptoms or conditions. Poor appetite, back pains, headaches and a gassy stomach may, and sometimes do, accompany faulty elimination or constipation. When these symptoms or conditions are caused by faulty elimination or constipation, then respondent's preparation will have no therapeutic value in the treatment thereof in excess of such temporary relief as may be provided by an evacuation of the bowels. Moreover, these symptoms or conditions which may be symptomatic or the result of faulty elim-

ination or constipation are more frequently brought about by conditions other than faulty elimination or constipation, in which event the use of respondent's product would be of no therapeutic value whatsoever. Said preparation will not restore pep, energy or vitality. Its use will not rid or purge the body of accumulated poisons. Frequent or continued use of the preparation may result in dependence on laxatives. Said preparation is not composed entirely of roots and its several ingredients were not used by the American Indian.

PAR. 6. Respondent's advertisements disseminated as aforesaid, constitute false advertising 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 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.

PAR. 7. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and depictions has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and that said preparation may be taken under all conditions without harmful effects and into the purchase of substantial quantities of respondent's preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Gladys Goldberg, an individual, trading as Wakita Herb Co., or trading under any other name, and her representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of respondent's medicinal preparation now designated as Indian Herbal Roots, or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold

under the same name or any other name, do forthwith cease and desist from directly or indirectly:

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

(a) That said preparation is a competent and effective treatment for nervousness, insomnia, dizziness or a sick burning stomach;

(b) That said preparation has any therapeutic value in the treatment of poor appetite, back pains, headaches or a gassy stomach in excess of providing temporary relief therefor when such symptoms and conditions are due to constipation;

(c) That said preparation will restore pep, energy or vitality;

(d) That said preparation will rid or purge the body of accumulated poisons;

(e) That said preparation is not habit forming;

(f) That nervousness, insomnia, dizziness, a gassy, sick, burning stomach, poor appetite, back pains and headaches are usually and ordinarily caused by constipation;

or which advertisement

(g) Uses the word "Indian" or "Roots" as a part of the trade name of said preparation or otherwise represents that said preparation is compounded from roots or that the ingredients thereof were used by the American Indians.

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 said preparation should not be used in the presence 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.

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 of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph 1 hereof, or which fails to comply with the affirmative requirements set forth in paragraph 2 hereof.

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

IN THE MATTER OF
CARLTON ROUTZAHN DOING BUSINESS AS BLAND
PRODUCTS COMPANY

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

Docket 5141. Complaint, Mar. 25, 1944—Decision, Sept. 7, 1944

Where an individual engaged in interstate sale and distribution of his "Flo Triple XXX Compound" and "An-Tex Inserts"; through advertisements of said medicinal preparations in circulars and other advertising literature—

- (a) Represented falsely that the former constituted an effective treatment for delayed menstruation caused by colds, over-exposure and similar conditions and could be depended upon to terminate pregnancy;
- (b) Represented that his "An-Tex Inserts" preparation was antiseptic or germicidal, and effective in the prevention of infection and diseases resulting therefrom, and was a dependable means of preventing conception;

The facts being that while said preparation might possess some antiseptic or germicidal properties, it would not, in use, destroy sufficient numbers of micro-organisms so as to prevent infection or diseases resulting therefrom, and use thereof was ineffective in preventing conception; and

- (c) Failed to reveal facts material in the light of said representations with respect to consequences which might result from the use of said "Flo Triple XXX Compound" under the prescribed or usual conditions, in that it was an irritant laxative and potentially dangerous when taken by persons suffering from abdominal pains, nausea, vomiting or other symptoms of appendicitis;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said "Flo Triple XXX Compound" might be taken at all times without ill effects; and that the aforesaid representations were true, and thereby to induce it to purchase said products:

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

Mr. William L. Taggart for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Carlton Routzahn, an individual, doing business as Bland Products Co., herein 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. Carlton Routzahn, is an individual, doing business under the name of Bland Products Co., with his principal office and place of business at 3716 North Clark Street, Chicago, Ill.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of medicinal preparations designated as Flo Triple XXX Compound and An-Tex Inserts. Respondent causes said preparations, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparations in commerce between and among the various States of the United States and in the District of Columbia.

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

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

Representations with respect to Flo Triple XXX Compound:

FLO TRIPLE XXX
FOR PERIODIC FUNCTIONAL FAULTS

Read the letters of happy users in this folder.

Many women become quickly troubled with delayed menstruation due to a slight cold or unusual exposure and similar conditions.

These abnormal conditions, as a rule, are quickly given relief by our FLO Triple XXX compound. This statement is based largely on its formula and on the experience of many other ladies through their use of this friendly, potent compound help in functional normalcy.

A further assurance to you of the help you may expect from FLO Triple XXX and the confidence in it you can freely accept, is in the knowledge it is compounded by recognized chemists in a Standard Pharmaceutical Laboratory with U. S. Standard ingredients known to have definite value in such conditions as here described.

I am a married woman and have passed my period six weeks. I am sending you an order for 2 boxes of your Flo Periodic Compound, and please fill it and rush it right back to me. I have read many letters written by women, how happy they were after taking your Flo Compound.

Representations with respect to An-Tex Inserts:

Many women rely on the ever ready reliability of AN-TEX INSERTS.

AN-TEX INSERTS offers all the protection the modern women would want, which makes them a favorite with many women. They are easily and quickly inserted,

immediately dissolved in the vagina by bodily warmth, and thoroughly cleanse the passages. As preventives, they ward off disease dangers and give that feeling of cleanly safety that is so important to a woman's happiness. Always ready, easy to carry with one—always reliable! AN-TEX INSERTS offers all the protection the modern women would want * *

I am going to recommend them to all my married women companions. I can assure you they are the best I have ever found.

PAR. 4. Through the use of the aforesaid statements and representations, and others of similar import but not set out herein, respondent represents and has represented, that his Flo Triple XXX Compound preparation constitutes a competent and effective treatment for delayed menstruation caused by colds, over exposure and similar conditions and that the use of said preparation can be depended upon to terminate pregnancy. Likewise, that his preparation An-Tex Inserts is antiseptic or germicide and is effective in the prevention of infection and conditions or diseases resulting therefrom and is a dependable means of preventing conception.

PAR. 5. The foregoing statements are false, misleading and deceptive. In truth and in fact respondent's preparation Flo Triple XXX Compound is not a competent and effective treatment for delayed menstruation regardless of the cause thereof. The use of said preparation will terminate pregnancy only in extremely rare instances and cannot be depended upon to produce such results. While respondent's preparation An-Tex Inserts may possess some antiseptic or germicidal properties it will not, in use, destroy sufficient numbers of micro-organisms so as to prevent infection or the various conditions and diseases resulting therefrom. Its use is ineffective in preventing conception.

PAR. 6. With respect to the preparation Flo Triple XXX Compound, respondent's aforesaid advertisements constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements or under such conditions as are customary or usual. In truth and in fact this preparation is an irritant laxative and potentially dangerous when taken by persons suffering from abdominal pains, nausea, vomiting or other symptoms of appendicitis.

PAR. 7. The use by respondent of the aforesaid false, misleading and deceptive statements and representations with respect to his said preparations, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said preparation Flo Triple XXX Compound may be taken at all times without ill effects and that the aforesaid statements and representations are true and to induce a substantial portion of the purchasing public to purchase said products because of such erroneous belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 25, 1944, issued and on March 29, 1944 served its complaint in this proceeding upon respondent, Carlton Routzahn, doing business as Bland Products Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 30, 1944, the respondent filed his answer, in which answer he admitted that prior to January 29, 1942, he engaged in all the acts and practices 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. Carlton Routzahn, is an individual, doing business under the name of Bland Products Co., with his principal office and place of business at 3716 North Clark Street, Chicago, Ill.

PAR. 2. Respondent prior to January 29, 1942, engaged in the sale and distribution of medicinal preparations designated as Flo Triple XXX Compound and An-Tex Inserts. Respondent caused said preparations, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintained a course of trade in said preparations in commerce between and among the various States of the United States and in the District of Columbia.

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

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

Representations with respect to Flo Triple XXX Compound:

FLO TRIPLE XXX
FOR PERIODIC FUNCTIONAL FAULTS

Read the letters of happy users in this folder.

Many women become quickly troubled with delayed menstruations due to a slight cold or unusual exposure and similar conditions.

These abnormal conditions, as a rule, are quickly given relief by our FLO Triple XXX compound. This statement is based largely on its formula and on the experience of many other ladies through their use of this friendly, potent compound help in functional normalcy.

A further assurance to you of the help you may expect from FLO Triple XXX and the confidence in it you can freely accept, is in the knowledge it is compounded by recognized chemists in a Standard Pharmaceutical Laboratory with U. S. Standard Ingredients known to have definite value in such conditions as here described.

I am a married woman and have passed my period six weeks. I am sending you an order for 2 boxes of your Flo Periodic Compound, and please fill it and rush it right back to me. I have read many letters written by women, how happy they were after taking your Flo Compound.

Representations with respect to An-TEX Inserts:

Many women rely on the ever ready reliability of AN-TEX INSERTS.

AN-TEX INSERTS offers all the protection the modern women would want, which makes them a favorite with many women. They are easily and quickly inserted, immediately dissolved in the vagina by bodily warmth, and thoroughly cleanse the passages. As preventives, they ward off disease dangers and give that feeling of cleanly safety that is so important to a woman's happiness. Always ready, easy to carry with one—always reliable! AN-TEX INSERTS offers all the protection the modern women would want * * *

I am going to recommend them to all my married women companions. I can assure you they are the best I have ever found.

PAR. 4. Through the use of the aforesaid statements and representations, and others of similar import but not set out herein, respondent represented that his Flo Triple XXX Compound preparation constitutes a competent and effective treatment for delayed menstruation caused by colds, over exposure and similar conditions and that the use of said preparation can be depended upon to terminate pregnancy. Likewise, that his preparation An-TEX Inserts is antiseptic or germicidal and is effective in the prevention of infection and conditions or diseases resulting therefrom and is a dependable means of preventing conception.

PAR. 5. The foregoing statements are false, misleading and deceptive. In truth and in fact, respondent's preparation Flo Triple XXX Compound is not a competent and effective treatment for delayed menstruation regardless of the cause thereof. The use of said preparation will terminate pregnancy only in extremely rare instances and cannot be depended upon to produce such results. While respondent's preparation An-TEX Inserts, may possess some antiseptic or germicidal properties, it will not, in use, destroy sufficient numbers of micro-organisms so as to prevent infection or the various conditions and diseases resulting therefrom. Its use is ineffective in preventing conception.

PAR. 6. With respect to the preparation Flo Triple XXX Compound, respondent's aforesaid advertisements constitute false advertisements for the further reason that they fail to reveal facts material in the light of

such representations or material with respect to consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements or under such conditions as are customary or usual. In truth and in fact this preparation is an irritant laxative and potentially dangerous when taken by persons suffering from abdominal pains, nausea, vomiting or other symptoms of appendicitis.

PAR. 7. The use by respondent of the aforesaid false, misleading and deceptive statements and representations with respect to his said preparations, has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said preparation Flo Triple XXX Compound may be taken at all times without ill effects and that the aforesaid statements and representations are true and to induce a substantial portion of the purchasing public to purchase said products because of such erroneous belief.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal 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 that prior to January 29, 1944, he engaged in all the acts and practices 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, Carlton Routzahn, trading as Bland Products 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 his medicinal preparations designated as "Flo Triple XXX Compound" and "An-Tex Inserts," or any other preparations of substantially similar composition or possessing substantially similar properties, under whatever names sold, 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 respondent's preparation Flo Triple XXX Compound constitutes a competent or effective treatment for delayed menstruation, or that the use of said preparation can be depended upon to terminate pregnancy;

(b) That the preparation An-Tex Inserts is effective in the prevention of infection or conditions or diseases resulting therefrom, or that its use is an effective means of preventing conception.

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 said Triple XXX Compound preparation should not be used in the presence 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, 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 of said preparations in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph 1 hereof or which fails to comply with the affirmative requirements set forth in paragraph 2 hereof.

It is further ordered, That the respondent shall, within 60 days after service upon 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

ALFRED UNGAR, TRADING AS AMERICAN FOOD
SHIPPING COMPANY

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

Docket 5147. Complaint, Apr. 1, 1944—Decision, Sept. 7, 1944

Where an individual engaged in the interstate sale and distribution of combination packages of food, candy, cigarettes, razor blades, and other merchandise to members of the armed forces of the United States and foreign countries, on orders from relatives and friends; through statement in newspapers, periodicals, and circular letters—

Represented that for the price shown he supplied and mailed to members of such forces the articles included in the listed combination package, and was equipped to handle orders thus solicited, and had specialized in sending packages to soldiers;

The facts being he failed to supply all the articles listed, substituted items of lesser value, had neither experience nor facilities for handling such orders, which in many instances he referred to others for filling and mailing, in which event he had no knowledge as to the actual contents of the packages shipped, and maintained no stock of merchandise for supplying orders;

With effect of misleading and deceiving a substantial portion of the buying public, into the erroneous belief that the packages shipped by him consisted of the items described and were of the value represented in said lists, and thereby into purchasing aforesaid packages:

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.

COMPLAINT

Pursuant to the provisions of the Federal 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 Ungar, an individual, trading as American Food Shipping 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, Alfred Ungar, is an individual, trading and doing business under the trade name of American Food Shipping Co., with his office and principal place of business located at 55 West 87th Street, in the city of New York, N. Y.

PAR. 2. Respondent is now and for more than six months last past has been engaged in the business of selling combination packages of food, candy, cigarettes, razor blades, and other items of merchandise, and shipping them to members of the armed forces at their points of location in the

United States and in foreign countries. Respondent receives orders from relatives and friends of members of the armed forces and causes the said packages of food and other merchandise to be shipped from his said place of business in the city of New York, N. Y. to said members of the armed forces at their various points of location in the various States of the United States, at sea, and in foreign countries. Respondent maintains and at all times mentioned herein has maintained a course of trade in said packages of food and other merchandise in commerce between and among the various States of the United States, the territories of the United States, and foreign countries.

PAR. 3. In the course and conduct of his said business, respondent has caused to be published in newspapers and periodicals and has distributed by United States mails circular letters offering combination packages of food and other merchandise packed and mailed to members of the armed forces in the United States, at sea and abroad. Respondent has by means of the above said circulars solicited orders from the families of said members of the armed forces, offering several assortments of food and merchandise, said assortments being listed and priced in the said circulars.

One of said packages of food and merchandise listed by respondent in his advertising circular is as follows:

- Bottle of Pure Raspberry Syrup (a thirst-quenching fruit juice),
- Pound box of 60 Assorted Ice Box Cookies,
- Box of Cheese Tid-Bits,
- Box Hors d'Oeuvre Crackers,
- Jar of Anchovy Paste (a fancy Sandwich Spread),
- Jar of Orange Jelly,
- Jar of Papaya Jam,
- 2 Marchpane Candy Bars (choice Continental morsels),
- Bag of Toffees (old British recipe),
- Bag of Bridge Mixture (Chocolate Nuts, Raisins, etc.),
- Package of Cigarettes (Chesterfield, Camel, Old Gold, etc.),
- Package of Double-Edged Razor Blades,
- Large Tube of Triple-Action Dental Cream,
- Pocket Comb with Sheath.

The respondent thereby represents that for the price shown on the list he supplies and mails to members of the armed forces the articles included in such listed combination package.

In truth and in fact respondent has failed to supply all of the articles included on such list, and also substituted articles of lesser value than those listed.

PAR. 4. In the circular letters soliciting orders for packages of food from friends and relatives of the members of the armed forces, respondent has represented that he is equipped to handle these orders, and has represented that he has specialized in sending packages to soldiers.

In truth and in fact respondent has neither experience nor facilities for handling such orders, and said orders are in many instances by him referred to others for filling and mailing, and in such instances respondent has no knowledge as to the actual contents of the packages shipped. Respondent maintains no stock of merchandise for supplying orders received, and his experience in handling such orders is limited.

PAR. 5. The aforesaid acts and practices of respondent and the aforesaid false advertisement have had and have the tendency and capacity to and do mislead and deceive a substantial portion of purchasers and prospective purchasers, members of the buying public, into the false and erroneous belief that the packages of food and other merchandise shipped by respondent consist of the items above described and are of the value represented in said lists, and into the purchase of said packages of food and other merchandise because of such erroneous belief.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 1, 1944, issued and thereafter served its complaint in this proceeding upon respondent, Alfred Ungar, an individual, trading as American Food Shipping Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 29, 1944, 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, Alfred Ungar, is an individual, trading and doing business under the trade name of American Food Shipping Co., with his office and principal place of business located at 55 West 87th Street, in the city of New York, N. Y.

PAR. 2. Respondent is now and for more than six months last past has been engaged in the business of selling combination packages of food, candy, cigarettes, razor blades, and other items of merchandise, and shipping them to members of the armed forces at their points of location in the United States and in foreign countries. Respondent receives orders from relatives and friends of members of the armed forces and causes the said packages of food and other merchandise to be shipped from his said place of business in the city of New York, N. Y. to said members of the armed forces at their various points of location in the various States of the United States, at sea, and in foreign countries. Respondent maintains and at all times mentioned herein has maintained a course of trade in said packages of food and other merchandise in commerce between and among the various States of the United States, the territories of the United States, and foreign countries.

PAR. 3. In the course and conduct of his said business, respondent has caused to be published in newspapers and periodicals and has distributed by United States mails circular letters offering combination packages of food and other merchandise packed and mailed to members of the armed forces in the United States, at sea and abroad. Respondent has by means of the above said circulars solicited orders from the families of said members of the armed forces, offering several assortments of food and merchandise, said assortments being listed and priced in the said circulars.

One of said packages of food and merchandise listed by respondent in his advertising circular is as follows:

- Bottle of Pure Raspberry Syrup (a thirst-quenching fruit juice),
- Pound Box of 60 Assorted Ice Box Cookies,
- Box of Cheese Tid-Bits,
- Box Hors d'Oeuvre Crackers,
- Jar of Anchovy Paste (a fancy Sandwich Spread),
- Jar of Orange Jelly,
- Jar of Papaya Jam,
- 2 Marchpane Candy Bars (choice Continental morsels),
- Bag of Toffees (old British recipe),
- Bag of Bridge Mixture (Chocolate Nuts, Raisins, etc.),
- Package of Cigarettes (Chesterfield, Camel, Old Gold, etc.)
- Package of Double-Edged Razor Blades,
- Large Tube of Triple-Action Dental Cream,
- Pocket Comb with Sheath.

The respondent thereby represents that for the price shown on the list he supplies and mails to members of the armed forces the articles included in such listed combination package.

In truth and in fact respondent has failed to supply all the articles included on such list, and also substituted articles of lesser value than those listed.

PAR. 4. In the circular letters soliciting orders for packages of food from friends and relatives of the members of the armed forces, respondent has represented that he is equipped to handle these orders, and has represented that he has specialized in sending packages to soldiers.

In truth and in fact respondent has neither experience nor facilities for handling such orders, and said orders are in many instances by him referred to others for filling and mailing, and in such instances respondent has no knowledge as to the actual contents of the packages shipped. Respondent maintains no stock of merchandise for supplying orders received, and his experience in handling such orders is limited.

PAR. 5. The aforesaid acts and practices of respondent and the aforesaid false advertisement have had and have the tendency and capacity to and do mislead and deceive a substantial portion of purchasers and prospective purchasers, members of the buying public, into the false and erroneous belief that the packages of food and other merchandise shipped by respondent consist of the items above described and are of the value represented in said lists, and into the purchase of said packages of food and other merchandise because of such erroneous belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Alfred Ungar, an individual, trading as American Food Shipping 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 combination packages of food and other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the combination packages of food and merchandise supplied and shipped by him contain certain specified articles or articles of specified value unless such packages when shipped actually contain all of the articles listed and of the value specified.

2. Substituting in packages articles of lesser value than those represented as being placed in such packages.

3. Representing that he is experienced in, and equipped for, the handling of combination packages of food and other merchandise for shipment to soldiers and other members of the armed services.

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
EASTMAN KODAK COMPANY

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

Docket 4322. Complaint, Sept. 23, 1940—Decision, Sept. 9, 1944

Amateur photographic film for the taking of still and motion pictures in natural color, which was sold under the trade name of the manufacturer and seller, and was made and developed for prints under secret processes protected by patents, was not sold in free and open competition with commodities of the same general class produced or distributed by others, including black-and-white film, other natural color film, and color processed film, so as to bring the seller's resale price maintenance contract covering said film within the Miller-Tydings amendment to the Sherman Anti-trust Act, where it appeared, (1) that an English natural color motion picture film placed on the American market in 1935, was withdrawn in 1939 for recognized deficiencies, that importation of the English still films became impossible subsequent to 1940, following which the American distributor became bankrupt, and that such film was no longer available on the American market, except, possibly in small quantities remaining on dealers' shelves; (2) that the "Dupac" and "Tripac" photographic films on the market since 1937, were not natural color films but were for use in color processing, and were sold on the market entirely for professional use, and that sales of each during the three-and-a-half year period concerned, amounted to less than \$2,000 at wholesale price; (3) that certain German natural color film, both motion picture and still, which had appeared in the United States, had never been imported for resale and sold in competition with the American product, the amount having been limited to extremely small quantities brought in by purchasers thereof in Europe or in Mexico; (4) that the American product herein concerned was the only natural color film made and distributed in the United States for taking motion pictures, and, except for the English product above noted, for taking still pictures, and (5) that purchaser, therefore, wishing to take still or motion pictures in natural color was required to purchase film for such purpose solely from the seller herein concerned.

An amateur so-called "Magazine Film" for taking motion pictures sold under the seller's trade mark and name, and which (1) consisted of the enclosure of either the seller's black-and-white film, or natural color Kodachrome motion picture film, in a special magazine or container designed to fit seller's "Magazine Cine-Kodak Camera," covered by seller's patents—which also covered said magazine, enclosure of aforesaid film therein, and some of the combination features involved in the use of said magazine with said camera; (2) was designed to facilitate loading and unloading of the camera and permitted the removal of one magazine before it was entirely exposed and replacement with another, thus permitting the operator to change at will to either black-and-white or Kodachrome; and (3) by reason of the patents concerned could alone be used in seller's magazine camera or in the motion picture magazine cameras of two other concerns; was not in the same general class with and sold in free and open competition with amateur motion picture roll film produced or distributed by others and that contained in magazines produced and distributed by others, or in free and open competition with commodities of the same general class produced or distributed by others;

so as to bring seller's resale price maintenance contracts in states in which said contracts were lawful, within the Miller-Tydings amendment to the Sherman Antitrust Act, since, while the film contained in the magazine in question was of the same kind and quality as other film sold by the seller, it alone could be used in the seller's and the other cameras above set forth, and there was no other film on the market which could be used therein.

Where a corporation engaged in the manufacture and interstate sale and distribution of photographic material, apparatus, and equipment, including (1) its patented natural color "Kodachrome" amateur photographic film for the taking of still and motion pictures in natural color, extensively used by amateur photographers, in medicine and agriculture, and also in museums of natural history and art, and the only natural color film made and distributed in the United States for use in taking motion pictures, or, with negligible exceptions, for taking still pictures; and (2) its patented "Magazine Film" for taking motion pictures, which consisted of the enclosure of either black-and-white or the Kodachrome motion-picture film in a patented special magazine or container designed to fit its Magazine Cine-Kodak Cameras, and which also alone fitted magazine motion picture cameras of two other concerns and, by reason of the patents involved, could alone be used in said cameras;

In pursuance of a resale price maintenance policy and system made use of by it since 1938 for the purpose of fixing and controlling the prices at which retailers resold its said Kodachrome and Magazine Film to the public, and making them uniform, and preventing the retail sale of said products at lower prices—

Entered into agreements with retail dealer customers in some 44 states with fair trade acts, under the terms of which said retailers agreed to maintain uniform minimum resale prices for its said Kodachrome and magazine film, and made known to the trade generally, by trade notices, salesmen and letters, that it had established such minimum resale prices, and expected and required its dealers to maintain and adhere thereto;

Notwithstanding its said Kodachrome and Magazine Film were, respectively, neither (1) in the same general class with or sold in free and open competition with black-and-white film, other natural color film and color-processing film, nor (2) sold in free and open competition with amateur motion picture roll film produced and distributed by others and with such film contained in magazines so produced and distributed; or in free and open competition with commodities of the same general class produced or distributed by others, so as to bring such contracts within the Miller-Tydings amendment to the Sherman Antitrust Act, approved August 17, 1937;

With direct effect of suppressing competition in the distribution and sale of its Kodachrome and Magazine Film; constraining dealers to sell said products at the prices fixed by it and preventing them from selling same at such lower prices as they might desire; and depriving ultimate purchasers thereof of such advantages in price as they would otherwise obtain from a natural and unobstructed flow of commerce in said products under conditions of free and open competition:

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

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

Mr. Daniel J. Murphy for the Commission.

Goodwin, Nixon, Hargrave, Middleton & Devans and *Mr. William F. Shepard*, of Rochester, N. Y., and *White & Case*, of New York City, for respondent.

Complaint

39 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 the Eastman Kodak Company, a corporation, hereinafter called the respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Eastman Kodak Co., is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 343 State Street, Rochester, N. Y. Said respondent is now, and for more than three years past has been, engaged in the manufacture, distribution and sale of photographic materials, apparatus and equipment including amateur photographic film.

PAR. 2. In the course and conduct of its business the said respondent transports said products, or causes the same to be transported, for distribution and sale, from the places where such products are manufactured or stored, into and through the various States of the United States to its wholesale and retail customers and purchasers thereof located in other States of the United States and in the District of Columbia; and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in said products manufactured, distributed and sold by respondent between the states wherein respondent's factories and warehouses are located and various other states of the United States. Respondent's said products are sold by it for use, consumption or resale within the United States and the District of Columbia.

PAR. 3. The respondent is the largest manufacturer and distributor of photographic materials, apparatus and equipment in the United States, doing a net annual business in excess of \$100,000,000. One of its principal products is amateur photographic film for the taking of colored still and motion pictures sold under the trade name "Kodachrome." Another amateur photographic film manufactured, distributed and sold by the respondent, in substantial quantities, is the Magazine Cine-Kodak Film, or so-called "Magazine" film, both black and white and Kodachrome; said "Magazine" film is sold in a magazine manufactured by the respondent under patent protection and made to fit exclusively respondent's patent protected Cine-Kodak Magazine Loading Camera, and the Bell & Howell Magazine Loading Camera manufactured and sold by a licensee of respondent.

PAR. 4. The respondent's said film for the taking of colored still and motion pictures (Kodachrome) and its said "Magazine" film are not sold in free and open competition with commodities of the same general class produced or distributed by others. The respondent is the only manufacturer and distributor in the United States of film for the taking of colored motion pictures. There is in the United States a single competing distributor of film, manufactured by a foreign corporation, for the taking of colored still pictures, the sales of which are negligible with reference to the sales of respondent's film for the taking of colored still pictures.

PAR. 5. The respondent's products, including its amateur photographic film for the taking of colored still and motion pictures (Kodachrome) and its "Magazine" film, are sold and distributed by the respondent directly to about 16,000 retail dealers, and to a large number of wholesale dealers who, in turn, resell to about 50,000 additional retail outlets, located throughout the United States.

PAR. 6. Since February, 1938, in connection with its sale of Kodachrome and "Magazine" Film, in interstate commerce, as aforesaid, and directly affecting said commerce, respondent has used and is now using a resale price maintenance policy and system for the purpose of fixing and controlling the prices at which retail dealers resold and resell Kodachrome and "Magazine" Film to the public, and of causing such products to sell at prices uniform among said dealers. In order to carry out said resale price maintenance policy and system, respondent has employed and still employs, among others, the following means whereby it and those cooperating with it undertake to prevent and do prevent retail dealers from selling its Kodachrome and "Magazine" Film to the public at prices less than the aforesaid retail prices established by respondent:

(a) Respondent enters into agreements and understandings with its dealer customers in all states wherein Fair Trade Acts have been adopted (some forty-four in number) that they will sell Kodachrome and "Magazine" Film to the public at prices fixed by said agreements and understandings and as fixed from time to time by respondent. The prices so fixed are to be, and are, uniform as among respondent's dealer customers;

(b) Respondent makes it generally known to the trade by its salesmen, general trade notices, letters and other means, that it expects and requires dealers handling its said Kodachrome and said "Magazine" Film to maintain and enforce its said resale prices, and that it will refuse to further sell and supply said products to dealers failing to maintain and enforce said prices;

(c) Respondent seeks and receives from dealers handling its said products reports of the failure of other dealers handling said products to observe and maintain its resale prices.

PAR. 7. The direct effect and result of the system, methods and practices hereinabove set forth have been and now are to suppress competition in the distribution and sale of respondent's Kodachrome and "Magazine" Film; to constrain dealers to sell said products at the prices fixed by respondent and to prevent them from selling said products at such less prices as they may desire, and to deprive the ultimate purchaser of said products of such advantages in price which otherwise they would obtain from the natural and unobstructed flow of commerce in said products under conditions of free and untrammelled competition.

PAR. 8. The aforesaid acts and practices of the respondent, and each of them, are to the prejudice of the public, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 23, 1940, issued and subse-

quently served its complaint in this proceeding on the respondent, Eastman Kodak 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 the answer of the respondent thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of and in opposition to the complaint, 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, Eastman Kodak Co., is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 343 State Street, Rochester, N. Y. Said respondent is now, and for a number of years last past has been, engaged in the manufacture, sale, and distribution of photographic materials, apparatus, and equipment, including amateur photographic film of various types, both black-and-white and Kodachrome, for taking both still and motion pictures.

PAR. 2. In the course and conduct of its business, the said respondent causes its products, when sold, to be transported from its various manufacturing plants and storage warehouses to the purchasers thereof located in States other than the State in which such shipments originate. 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. Respondent's said products are sold by it for use, consumption, or resale within the United States and the District of Columbia. The respondent is the largest manufacturer and distributor of photographic material, apparatus, and equipment in the United States, doing a net annual business in excess of \$100,000,000.

PAR. 3. One of the principal products of the respondent is amateur photographic film for the taking of still and motion pictures in color, which is sold under the trade name "Kodachrome." This film is protected by several patents issued by the United States Patent Office, covering both the method of manufacture and the method of processing such film.

Another amateur photographic film manufactured, distributed, and sold by the respondent in substantial quantities is the Magazine Cine-Kodak Film, or so-called "Magazine Film," for taking motion pictures. This Magazine Film consists of the enclosure of either black-and-white or Kodachrome motion-picture film in a special magazine or container designed to fit a Magazine Cine-Kodak Camera. The magazine and the en-

closure of such film in such magazine are covered by patents issued to the respondent. Respondent also holds patents upon its Magazine Cine-Kodak Camera, in which this Magazine Film, both black-and-white and Kodachrome, is used; and respondent also has patents on some of the combination features involved in the use of this magazine with the Magazine Cine-Kodak Camera. Bell & Howell of Chicago, Illinois, is licensed by the respondent to manufacture and sell an amateur motion-picture camera which will take respondent's Magazine Film. There is another camera, known as the "Perfex," which uses respondent's Magazine Film.

Respondent's Magazine Film is designed to facilitate loading and unloading of the camera and permits the removal of one Magazine Film before it is entirely exposed and replacement with another. This permits the operator of respondent's Magazine Camera to change at will to either black-and-white or Kodachrome because of the nature of the subject being photographed or lighting involved or to obtain continuity of pictures on a particular film.

By reason of the patents held by the respondent on its Magazine Film, purchasers and owners of respondent's Magazine Cine-Kodak Cameras, Bell & Howell Magazine Cameras, and Perfex Magazine Cameras are limited to the exclusive use of respondent's Magazine Film in operating such cameras, as no other film will fit in such cameras.

PAR. 4. The respondent's products, including its amateur photographic film for the taking of color, still, and motion pictures, known as Kodachrome, and its Magazine Film, are sold and distributed by the respondent directly to about 16,000 retail dealers and to a large number of wholesale dealers who in turn resell to about 50,000 retail outlets located throughout the United States.

PAR. 5. Since February 1938, in connection with its sale of Kodachrome and Magazine Film in commerce among and between the various States of the United States, the respondent has used a resale-price-maintenance policy and system for the purpose of fixing and controlling the prices at which retail dealers resell Kodachrome and Magazine Film to the public and of causing such products to sell at prices uniform among said dealers. In order to carry out said resale-price-maintenance policy and system and to prevent retail dealers from selling its Kodachrome and Magazine Film to the public at prices less than the retail prices established by respondent, said respondent has entered into agreements with retail dealer-customers in those States where fair-trade acts have been enacted (in some 44 States) and are valid and existing laws, under the terms of which agreements the said retail dealer-customers agreed to maintain uniform minimum retail resale prices for respondent's Kodachrome and Magazine Film. The respondent has made known to the trade the fact that it has established such minimum retail resale prices and that it expects and requires dealers in said States handling said products not to sell said products at retail below such established minimum prices. The respondent makes known to the trade generally, by trade notices, salesmen, and letters, that it expects and requires its dealers to maintain and adhere to its said minimum resale prices.

PAR. 6. Since respondent's Kodachrome and Magazine Film and the containers in which they are sold contain the trade-mark and name of the respondent and since its resale-price-maintenance contracts covering said products are used only in those States where such contracts are lawful un-

der the laws of said States, the only issue raised in the pleadings and trial of this case is whether respondent's Kodachrome and Magazine Film are in free and open competition with commodities of the same general class produced or distributed by others so as to bring said contracts within the Miller-Tydings amendment to the Sherman Antitrust Act, approved August 17, 1937. It is the respondent's contention that its Kodachrome Film is in the same general class with, and is sold in free and open competition with, black-and-white film, other natural-color film, and film processed to produce color prints which are produced or distributed by others and that its Magazine Film, both Kodachrome and black-and-white, is in the same general class with, and is sold in free and open competition with, amateur motion-picture roll film produced or distributed by others and with amateur motion-picture film contained in magazines produced and distributed by others.

PAR. 7. Photographic film consists of a transparent base, usually cellulose acetate or cellulose nitrate, upon which have been superimposed one or more coatings of an emulsion sensitive to light. Photographic film falls within two distinct groups—black-and-white and color. Black-and-white film has one or two coatings of an emulsion sensitive to light superimposed upon the cellulose base. When two coatings of emulsion are used the sensitivity range of the two emulsions is the same. Black-and-white film, when exposed and developed, produces a negative in black and white, from which in turn can be produced a print in black and white. The development process of black-and-white film is simple and comparatively inexpensive.

Respondent's Kodachrome Film is composed of a cellulose base upon which have been superimposed three emulsion layers which have been sensitized to color by the addition of an optic sensitizer. The first of these layers of emulsion is sensitive to blue; the second, to green; and the third, to red, with filter layers of gelatin in between to keep the primary colors from mixing and also for the purpose of directing certain light rays of different color to the particular emulsion layer made sensitive to that color. The top layer, being sensitive only to blue, does not record the green and red rays falling upon it. The green- and red-sensitive layers are also sensitive to blue light and therefore are protected against the action of blue light by the interposition of a yellow interlayer between the blue- and green-sensitive layers.

The process by which respondent's Kodachrome Film is sensitized to color and the process by which such film is developed and by which prints are made, are secret processes of the respondent protected by patents, and the films, after exposure, must be sent to the respondent for processing. The prices charged by the respondent for its Kodachrome Film are substantially higher than the prices charged by respondent and other manufacturers for black-and-white film.

The Kodachrome process is a process whereby the exposed film, when developed, becomes a positive transparency in natural color, as distinguished from negative process as in the development of an exposed black-and-white film. Respondent's Kodachrome film is a natural-color film, which is capable of reproducing by itself the natural colors of the subject photographed. Respondent's Kodachrome film, by reason of its ability to reproduce photographic images in natural color, has a very great appeal to

the consuming public and is extensively used by the amateur photographer. In addition, Kodachrome film is extensively used in medicine to disclose pathological conditions and in the presentation of surgical conditions and in agriculture for the purpose of showing actual growing conditions and the nature and character of plant diseases, their causes and corrections, particularly in soil deficiency. These conditions would not show in a black-and-white photograph. It has also been used in museums of natural history and in art museums in making pictures in color of objects in which color is indicated as an art feature.

The principal manufacturers of black-and-white film, both motion picture and still, are Eastman Kodak Co., respondent herein; Agfa Anseo Corporation of Binghamton, New York; the Du Pont Film Manufacturing Corporation; and The Gevaert Company of America, Inc. Respondent is the only manufacturer and distributor in the United States of natural-color film for use in the taking of motion pictures. Except for the sale of small quantities of Dufaycolor Film, hereinafter described, respondent is the only manufacturer and distributor in the United States of natural-color film for use in taking still pictures.

PAR. 8. In 1935 Dufay Chromex, Ltd., of England placed on the American market, through its American distributor, Dufaycolor Co., Inc., of New York, a movie and still film in natural color known as Dufaycolor Film. This film had a cellulose acetate or cellulose nitrate base on which was placed a screen of primary colors—red, green, and blue—superimposed by a photographic emulsion. Due to the manner in which the color screen was placed upon the film it did not readily lend itself to enlargement or screening, as the color screen on the film had a tendency to show through. Consequently, in 1939 this company removed its motion-picture film from the American market, and from that time on was engaged only in the sale of Dufaycolor still film, for both amateur and professional use. Due to war conditions it became almost impossible to import this film from England subsequent to 1940, and thereafter the American distributor Dufaycolor Company, Inc., was adjudged bankrupt and its assets sold on February 24, 1942. Based upon the testimony of dealers in photographic supplies and film the sales of Dufaycolor Film for amateur use were negligible as compared with the sales of Kodachrome film.

PAR. 9. Since 1937 there have been on the market certain photographic films known as "Dupac" and "Tripac," distributed solely by the Defender Photo Supply Company, Inc. These were black-and-white films designed for use in making separation negatives which might be processed to obtain prints in color. These films were sold on the market entirely for professional use. Furthermore, during the period from 1937 to 1940 and through the first five months of 1941, only 3,026 square feet of Dupac were sold, at wholesale list price of \$1800, and during the same period only 14,097 square feet of Tripac, at the wholesale price of \$1400. These films are not natural-color films and are not capable of reproducing by themselves the natural colors of the subject photographed but are in fact film for use in color processing.

PAR. 10. The Commission finds that respondent's Kodachrome Film is not in the same general class as black-and-white film and that a purchaser wishing to take photographs or moving pictures in natural color is required to purchase film for this purpose solely from the respondent. The Dufay-

color Film hereinbefore described was not sold in sufficient quantities to cause this film to be in free and open competition with respondent's Kodachrome Film, and this film is not now available on the American market except possibly in small quantities still remaining on the dealers' shelves. While it is recognized that war conditions have had some effect on the sale of Dufaycolor Film within the United States, due to the recognized deficiencies in this film there is no evidence in the record from which it might be reasonably concluded that this film will be sold on the American market after the war in any substantial quantities and in amounts sufficient to constitute free and open competition with respondent's Kodachrome Film. The film sold for use in color processing, such as Dupac and Tripac, are principally professional film and are color-processing film only and, as such, are not in the same general class as respondent's Kodachrome Film. Furthermore, this film does not sell in free and open competition with respondent's Kodachrome film for amateur use. There is some evidence in the record that certain natural-color film, both motion-picture and still, produced by the Agfa Company of Germany has appeared in the United States in extremely small quantities. This film, however, has never been imported into this country for resale and has never been sold in competition with respondent's Kodachrome, as the amount coming into this country has been limited to that brought in by persons who have purchased this film in Europe or in Mexico.

The Commission further finds that respondent's Kodachrome Film is not in free and open competition with commodities of the same general class produced or distributed by others so as to bring its resale-price-maintenance contracts covering its Kodachrome Film within the Miller-Tydings amendment to the Sherman Antitrust Act, approved August 17, 1937.

PAR. 11. The Commission further finds that respondent's Magazine Cine-Kodak Film, both black-and-white and Kodachrome, is not sold in free and open competition with commodities of the same general class. While the film contained in the magazine is of the same kind and quality as other film sold by the respondent, when such film is packed within such magazine it can then only be used in a camera equipped and fitted for using such magazine. Respondent's Magazine Cine-Kodak Cameras and also the Bell & Howell Magazine Cameras and the Perfex Magazine Cameras can be loaded only with respondent's Magazine Film, and there is no other film on the market which can be used in said cameras other than the Magazine Film manufactured and sold by the respondent. Consequently, owners and purchasers of respondent's Magazine Cine-Kodak Cameras, Bell & Howell Magazine Cameras, and Perfex Magazine Cameras can use in such cameras only Magazine Film purchased solely from the respondent.

PAR. 12. The direct effect and result of respondent's resale-price-maintenance policy and system and the methods and practices hereinbefore described have been, and now are, to suppress competition in the distribution and sale of respondent's Kodachrome and Magazine Film; to constrain dealers to sell said products at the prices fixed by respondent and to prevent them from selling said products at such less prices as they may desire; and to deprive the ultimate purchasers of said products of such advantages in price as they would otherwise obtain from a natural and unobstructed flow of commerce in said products under conditions of free and open competition.

Order

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on 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, 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 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, Eastman Kodak 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 its Kodachrome and Magazine Film in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from—

1. Entering into, either directly or indirectly, any contract, agreement, or understanding with its dealer-customers which provides that respondent's Kodachrome Film or Magazine Film is not to be advertised, offered for sale, or sold by such dealer-customers at prices less than those specified or fixed by the respondent.

2. Enforcing or continuing in operation any contract, agreement, or understanding with its dealer-customers to fix or maintain minimum resale prices at which respondent's Kodachrome Film or Magazine Film is to be offered for sale or sold.

Provided, however, that if conditions later change so that there are other commodities of the same general class produced or distributed by others which are sold in free and open competition with respondent's Kodachrome or Magazine Film, then, and in that event, the Commission will, upon proper showing by the respondent, reconsider the terms of this order in the light of such new conditions.

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

IN THE MATTER OF
BRADLEY BOSTON, INC. ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 3461. Order, September 12, 1944

Modified order, in proceeding in question, in which original order issued on December 22, 1936, 27 F.T.C. 1437, requiring respondents, and their officers, etc., in connection with the offer, etc., in commerce, of watches, rings, and other jewelry, to cease and desist from misrepresenting as "railroad" or "engineer," watches not properly equipped for such use as in said order specified, and from falsely representing, designating or describing watches and other articles as "free" "included free," etc., and from using the term "free," etc. as in the order specified.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission and a stipulation as to the facts entered into between the respondents herein and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that 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 duly made and issued its findings as to the facts, conclusion and order to cease and desist dated December 22, 1938, and the Commission having further considered said order to cease and desist heretofore issued, and being of the opinion that the public interest requires that a modified order to cease and desist should be issued in said cause; and the Commission having given due notice to the respondents to show cause on July 24, 1944, why this case should not be reopened for the purpose of modifying said order to cease and desist; and the Commission having considered the matter and the record herein, and having issued its order modifying said order in certain respects, issues this its modified order to cease and desist.

It is ordered, That the respondents, Bradley Boston, Inc., a corporation, also trading as Gold Standard Watch Co., and National Watch Co., a corporation, also trading as Gold Standard Watch Co., their officers, agents, representatives and employees, and Peter Turchon, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of watches, rings and other jewelry in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, designating or describing watches which are not "lever set," equipped with "micrometers," and do not contain 19 or more jewels properly placed so as to insure accuracy and to eliminate friction, as "railroad" or "engineer" watches.

2. Representing, designating or describing watches and other articles regularly included in a combination offer with a ring or other article as "free," "included free," or "included free of extra charge."

3. Representing, designating or describing watches or other articles delivered only upon the condition that some other articles be purchased and paid for as "free," "included free" or "included free of extra charge" or in any other manner indicating that the watch or other article is a gift or gratuity.

4. Using the term "free" or any other term of similar import and meaning to describe, designate or refer to any merchandise which is not a gift or gratuity and delivered to the recipient thereof without cost and unconditionally.

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

39 F. T. C.

IN THE MATTER OF
SOUTHGATE BROKERAGE COMPANY, INC.

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

Docket 4321. Complaint, Aug. 25, 1942—Decision, Sept. 12, 1944

Where a corporation, with offices and warehouses in four other cities, engaged principally in the interstate purchase for resale in its own name and for its own account, of food products and other merchandise, which became its own property, and was stored in its warehouses and dealt with as such under its absolute title; and engaged also as a broker, soliciting and obtaining orders in behalf of various sellers and receiving as compensation for such service, brokerage paid by its seller principals;

In connection with the purchase in commerce of said food products and other merchandise in its own behalf and for its own account—

Received and accepted, in many instances and for a number of years, brokerage or allowances and discounts in lieu thereof, from sellers of such merchandise, in some cases, through remittance by check, and in others through deducting the brokerage, or discount or allowance in lieu thereof, from the seller's invoice in remitting:

Held, That such receipt and acceptance by it of brokerage or allowance and discounts in lieu thereof, as above set forth, constituted a violation of subsec. (c) of sec. 2 of the Clayton Act, as amended.

Before *Mr. John L. Hornor*, trial examiner.

Mr. Edward S. Ragsdale for the Commission.

Mr. William P. Smith, of Washington, D. C., and *Mr. Charles L. Kaufman*, of Norfolk, Va., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (c) of Section 2 of the Clayton Act (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, Southgate Brokerage Co., Inc., is a corporation, organized and existing under the laws of the State of Virginia with its principal office and place of business located at 249 West Tazewell Street, Norfolk, Va. The respondent also operates four branch offices and warehouses located at Winston-Salem, Charlotte, Wilmington, and Greensboro, N. C. The respondent is engaged in the purchase, sale, and distribution of food products, canned goods, and miscellaneous merchandise.

PAR. 2. Respondent is now, and for many years last past, has been engaged in business, principally, as a jobber, buying in its own name for resale various food products, canned goods and miscellaneous merchandise

and reselling such products. To a minor extent, respondent acts as a broker of food products, canned goods and miscellaneous merchandise.

PAR. 3. Respondent, in the course and conduct of its said business as a jobber, purchases a substantial portion of its requirements of food products, canned goods, and miscellaneous merchandise from sellers located in States other than the States in which the respondent is located. Pursuant to said purchases and instructions such commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent or to respondent's customers.

PAR. 4. Respondent, since June 19, 1936, in connection with the purchase of its requirements of food products, canned goods, and miscellaneous merchandise, in interstate commerce, in its own behalf and for its own account, for resale, from numerous sellers located in States other than the States where the respondent is located, has been and is now receiving and accepting from numerous sellers of said food products, canned goods, and miscellaneous merchandise, brokerage fees or allowances and discounts in lieu of brokerage in substantial amounts.

The respondent receives such brokerage fees, discounts and allowances in lieu thereof in many ways, including the following four ways:

1. By purchasing food products, canned goods and miscellaneous merchandise from sellers at prices lower than the same sellers sell such commodities and commodities of like grade and quality to other purchasers.

2. By obtaining such commodities at prices that are lower than the prices at which such commodities and commodities of like grade and quality are sold by such sellers to other purchasers and which correspond to an amount which reflects all or a part of the brokerage fees currently being paid by such sellers to brokers for selling in behalf of such sellers of such commodities.

3. By making deductions in lieu of brokerage from the invoices of certain sellers when paying such invoices.

4. By receiving from certain sellers monthly rebate checks representing the customary brokerage fees of such sellers.

PAR. 5. A representative but by no means a complete list of sellers who since June 19, 1936 have sold and delivered food products, canned goods, and miscellaneous merchandise to respondent for its own account, and who have allowed, granted, and paid, directly or indirectly, as hereinabove set out, or otherwise, brokerage fees or allowances or discounts in lieu thereof on respondent's purchases for its own account from said sellers is as follows:

C. H. Musselman & Co., Bigler-
ville, Pa.

Connell Brothers Co. Ltd.,
Monterey, Calif.

Eastern Shore Canning Co., Inc.,
Machipongo, Va.

E. H. Hamlin Co., Seattle,
Wash.

Fruitvale Canning Co., Inc.,
Oakland, Calif.

The Larsen Co., Green Bay,
Wis.

Morgan Packing Co., Austin;
Ind.

Pomona Products Co., Griffin,
Ga.

Rosenberg Brothers & Co., San
Francisco, Calif.

Whitney & Co., Seattle,
Wash.

Windsor Products Co., Bridgeton, N. J.

PAR. 6. The receipt and acceptance by the respondent of brokerage fee or allowances and discounts in lieu of brokerage by respondent as set forth above is in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act) as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., Sec. 13), the Federal Trade Commission on August 25, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Southgate Brokerage Co., Inc., a corporation, charging it with the violation of subsection (c) of Section 2 of said Clayton Act, as amended. After the filing by respondent of its answer to the complaint, 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 upon the complaint, answer, 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, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Southgate Brokerage Co., Inc., is a corporation, organized and existing under the laws of the State of Virginia, with its principal office and place of business located at 249 West Tazewell Street, Norfolk, Va. Respondent also operates four branch offices and warehouses located at Winston-Salem, Charlotte, Wilmington, and Greensboro, all in N. C. Respondent is engaged principally in the purchase, in its own name and behalf and for its own account, of food products and other merchandise, and in the resale and distribution of such merchandise. The trade area in which respondent sells its merchandise comprises all of North Carolina, the eastern portion of Virginia, and that portion of South Carolina which borders on North Carolina.

PAR. 2. In the course and conduct of its business, respondent purchases a substantial portion of its merchandise from sellers located in various States of the United States other than the States in which respondent maintains places of business. Such merchandise is caused by respondent to be shipped and transported by the respective sellers thereof across State lines to respondent or to respondent's customers. In the purchase of its merchandise, respondent maintains and at all times mentioned herein has maintained a course of trade in such merchandise in commerce among and between various States of the United States.

PAR. 3. In addition to the purchase of food products and other merchandise in its own name and behalf and for its own account, and the resale of such merchandise, respondent also acts as a broker or sales agent, representing various sellers of merchandise and soliciting and obtaining orders on behalf of such seller principals from purchasers located in respondent's trade area. As compensation for its services in negotiating such sales, respondent is paid brokerage by its seller principals. This phase of respondent's business operations is not involved in the present proceeding.

PAR. 4. The purchases made by respondent in its own name and behalf and for its own account constitute approximately sixty percent of its total volume of business. The merchandise so purchased is stored by respondent in its own warehouses, and is in all respects its own property to deal with as it sees fit. Respondent insures the merchandise in its own name and at its own expense, pays such taxes as may be levied on the merchandise, and resells it to such purchasers and at such prices and upon such terms as its judgment may dictate, reaping a profit or sustaining a loss thereon, as the case may be. If the merchandise is lost or damaged while in transit from the seller to respondent, respondent files claims against the carrier for such loss or damage in its own name and for its own benefit. In short, respondent's title to the merchandise is absolute. Respondent frequently enters into contracts of purchase with packers and canners of food products calling for the future delivery of large quantities of goods to respondent at fixed prices. In such cases, respondent's profit or loss on the transaction usually depends, of course, upon whether the market advances or declines after the contract is executed. Some of the canned food products purchased and resold by respondent bear respondent's own private trade-marks or brands, which are registered in the United States Patent Office. The labels for such goods are supplied by respondent to the packer or canner, who affixes them to the cans or other containers in which the goods are packaged.

PAR. 5. In connection with the purchase in interstate commerce of such food products and other merchandise in its own behalf and for its own account, respondent in many instances receives and accepts and for a number of years last past has received and accepted from the sellers of such merchandise, brokerage or allowances and discounts in lieu of brokerage. The brokerage is usually received by respondent in one of two ways. In some cases, the seller remits the amount of the brokerage to respondent by check. In other cases, respondent in remitting to the seller the purchase price of the merchandise deducts the brokerage, or a discount or allowance in lieu thereof, from the seller's invoice. The amount of brokerage thus received and accepted by respondent is substantial. For example, the amount received on purchases made by respondent between July 1, 1941, and December 31, 1941, was \$25,873.68.

CONCLUSION

The receipt and acceptance by the respondent of brokerage, or allowances and discounts in lieu thereof, as hereinabove set forth, is in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of 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 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 subsection (c) of Section 2 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., Sec. 13).

It is ordered, That the respondent, Southgate Brokerage Co., Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of food products or other merchandise in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting from any seller, directly or indirectly, anything of value as brokerage, or any commission, compensation, allowance, or discount in lieu thereof, upon purchases made for respondent's own account.

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

FRANK J. MARKS, TRADING AS NATIONAL COMMITTEE
FOR EDUCATION AND AS PRESIDENT AND TREASURER
OF BOOK-A-WEEK CLUB, INC. AND BOOK-A-WEEK
CLUB, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4877. Complaint, Dec. 17, 1942—Decision, Sept. 13, 1944*

Where an individual, who traded as "National Committee for Education," and was president and treasurer, prior to its dissolution, of his "Book a Week Club, Inc.," engaged in the interstate sale and distribution of two sets of reference books respectively designated as "Standard American Encyclopedia" and "University of Knowledge Wonder Books"; through advertisements in newspapers, and periodicals, circulars and other advertising material, and radio broadcasts,—

(a) Falsely represented that the "National Committee for Education was an organization, national in scope, consisting of a group of teachers and educators which sponsored and endorsed the Book-A-Week Club" and expressly edited and compiled valuable literature for distribution to the members of said Club, and that his "Standard American Encyclopedia" set of books was sold and distributed in cooperation with said National Committee for Education to members of the Book-A-Week Club, Inc.;

The facts being that said National Committee for Education was merely a trade name assumed by said individual in connection with the sale and distribution of the reference books hereinabove described, which he purchased from the publisher on a consignment basis; said "The Book-A-Week Club, Inc.," was a corporation dominated and controlled by said individual, and its so-called "membership" consisted merely of purchasers of said reference books, who did not receive any literature expressly edited and compiled for them; and the use of aforesaid trade name and sale and distribution of his said reference books by and through his said corporate entity, were a subterfuge to further the false representations that said reference books were endorsed by and sold in cooperation with some group of educators or teachers;

(b) Falsely represented that said "Standard American Encyclopedia" contained complete and comprehensive information with respect to every conceivable subject and was one of the most important sets of books ever written, and had a retail value of \$65; that his "University of Knowledge Wonder Books" had a retail value of \$100; that a limited quantity of said books was being offered to charter members of the Book-A-Week Club, Inc., in good standing, and that said books were available at the prices quoted only to such members;

The facts being that value of the sets was not \$65 or \$100, respectively, but in the normal and ordinary course of business the books sold at 49¢ per volume for the regular edition and 69¢ for the deluxe, plus postage, for the 20 volume "Encyclopedia," and 59¢ per volume plus postage for the other 24 volume set of "Wonder Books"; and

(c) Represented that the first volume of his said sets would be delivered free, and that persons receiving the first so-called "free" volume were obligated to accept and

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pay for succeeding volumes sent by him unless they notified him within ten days of receipt of the first volume that they did not desire succeeding volumes;

The facts being said first volume was not delivered free or without cost or obligation, but only upon payment of a consideration therefor, and persons receiving said so-called "free" volume were not legally obligated to accept and pay for succeeding volumes, but said statement was merely a subterfuge used by him to induce the purchase of the remaining volumes of said sets of books;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and to induce it to purchase his reference books because of such belief; whereby trade was diverted unfairly to him from his competitors in commerce 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. Randolph Preston*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. Harvey J. Scribner, 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 Frank J. Marks, an individual, trading as National Committee for Education, and Book-A-Week Club, 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, Frank J. Marks, is an individual, trading and doing business under the firm name and style of National Committee for Education, with his office and principal place of business located at 147 West 22nd Street in the city of New York and State of New York; respondent, Book-A-Week Club, Inc., is a corporation, organized and existing under the laws of the State of New York with its office and principal place of business located at 147 West 22nd Street, in the city and State of New York. Respondent, Frank J. Marks, is president and treasurer of said corporation and as such formulates, controls and directs the policies and practices of said corporation. Said respondent, Frank J. Marks, is now and for more than two years last past has been engaged in the sale and distribution in commerce between and among the various States of the United States of reference books designated as Standard American Encyclopedia and the University of Knowledge Wonder Books. Respondent, Frank J. Marks, in the course and conduct of said business, during the time aforesaid, caused and does now cause said books to be transported from his said place of business in the State of New York to purchasers thereof located in the several States of the United States other than the State of New York and in the District of Columbia.

PAR. 2. There is now and has been at all times hereinafter mentioned a course of trade in said books of reference so sold and distributed by said respondent in commerce between and among the various States of the United States and the District of Columbia.

There are other persons, firms and corporations that have been and are engaged in offering for sale, selling and transportation in commerce between and among the various States of the United States of books of reference and encyclopedias, and respondents are engaged in substantial competition with such concerns.

PAR. 3. In the course and conduct of said business, respondent, Frank J. Marks, solicits the purchase of said books by means of advertisements in newspapers having an interstate circulation, advertising matter circulated by mail among prospective purchasers in various States of the United States and continuities broadcast from radio stations which convey the programs emanating therefrom to listeners thereto situated in various States of the United States. Typical of such advertising representations are the following:

Education Is The First Line of Defense
National Committee for Education
Either or Both
FREE of these FREE
Great Offers

Vol. One of the Famous Just Send Us
Standard American Your Name
Encyclopedia

We want you to actually see for yourself what a sensational value the Standard American Encyclopedia represents. So just send us your name and we will forward FREE your first volume as our gift to you . . .

And the first volume is yours absolutely FREE without any obligation on your part.

Act Now! Only a Limited Supply Currently Available.

Everything you've ever wanted to know—on every conceivable subject.

Offered in Cooperation with the National Committee for Education.

. . . one of the most important sets of books ever written, the Standard American Encyclopedia.

These costly features are offered to you as a charter member of the BOOK-A-WEEK CLUB of the National Committee for Education. In addition to this your membership entitles you to receive all further valuable literature edited and compiled expressly for its members by the National Committee for Education.

Book-A-Week Club—Inc.
Sponsored and Endorsed by the National
Committee for Education.

The offer . . . is made possible only through the cooperation of the National Committee for Education which for the first time has taken cognizance of the pressing needs of the American public and is now offering for a limited time the complete unabridged, original 20 volume illustrated Standard Encyclopedia with the first volume absolutely FREE.

You may still order one or more volumes at a time under the original plan, at the old price of 49¢ for each volume of the regular edition, or 69¢ for each volume of the deluxe edition (plus 11¢ to cover postage, packing, and handling). Just think of owning a magnificent set of Encyclopedias, valued at \$65.00, for such a small fraction of its worth!

... a complete comprehensive and concise storehouse of knowledge. . .

The newest, most up-to-date set ever published.

The University of Knowledge Wonder Books

The Publishers of this magnificent wonderland of World-wide knowledge allowed us just a limited number of sets in order to make possible this extraordinary offer! Therefore, only Charter Members in good standing of the Book-A-Week Club may obtain this set on this convenient plan . . . and the First Volume is sent to you here-with absolutely FREE! Remember too that each volume is valued at \$4.00. The complete 24-volume set is actually worth \$100.00.

Each volume is yours for only 59¢ plus 11¢ for postage, packing, etc. . . a total of only 70¢ for splendid volumes valued at \$4.00 each. Available at this price only to Honor Roll Members like yourself.

In the absence of any word from you, within ten days, we shall send your succeeding volumes to you, one each week, and you agree that you are obligated to pay the post-man for same.

PAR. 4. By means of the foregoing statements and representations and others of like tenor and effect, the respondents represent to the purchasing public that the National Committee for Education consists of a group of teachers or educators which is national in scope; that said National Committee for Education cooperates in the sale and distribution of encyclopedias and reference books; and that any person may ask for and secure the first volume of Standard American Encyclopedia without cost or obligation; that only a limited supply of said books is available; that said encyclopedia contains complete and unabridged information on all conceivable subjects, is one of the most important and newest sets of books ever written, and valued at sixty-five dollars; that purchasers of said books become charter members of the Book-A-Week Club and as such are entitled to receive valuable literature expressly edited and compiled for such members. That the set of books, designated Wonder Books is available only to Honor Roll members at the specially low price of 59¢ and that each volume of said Wonder Books is valued at four dollars and that the entire set of 24 volumes is worth \$100.00 and that the supply of said books is limited by the publisher thereof. That persons having received the first so-called "Free" volume are legally obligated to accept and pay for succeeding volumes sent by respondents, unless they notify respondents within 10 days from receipt of said first volume that they do not desire the succeeding volumes.

PAR. 5. In truth and in fact, said National Committee for Education is not an aggregation or a committee of educators or teachers, but is merely the trade name assumed by the respondent, Frank J. Marks; and said National Committee for Education is not cooperating in the sale and distribution of said encyclopedias and reference books in the generally accepted sense of that term, but the respondent, Frank J. Marks, is a jobber

and retailer of said books which he purchases from the publisher on a consignment basis. In truth and in fact, the first volumes of the Standard American Encyclopedia and Wonder Books are not free, but are delivered only upon the payment of a consideration therefor. The supply of said books is not limited, either as to quantity or in point of time, but is available to all purchasers at all times, and the prices per volume for each of said respective sets of books are in fact the regular prices at which said books are customarily sold by respondent, Frank J. Marks. In truth and in fact, the value of the Standard American Encyclopedia is not \$65.00, but the price actually paid by purchasers is the regular value of said books; and the true value of all the Wonder Books is not \$100.00 per set, but is of the value regularly paid for by purchasers thereof.

While the Book-A-Week Club, Inc., is a corporation, it is actually employed as another trade name by the respondent, Frank J. Marks, who is president and treasurer and owns 90% of the stock.

Said corporation has no other officers or employees and is not engaged in any business or enterprise, its sole purpose being to further the impression among the purchasing public that a large organization, namely, the National Committee for Education, endorses and sponsors another large and independent organization, the Book-A-Week Club, for the distribution of encyclopedias and reference books. In truth and in fact, the so-called membership of said Club consists merely of the purchasers of said reference books from the respondent Frank J. Marks who is the sole owner and operator of both enterprises.

Said Standard American Encyclopedia does not in fact contain complete and comprehensive information with respect to every conceivable subject and is not one of the most important sets of books ever written, but, on the contrary, there are many subjects on which no information is contained in said encyclopedia, and generally the information given on the subjects listed is incomplete and limited in scope.

In truth and in fact no further literature has been edited or compiled expressly for the so-called members of the Book-A-Week Club; and representations to that effect are made for the purpose of inducing the purchase of said books.

In truth and in fact, persons to whom said so-called free volumes have been sent are under no obligation whatever to notify the respondents within ten days, or any other time, whether they do or do not desire to be furnished with additional volumes, and failure so to notify respondents does not obligate them to pay the postman or anyone else for any succeeding volumes which respondents may elect to send them.

PAR. 6. The false, misleading and deceptive representations, acts and practices hereinabove described have a tendency to and do induce the general purchasing public to purchase respondents' encyclopedias and reference books in the mistaken belief that the National Committee for Education is an aggregation of educators of national scope, and said Book-A-Week Club, Inc., is a substantial organization established for the purpose of enabling purchasers to buy various books under advantageous prices and conditions; that the first volumes of said sets of books are available without cost to any person asking therefor, and that said Standard American Encyclopedia contains complete and unabridged articles on every conceivable subject.

PAR. 7. There are among competitors of respondents, individuals and corporations, who sell and distribute encyclopedias and reference books who do not engage in any of the acts and practices hereinabove set forth.

PAR. 8. Each and all of the false and misleading statements and representations made by the respondents as hereinabove set forth 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, practices and representations, a substantial number of the purchasing public has purchased respondents' books and as a result of said acts and representations substantial trade in commerce has been unfairly diverted to respondents from respondents' competitors in commerce who do not misrepresent their merchandise, to the injury of said competitors.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 17, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Frank J. Marks, trading as National Committee for Education, individually, and as president and treasurer of Book-A-Week Club, Inc., and Book-A-Week Club, 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 the form of a stipulation as to the facts entered into upon the record between counsel for respondent, Frank J. Marks, and counsel for the Commission, 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. By said stipulation entered into upon the record the respondents expressly waived the filing of a report upon the evidence by the trial examiner and the filing of briefs and oral argument. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, and stipulation of facts entered into upon the record; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Frank J. Marks, is an individual, formerly trading as National Committee for Education, with his office and prin-

principal place of business located at 147 West 22nd Street, New York, N. Y. Respondent, Book-A-Week Club, Inc., was a corporation, organized and existing under the laws of the State of New York, with its office and principal place of business located at 147 West 22nd Street, New York, N. Y. Respondent, Frank J. Marks, was president and treasurer of said corporation and, as such, formulated, controlled, and directed the policies and practices of said corporation.

PAR. 2. For more than two years prior to April 1, 1943, respondent, Frank J. Marks, trading as National Committee for Education and as president and treasurer of Book-A-Week Club, Inc., was engaged in the sale and distribution in commerce among and between the various States of the United States of sets of reference books designated as "Standard American Encyclopedia" and "University of Knowledge Wonder Books." Said respondent caused said books, when sold, to be transported from his place of business in the State of New York to the purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondent maintained, and at all times mentioned herein has maintained, a course of trade in said reference books in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent, Frank J. Marks, was in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar merchandise in commerce among and between the various States of the United States.

PAR. 4. Since April 1, 1943, the business of respondent, Frank J. Marks, has been in the process of liquidation, said liquidation being in charge of persons other than said respondent, who, since April 1, 1943, has been totally inactive in the operation of said business. On or about December 23, 1942, the respondent, Book-A-Week Club, Inc., was dissolved by the filing of a Certificate of Dissolution with the Secretary of State of the State of New York.

PAR. 5. In the course and conduct of his said business and for the purpose of inducing the purchase of his said reference books, the respondent, Frank J. Marks, made false, deceptive, and misleading statements and representations concerning the nature of the business conducted by him and the reference books sold by him, by means of advertisements in newspapers and periodicals having a general circulation and by means of circulars and other advertising material circulated by means of the United States mails and by continuities broadcast from radio stations. Typical of such statements and representations in such advertising were the following:

Education is the First Line of Defense
National Committee for Education

FREE Either or Both FREE
 of these
 Great Offers

Vol. One of the Famous Just Send Us
Standard American Your Name
Encyclopedia

We want you to actually see for yourself what a sensational value the Standard American Encyclopedia represents. So just send us your name and we will forward FREE your first volume as our gift to you . . .

And the first volume is yours absolutely FREE without any obligation on your part.

Act Now! Only a Limited Supply Currently Available.

Everything you've ever wanted to know—on every conceivable subject.

Offered in Cooperation with the National Committee for Education.

. . . one of the most important sets of books ever written, the Standard American Encyclopedia.

These costly features are offered to you as a charter member of the BOOK-A-WEEK CLUB of the National Committee for Education. In addition to this your membership entitles you to receive all further valuable literature edited and compiled expressly for its members by the National Committee for Education.

Book-A-Week Club—Inc.

Sponsored and Endorsed by the National Committee for Education.

The offer . . . is made possible only through the cooperation of the National Committee for Education which for the first time has taken cognizance of the pressing needs of the American public and is now offering for a limited time the complete unabridged, original 20 volume illustrated Standard Encyclopedia with the first volume absolutely FREE.

You may still order one or more volumes at a time under the original plan, at the old price of 49¢ for each volume of the regular edition, or 69¢ for each volume of the deluxe edition (Plus 11¢ to cover postage, packing, and handling). Just think of owning a magnificent set of Encyclopedias, valued at \$65.00, for such a small fraction of its worth!

. . . a complete comprehensive and concise storehouse of knowledge . . .

The newest, most up-to-date set ever published.

The University of Knowledge Wonder Books

The Publishers of this magnificent wonderland of World-wide knowledge allowed us just a limited number of sets in order to make possible this extraordinary offer! Therefore, only Charter Members in good standing of the Book-A-Week Club may obtain this set on this convenient plan . . . and the First Volume is sent to you herewith absolutely FREE! Remember too that each volume is valued at \$4.00. The complete 24-volume set is actually worth \$100.00.

Each volume is yours for only 59¢ plus 11¢ for postage, packing, etc. . . a total of only 70¢ for splendid volumes valued at \$4.00 each. Available at this price only to Honor Roll Members like yourself.

In the absence of any word from you, within ten days, we shall send your succeeding volumes to you, one each week, and you agree that you are obligated to pay the postman for same.

PAR. 6. Through the use of the statements and representations hereinabove set forth and other similar thereto not specifically set out herein, the respondent, Frank J. Marks, represented that the National Committee for Education was an organization, national in scope, consisting of a group

of teachers and educators which sponsored and endorsed the Book-A-Week Club and expressly edited and compiled valuable literature for distribution to the members of said Club. By the same means it was further represented by said respondent that his set of books known as Standard American Encyclopedia was sold and distributed in cooperation with said National Committee for Education to members of the Book-A-Week Club, Inc., that said set of books contained complete and comprehensive information with respect to every conceivable subject and was one of the most important sets of books ever written, and that said set of books had a retail value of \$65. In the same manner said respondent also represented that his set of books known as University of Knowledge Wonder Books had a retail value of \$100 and that a limited quantity of said books was being offered to charter members of the Book-A-Week Club, Inc., who were in good standing and that said books were available at the prices quoted only to such members. It was also represented by said respondent that the first volume of his Standard American Encyclopedia and University of Knowledge Wonder Books would be delivered free and that persons receiving the first so-called "free" volume were obligated to accept and pay for succeeding volumes sent by the respondent unless they notified respondent within ten days of receipt of the first volume that they did not desire succeeding volumes.

PAR. 7. The Commission finds that the National Committee for Education was not an organization of national scope consisting of a group of teachers or educators, but was merely a trade name assumed by the respondent, Frank J. Marks, in connection with the sale and distribution of the reference books hereinabove described, which the respondent purchased from the publisher on the consignment basis. The Book-A-Week Club, Inc., was not sponsored by any group of teachers or educators but, instead, was a corporation dominated and controlled by the respondent, Frank J. Marks, and its so-called "membership" consisted merely of purchasers of said reference books. The so-called "members" of the Book-A-Week Club, Inc., did not receive any literature expressly edited and compiled for such members by any group or organization.

The use by the respondent, Frank J. Marks, of the trade name "National Committee for Education" and the sale and distribution of his said reference books by and through the corporate entity Book-A-Week Club, Inc., which was dominated and controlled by him, were a subterfuge to further the false representations that the said reference books were endorsed by, and sold in cooperation with, some group of educators or teachers. The supply of said books was not limited either as to quantity or in point of time but was available to all purchasers at all times. The prices per volume actually paid by purchasers for each of said respective sets of books were the usual and customary prices at which said respondent, Frank J. Marks, sold said books in the normal and ordinary course of business. The value of the Standard American Encyclopedia, consisting of 20 volumes, was not \$65, but the true value of said books was 49 cents per volume for regular edition and 69 cents per volume for deluxe edition, plus postage, which were the prices at which said books were actually sold. The value of the University of Knowledge Wonder Books, consisting of 24 volumes, was not \$100 or \$4 for each volume, but, instead, the true value of said books was 59 cents per volume, plus postage, the price at which they

were actually sold. The Standard American Encyclopedia did not contain complete and comprehensive information with respect to every conceivable subject and was not one of the most important sets of books ever written. The first volume of said Standard American Encyclopedia or University of Knowledge Wonder Books was not delivered free or without cost or obligation but was delivered only upon payment of a consideration therefor. Persons receiving the so-called "free" volume of respondent's so-called sets of reference books were under no contractual obligation and were not legally obligated to accept and pay for succeeding volumes unless they notified respondent within ten days of receipt of the first volume that they did not desire succeeding volumes, and this was merely a subterfuge used by respondent, Frank J. Marks, to induce the purchase of the remaining volumes of said set of books.

PAR. 8. The use by the respondent, Frank J. Marks, of the foregoing false, deceptive, and misleading statements and representations has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce a substantial portion of the purchasing public to purchase respondent's reference books 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, were all to the prejudice and injury of the public and of respondent's competitors and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and a stipulation as to the facts entered into upon the record, which stipulation provides, among other things, that the Commission may proceed upon the facts as stipulated without further evidence (the report of the trial examiner, briefs of counsel, and oral argument being expressly waived); and the Commission having made its findings as to the facts and conclusion that the respondent, Frank J. Marks, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Frank J. Marks, his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of reference books, encyclopedias, and other publications in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from—

Order

1. The use of the words "National Committee for Education" or any other words of similar import or meaning in respondent's trade name, or representing through any other means or device or in any manner that respondent's business is operated, endorsed, or sponsored by a group of teachers or educators or that such groups or individuals cooperate in the conduct of his business or endorse or sponsor the publications sold or distributed by him.

2. Representing directly or by implication that any publication sold or distributed by the respondent is available only to members of a particular group or organization at especially low prices.

3. Representing as a customary or regular price or value of any of respondent's publications, any price or value which is in fact in excess of the price at which said publication is customarily offered for sale and sold in normal and usual course of business.

4. Representing that purchasers of respondent's publications become members of any book club or any other organization and are thereby entitled to receive literature or publications expressly compiled for such members.

5. Representing that any person may secure the first volume of any set of books offered for sale without cost or other obligation, or that the supply of said books is limited.

6. Representing that the Standard American Encyclopedia contains complete and unabridged information on all subjects or is one of the most important sets of books ever written.

7. Representing that any person having received the first volume of any set of books is legally obligated to accept and pay for any succeeding volume or volumes which may be sent him by respondent, Frank J. Marks, unless such person notifies said respondent within any designated period of time that no succeeding volumes are desired.

It is further ordered, That respondent, Frank J. Marks, 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 the same hereby is, dismissed as to said respondent, Book-A-Week Club, Inc.

IN THE MATTER OF

NEWTON E. WENTZ AND FRITZ O. LEE, DOING
BUSINESS AS DAVENPORT CANDYCRAFTS

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

Docket 5088. Complaint, Nov. 17, 1943—Decision, Sept. 14, 1944

- Where two partners engaged in the competitive interstate sale and distribution of assortments of candy which were so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consuming public, a typical assortment including 28 packages of fudge candy and a 1,000 hole punchboard for use in its sale, as explained on board, under a plan by which the number punched by chance determined whether or not the customer received candy and the amount paid therefor, if any, the maker of the last punch on the board being also entitled, as announced, to box thereof;
- Sold such assortments to dealers including retailers, by whom as direct or indirect purchasers they were exposed to the purchasing public in accordance with aforesaid plan, involving a game of chance or sale of a chance to secure merchandise at much less than its normal retail price, and thereby supplied to and placed in the hands of others means of conducting a lottery in the sale of their products, contrary to an established public policy of the United States Government and in competition with many who do not use methods involving chance or contrary to public policy;
- With result that persons were attracted by said sales plans or methods and the element of chance involved therein, and were thereby induced to buy and sell said merchandise in preference to that of aforesaid competitors who do not use such methods, and with tendency and capacity thereby unfairly to divert trade in commerce to them from their competitors aforesaid; to the substantial injury of competition in commerce:
- Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods 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 Newton E. Wentz and Fritz O. Lee, individually, and trading under the name of Davenport Candycrafts, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Newton E. Wentz and Fritz O. Lee, are individuals, trading as copartners under the name of Davenport Candy-

crafts, with their principal office and place of business located at 168 South Division Street, Spokane, Wash. Respondents are now, and for more than six months last past have been, engaged in the sale and distribution of candy to dealers. Respondents cause and have caused their said candy, when sold, to be shipped or transported from their aforesaid place of business in the State of Washington to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. There is now and has been for more than six months last past a course of trade by respondents in such candy in commerce between and among the various States of the United States and in the District of Columbia.

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

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and have sold to dealers certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprise or lottery scheme when sold and distributed to the consuming public. Typical of said assortments is one hereinafter described for the purpose of showing the methods used by respondents, and is as follows: This assortment includes a punchboard and 28 packages of fudge candy. On the face of the punchboard appears a legend to the following effect:

NUMBERS Ending "0" are FREE
 NUMBERS Ending "1" pay 1 cent
 NUMBERS Ending "2" pay 2 cents
 NUMBERS Ending "3" pay 3 cents
 NUMBERS Ending "4" pay 4 cents
 NUMBERS Ending "5" pay 5 cents
 NUMBERS Ending "9" pay 5 cents

LAST PUNCH ON THE BOARD RECEIVES $2\frac{1}{4}$ lb. Tub Chocolate Fudge.

and a legend stating that certain numbers win either a 1 lb. or a $2\frac{1}{2}$ lb. tub of candy. Candy is distributed to the purchasing public in accordance with the foregoing legend and in the following manner: The punchboard contains 1,000 punches, each concealing a number. Said numbers are not arranged in numerical sequence. Whether a purchaser pays 1¢, 2¢, 3¢, 4¢ or 5¢, or receives his punch free, is determined by the last digit of the number of the slip punched by him from the punchboard, and whether he receives a box of candy or nothing for his money is determined by the number appearing on the slip punched by him from said board. Persons who qualify by punching a slip containing one of the designated numbers receive a box of candy. Persons not obtaining one of the designated numbers receive nothing. The numbers are effectively concealed from purchasers and prospective purchasers until a punch selection has been made and a particular punch separated from the board. The candy is thus distributed to purchasers of punches from the board wholly by lot or chance, the amount to be paid for each punch or purchase is determined wholly by

lot or chance, and whether or not a purchaser of a punch from the board receives a package of candy or nothing for his purchase money is also determined wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondents' candy directly or indirectly expose and sell 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 the respondents of said sales plan or method in the sale of candy and the sale of said candy by and through the use thereof and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States.

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

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 17, 1943, 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 and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint, respondents filed answer thereto 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. Respondents, Newton E. Wentz and Fritz O. Lee, are individuals, trading as copartners under the name of Davenport Candy-crafts, with their principal office and place of business located at 168 South Division Street, Spokane, Wash. Respondents are now, and for more than six months last past have been, engaged in the sale and distribution of candy to dealers. Respondents cause, and have caused, their said candy, when sold, to be shipped or transported from their aforesaid place of business in the State of Washington to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. There is now, and has been for more than six months last past, a course of trade by respondents in such candy in commerce between and among the various States of the United States and in the District of Columbia.

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

PAR. 2. In the course and conduct of their business as described in paragraph 1 thereof, respondents sell, and have sold, to dealers certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consuming public. Typical of said assortments is one hereinafter described for the purpose of showing the methods used by respondents. Said assortment includes 28 packages of fudge candy and a punchboard, on the face of which appeared a legend to the following effect:

NUMBERS Ending "0" are FREE
 NUMBERS Ending "1" pay 1 cent
 NUMBERS Ending "2" pay 2 cents
 NUMBERS Ending "3" pay 3 cents
 NUMBERS Ending "4" pay 4 cents
 NUMBERS Ending "5" pay 5 cents
 NUMBERS Ending "9" pay 5 cents

LAST PUNCH ON THE BOARD RECEIVES $2\frac{1}{4}$ lb. Tub Chocolate Fudge.

and also a legend stating that certain numbers win either a 1-pound or a $2\frac{1}{2}$ -pound tub of candy. Candy is distributed to the purchasing public in accordance with the foregoing legend and in the following manner: The punchboard contains 1,000 punches, each concealing a number. Said numbers are not arranged in numerical sequence. Whether a purchaser pays 1¢, 2¢, 3¢, 4¢, or 5¢, or receives his punch free, is determined by the last digit of the number of the slip punched by him from the punchboard, and

whether he receives a box of candy or nothing for his money is determined by the number appearing on the slip punched by him from said board. Persons who qualify by punching a slip containing one of the designated numbers receive a box of candy. Persons not obtaining one of the designated numbers receive nothing. The numbers are effectively concealed from purchasers and prospective purchasers until a punch selection has been made and a particular punch separated from the board. The candy is thus distributed to purchasers of punches from the board wholly by lot or chance; the amount to be paid for each punch or purchase is determined wholly by lot or chance; and whether or not a purchaser of a punch from the board receives a package of candy or nothing for his purchase money is also determined wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondents' candy, directly or indirectly, expose and sell 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 the respondents of said sales plan or method in the sale of candy, and the sale of said candy by and through the use thereof and by the aid of said sales plan or method, is a practice which is contrary to an established public policy of the Government of the United States.

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

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

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admitted all the material allegations of fact set forth in said complaint and waived 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, Newton E. Wentz and Fritz O. Lee, jointly or severally, trading under the name of Davenport Candycrafts, or under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of candy or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing candy or any merchandise so packed and assembled that sales of such candy or other merchandise to the 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.

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

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

It is further ordered, That the 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

39 F. T. C.

IN THE MATTER OF

HARRY GREENBERG, TRADING AS PIONEER SPECIALTY
COMPANY AND CANDYLAND COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5128. Complaint, Feb. 5, 1944—Decision, Sept. 14, 1944*

Where an individual engaged in interstate sale and distribution of candy to dealers, including its "General MacArthur" packages which retailed for 5¢, and its "U. S. Navy Warships," "U. S. Warplanes" or "Remember Pearl Harbor" which retailed at 1¢ each—

Offered and sold said packages in cartons of substantially greater size than necessary and which, in case of first, with dimensions of 1" × 3" × 5" included several pieces of candy taffy and a toy of infinitesimal value, and in the other cases, with dimensions of 1½" × 2" × 3", contained a few pieces of candy of the size of a small bean and a toy or novelty of no appreciable value;

With effect, through such employment of said "slack filling" practice, of misleading and deceiving a substantial portion of the buying public into the erroneous belief that said packages or containers were filled to capacity and contained the quantity of candy indicated by their capacity, and into the purchase of said candy in reliance upon such erroneous belief, and of placing in the hands of retail sellers the means whereby to mislead and deceive members of the purchasing public:

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

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

Mr. I. Zimmerman, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Harry Greenberg, an individual, trading and doing business under the name of Pioneer Specialty Co. and Candyland Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Harry Greenberg, is an individual, trading and doing business under the names of Pioneer Specialty Co. and Candyland Co. with his principal office and place of business located at 38 Crosby Avenue, Brooklyn, N. Y. Respondent is now and for more than one year last past has been engaged in the sale and distribution of candy to dealers. Respondent causes and has caused his said candy when sold to be shipped or transported from his aforesaid place of business in the State of New York to purchasers thereof at their respective points of location in various

other States of the United States and in the District of Columbia. There is now and has been for more than one year last past a course of trade by respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as aforesaid, respondent has sold and offered for sale candy packaged in cardboard containers in the following manner. One of respondent's said packages of candy labeled "General MacArthur" and retailing for 5¢, is packed in a cardboard carton 1" × 3" × 5", said carton containing five or six small pieces of candy taffy and a toy of infinitesimal value. The carton in which said candy is packed is substantially larger than necessary to contain the amount of candy therein packed. Others of respondent's packages of candy labeled "U. S. Navy Warships," "U. S. Warplanes" or "Remember Pearl Harbor" and retailing for 1¢ each, consist of a few pieces of candy of the size and shape of a small bean and a toy or novelty of no appreciable value which are packed in a carton 1½" × 2" × 3" in dimension, said cartons being of substantially greater size than is necessary to contain the candy and novelty.

Thus said containers of candy when offered for sale and sold to the purchasing public are not filled to capacity and the quantity of candy contained therein is substantially less than the capacity of said cartons or containers. The practice of using over-size containers or cartons is known in the trade and generally as "slack filling" and has the force and effect of misleading and deceiving members of the purchasing public with respect to the quantity of candy contained in such packages.

PAR. 3. The aforesaid acts and practices of the respondent have had, and have, the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasers and prospective purchasers, members of the buying public, into the false and erroneous belief that said packages or containers are filled to capacity, and contain the quantity of candy indicated by the capacity of said containers, and into the purchase of said candy in reliance upon such erroneous belief. The said practices further place in the hands of retail sellers the means whereby to mislead and deceive members of the purchasing public.

PAR. 4. 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 5, 1944, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint, respondent filed his answer thereto admitting all the material allegations of fact set forth in said complaint and waiving further hearing as to said facts, and by letter dated February 21, 1944, respondent's counsel advised the Commission that respondent waived all

intervening procedure. 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, Harry Greenberg, is an individual, trading and doing business under the names of Pioneer Specialty Co. and Candyland Co., with his principal office and place of business located at 38 Crosby Avenue, Brooklyn, N. Y. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of candy to dealers. Respondent causes, and has caused, his said candy, when sold, to be shipped or transported from his aforesaid place of business in the State of New York to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. There is now, and has been for more than one year last past, a course of trade by respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as aforesaid, respondent has sold and offered for sale candy packaged in cardboard containers in the following manner. One of respondent's said packages of candy labeled "General MacArthur," and retailing for 5¢, is packed in a cardboard carton 1" × 3" × 5", said carton containing five or six small pieces of candy taffy and a toy of infinitesimal value. The carton in which said candy is packed is substantially larger than necessary to contain the amount of candy therein packed. Others of respondent's packages of candy labeled "U. S. Navy Warships," "U. S. Warplanes," or "Remember Pearl Harbor," and retailing for 1¢ each, consist of a few pieces of candy of the size and shape of a small bean and a toy or novelty of no appreciable value, which are packed in a carton 1½" × 2" × 3" in dimension, said cartons being of substantially greater size than is necessary to contain the candy and novelty.

Thus said containers of candy, when offered for sale and sold by the purchasing public, are not filled to capacity, and the quantity of candy contained therein is substantially less than the capacity of said cartons or containers. The practice of using over-size containers or cartons is known in the trade and generally as "slack filling" and has the force and effect of misleading and deceiving members of the purchasing public with respect to the quantity of candy contained in such packages.

PAR. 3. The aforesaid acts and practices of the respondent have had, and have, the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasers and prospective purchasers, members of the buying public, into the false and erroneous belief that said packages or containers are filled to capacity, and contain the quantity of candy indicated by the capacity of said containers, and into the purchase of said candy in reliance upon such erroneous belief. The said practices further place in the hands of retail sellers the means whereby to mislead and deceive members of the purchasing public.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That respondent, Harry Greenberg, trading as Pioneer Specialty Co., as Candyland Co., or under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of his candy products or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from offering for sale or selling any of such candy products or other merchandise in a container or package which is substantially larger in size or capacity than that required for packaging the quantity of product contained or placed therein.

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
BUREAU OF ENGRAVING, INC., AND ART
INSTRUCTION, INC.

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

Docket 4914. Complaint, Feb. 15, 1943—Decision, Sept. 18, 1944

Where a corporation, subsidiary of a commercial printing and engraving concern, engaged in the conduct of a correspondence school and in the competitive interstate sale and distribution of correspondence courses in commercial designing, illustrating and cartooning, soliciting purchasers therefor through the mails and through agents or so-called "registrars" who called upon prospective students and their parents and guardians and whom it supplied with sales literature—

- (a) Falsely represented or implied that competing resident art schools or institutes did not have competent instructors and the requisite facilities for the teaching of the aforesaid subjects, and that its correspondence courses of instruction therein were of greater benefit to the student than similar courses offered by said resident schools, through such statements of their "Registrars" to prospects as "* * * there are very few resident or local art institutes having an educational division wholly comprised of men and women of ability, judgment, poise, balance, discrimination and experience as teachers. Too many of them are extremists, faddists, and poseurs who permit and encourage the perpetration of abominations and perversities in the name of art. . . ." and "There are a few—VERY FEW—Art Institutes in the country that have facilities for the teaching of commercial designing and illustrating. I do not know of one art institute that has really excellent facilities nor a thoroughly competent, practical, experienced professional body of educators";
- (b) Made use of undated testimonials or excerpts therefrom in catalogues and other advertising matter, as descriptive of its said courses, representing or implying thereby that such testimonials were recently executed by their authors, when in fact many of them were procured more than 15 years prior to said use thereof; and
- (c) Made use of fictitious trade name "Metropolitan Collection Bureau" for the purpose of collecting delinquent accounts, falsely representing thereby that said Metropolitan Collection Bureau was an independent and separate organization employed to collect accounts which were in arrears; when in fact said agency was operated solely by said concerns and used by them to coerce and intimidate purchasers of said courses and to compel them to pay therefor, though purchased as a result of the mistaken belief engendered by aforesaid deceptive practices;

With tendency and capacity to mislead and deceive members of the purchasing public into the mistaken belief that said representations were true, whereby trade was unfairly diverted to them from their competitors in commerce:

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

Mr. William L. Pencke for the Commission.

Mr. John A. Bresnahan, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, having reason to believe that Bureau of Engraving, Inc., a corporation, and Art Instruction, Inc., (formerly known as Federal Schools, 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, Bureau of Engraving, Inc., and Art Instruction, Inc., are corporations organized and existing under and by virtue of the laws of the State of Minnesota, each having its principal office and place of business located at 500 South Fourth Street, Minneapolis, Minn. Respondent Art Instruction, Inc., formerly bore the name Federal Schools, Inc. Respondent Bureau of Engraving, Inc., is now, and for more than five years last past has been, engaged in the business of commercial printing and engraving of all types of advertising matter, and in the sale and distribution thereof to purchasers located in the various States of the United States other than the State of Minnesota, and in the District of Columbia. It causes and has caused said printed and engraved products, when sold, to be shipped or transported from the State of Minnesota to purchasers thereof located in the various States of the United States other than the State of Minnesota and in the District of Columbia.

In the course and conduct of said business respondent, Bureau of Engraving, Inc., is now, and at all times herein referred to, has been in substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of like or similar products in commerce among and between the various States of the United States.

Respondent, Art Instruction, Inc., is a subsidiary of and was organized by respondent, Bureau of Engraving, Inc., which owns all of the stock of Art Instruction, Inc., with the exception of four shares, one each being owned by the four officers of Art Instruction, Inc., who are also officers of Bureau of Engraving, Inc. Respondent, Bureau of Engraving, Inc., dominates, controls and directs all of the acts, practices and policies of respondent, Art Instruction, Inc., and said respondents act together and have acted together and in cooperation with each other in doing the acts and things hereinafter alleged.

Respondent, Art Instruction, Inc., is now, and for more than five years last past has been, engaged in the business of conducting a correspondence school and in the sale and distribution of correspondence courses consisting of instructions in commercial designing, illustrating and cartooning in commerce between and among the various States of the United States and in the District of Columbia. In the sale of such correspondence courses of instruction the respondent, Art Instruction, Inc., has, for more than five years last past, maintained a course of trade in commerce between and among the various States of the United States.

In the course and conduct of its said business, respondent, Art Instruction, Inc., is and has been in substantial competition with other corporations, partnerships and individuals engaged in the sale and distribution of correspondence courses in commercial designing, illustrating and cartoon-

ing in commerce between and among the various States of the United States and in the District of Columbia. In connection with the sale and distribution of its said correspondence courses, respondent, Art Instruction, Inc., transports or causes to be transported from its aforesaid place of business in the State of Minnesota 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, printed copies of its lessons, examination questions and other pamphlets, documents and equipment used in connection with said courses.

PAR. 2. In the course and conduct of its said business respondent, Art Instruction, Inc., solicits purchasers for said courses of instructions by means of the United States mails and through agents designated as "Registrars," who personally call upon prospective students and their parents and guardians located throughout the United States and in the District of Columbia and induce many of said students to enroll as students, and to purchase, receive and agree to pay for said courses of instruction. For the purpose of promoting and increasing the sales of such courses, respondent, Art Instruction, Inc., furnishes and has furnished such "Registrars" with sales literature containing various false, deceptive, misleading and disparaging statements and representations concerning art courses of instruction offered or given by competing resident art schools or institutes. Among and typical of such statements and representations are the following:

* * * there are very few resident or local art institutes having an educational division wholly comprised of men and women of ability, judgment, poise, balance, discrimination and experience, as teachers. Too many of them are extremists, faddists, and poseurs who permit and encourage the perpetration of abominations and perversities in the name of art. That of course is a very serious thing. There's nothing funny or humorous about it.

* * *

There are a few—VERY FEW—Art Institutes in the country that have facilities for the teaching of commercial designing and illustrating. I do not know of one art institute that has really excellent facilities nor a thoroughly competent, practical, experienced professional body of educators.

There are many magnificent and wonderful and marvelous landscape artists, in America who are among the finest in the world, but they have little influence in the modern art institute, unfortunately, where the training of the youth of the country is entrusted to the young and immature men who in many instances are full of ego and isms.

Said statements and representation have been and are being made orally to prospective customers by said "Registrars" in connection with the sale and distribution of said courses of instruction.

Through the use of such statements as aforesaid, and others of similar import not herein set forth, respondent, Art Instruction, Inc., has represented or implied and represents and implies, (1) that competing resident art schools or institutes do not have competent instructors; (2) that competing resident art schools or institutes do not have the required facilities for the teaching of commercial designing, cartooning and illustrating; and (3) that said correspondence courses of instruction in commercial designing, illustrating and cartooning offered for sale and sold by respondent, Art

Instruction, Inc., are of greater benefit to the student than similar courses offered by said resident art schools or institutes.

PAR. 3. In truth and in fact, there are numerous resident art schools that have well trained and competent instructors. There are numerous resident art schools or institutes that have the required facilities for the teaching of commercial designing, illustrating and cartooning and said correspondence courses of instruction are not of greater benefit to the student than similar courses of instruction given by said resident art schools or institutes.

PAR. 4. Respondent, Art Instruction, Inc., further, in soliciting the sale of and in selling and distributing said courses, and for the purpose of inducing the purchase thereof, has distributed or caused to be distributed in said commerce by means of and through the United States mails, catalogs and other advertising matter containing undated testimonials or excerpts therefrom as being descriptive of the said courses being offered for sale and sold by respondent, Art Instruction, Inc., at the time of the circulation of such catalogs and other advertising matter.

By the use of such undated testimonials respondent, Art Instruction, Inc., has represented or implied that the same were recently executed by the authors thereof. In truth and in fact, many of said testimonials were procured more than fifteen years prior to the issuance of said catalogs and other advertising matter.

PAR. 5. In the course and conduct of said business, respondent, Bureau of Engraving, Inc., causes and has caused its name, Bureau of Engraving, Inc., to appear on its stationery, catalogs and other advertising literature. By and through the use of the words "Bureau of Engraving" in its said name, respondent, Bureau of Engraving, Inc., has represented or implied that it has some connection or affiliation with the Bureau of Engraving and Printing, a branch or bureau of the United States Government.

In truth and in fact, said respondent Bureau of Engraving, Inc., has no connection or affiliation with any branch or bureau of the United States Government.

PAR. 6. In the course and conduct of its business, respondent, Art Instruction, Inc., has adopted and uses a fictitious trade name, to wit; Metropolitan Collection Bureau, for the purpose of collecting delinquent accounts, thereby falsely representing that said Metropolitan Collection Bureau is an independent and separate organization employed to collect accounts which are in arrears.

In truth and in fact, said fictitious collection agency is operated solely by the respondents and used by the respondents to coerce and intimidate purchasers of said courses of instruction and to compel them to pay for said courses, though purchased as a result of the mistaken belief engendered by respondents' deceptive practices as herein alleged.

PAR. 7. The aforesaid acts and practices of the respondent, as herein set forth, have the tendency and capacity to mislead and deceive members of the purchasing public into the mistaken and erroneous belief that the representations made by the respondents are true and into the further mistaken and erroneous belief that the respondent, Bureau of Engraving, Inc., is a part of or is affiliated with the United States Government in some capacity and into the purchase of correspondence courses offered for sale by the respondent, Art Instruction, Inc., as the result of such erroneous

and mistaken beliefs. As a result thereof, trade has been unfairly diverted to the respondents from their competitors in commerce among and between the various States of the United States.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 15th day of February, 1943, issued, and on the 17th day of February, 1943, served its complaint in this proceeding upon the respondents, Bureau of Engraving, Inc., and Art Instruction, Inc., charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint with the exception of the allegations contained in paragraph 5 of said complaint and paragraph 7 insofar as it deals with allegations in respect of the respondent, Bureau of Engraving, Inc., which substitute answer was duly filed in the office of the Commission, and respondents waived all intervening procedure and further hearing as to said facts. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer and the Commission having duly considered the matter and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Bureau of Engraving, Inc., and Art Instruction, Inc., are corporations, organized and existing under and by virtue of the laws of the State of Minnesota, each having its principal office and place of business located at 500 South Fourth Street, Minneapolis, Minn. Respondent, Art Instruction, Inc., formerly bore the name Federal Schools, Inc. Respondent, Bureau of Engraving, Inc., is now, and for more than five years last past has been, engaged in the business of commercial printing and engraving of all types of advertising matter, and in the sale and distribution thereof to purchasers located in the various States of the United States other than the State of Minnesota, and in the District of Columbia. It causes and has caused said printed and engraved products, when sold, to be shipped or transported from the State of Minnesota to purchasers thereof located in the various States of the United States other than the State of Minnesota and in the District of Columbia.

Respondent, Art Instruction, Inc., is a subsidiary of and was organized by respondent, Bureau of Engraving, Inc., which owns all of the stock of Art Instruction, Inc., with the exception of four shares, one each being owned by the four officers of Art Instruction, Inc., who are also officers of Bureau of Engraving, Inc. Respondent, Bureau of Engraving, Inc., dominates, controls and directs all of the acts, practices and policies of respondent, Art Instruction, Inc., and said respondents act together and have acted together and in cooperation with each other in doing the acts and things hereinafter alleged.

Respondent, Art Instruction, Inc., is now, and for more than five years last past has been, engaged in the business of conducting a correspondence school and in the sale and distribution of correspondence courses consisting of instructions in commercial designing, illustrating and cartooning in commerce between and among the various States of the United States and in the District of Columbia. In the sale of such correspondence courses of instruction the respondent, Art Instruction, Inc., has, for more than five years last past, maintained a course of trade in commerce between and among the various States of the United States.

In the course and conduct of its said business, respondent, Art Instruction, Inc., is and has been in substantial competition with other corporations, partnerships and individuals engaged in the sale and distribution of correspondence courses in commercial designing, illustrating and cartooning in commerce between and among the various States of the United States and in the District of Columbia. In connection with the sale and distribution of its said correspondence courses, respondent, Art Instruction, Inc., transports or causes to be transported from its aforesaid place of business in the State of Minnesota 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, printed copies of its lessons, examination questions and other pamphlets, documents and equipment used in connection with said courses.

PAR. 2. In the course and conduct of its said business respondent, Art Instruction, Inc., solicits purchasers for said courses of instructions by means of the United States mails and through agents designated as "Registrars," who personally call upon prospective students and their parents and guardians located throughout the United States and in the District of Columbia and induce many of said students to enroll as students, and to purchase, receive and agree to pay for said courses of instruction. For the purpose of promoting and increasing the sales of such courses, respondent, Art Instruction, Inc., furnished such "Registrars" with sales literature containing various false, deceptive, misleading and disparaging statements and representations concerning art courses of instruction offered or given by competing resident art schools or institutes. Among and typical of such statements and representations were the following:

* * * there are very few resident or local art institutes having an educational division wholly comprised of men and women of ability, judgment, poise, balance, discrimination and experience, as teachers. Too many of them are extremists, faddists, and poseurs who permit and encourage the perpetration of abominations and perversities in the name of art. That of course is a very serious thing. There's nothing funny or humorous about it.

There are a few—VERY FEW—Art Institutes in the country that have facilities for the teaching of commercial designing and illustrating. I do not know of one art institute that has really excellent facilities nor a thoroughly competent, practical, experienced professional body of educators.

There are many magnificent and wonderful and marvelous landscape artists, in America who are among the finest in the world, but they have little influence in the modern art institute, unfortunately, where the training of the youth of the country is entrusted to the young and immature men who in many instances are full of ego and isms.

Said statements and representations had been made orally to prospective customers by said "Registrars" in connection with the sale and distribution of said courses of instruction.

Through the use of such statements as aforesaid, and others of similar import not herein set forth, respondent, Art Instruction, Inc., has represented or implied (1) that competing resident art schools or institutes do not have competent instructors; (2) that competing resident art schools or institutes do not have the required facilities for the teaching of commercial designing, cartooning and illustrating; and (3) that said correspondence courses of instruction in commercial designing, illustrating and cartooning offered for sale and sold by respondent, Art Instruction, Inc., are of greater benefit to the student than similar courses offered by said resident art schools or institutes.

PAR. 3. In truth and in fact, there are numerous resident art schools that have well trained and competent instructors. There are numerous resident art schools or institutes that have the required facilities for the teaching of commercial designing, illustrating and cartooning and said correspondence courses of instruction are not of greater benefit to the student than similar courses of instruction given by said resident art schools or institutes.

PAR. 4. Respondent, Art Instruction, Inc., further, in soliciting the sale of and in selling and distributing said courses, and for the purpose of inducing the purchase thereof, had distributed or caused to be distributed in said commerce by means of and through the United States mails, catalogs and other advertising matter containing undated testimonials or excerpts therefrom as being descriptive of the said courses being offered for sale and sold by respondent, Art Instruction, Inc., at the time of the circulation of such catalogs and other advertising matter.

By the use of such undated testimonials respondent, Art Instruction, Inc., has represented or implied that the same were recently executed by the authors thereof. In truth and in fact, many of said testimonials were procured more than fifteen years prior to the issuance of said catalogs and other advertising matter.

PAR. 5. In the course and conduct of its business, respondent, Art Instruction, Inc., had adopted and used a fictitious trade name, to wit, Metropolitan Collection Bureau, for the purpose of collecting delinquent accounts, thereby falsely representing that said Metropolitan Collection Bureau is an independent and separate organization employed to collect accounts which are in arrears.

In truth and in fact, said fictitious collection agency was operated solely by the respondents and used by the respondents to coerce and intimidate

purchasers of said courses of instruction and to compel them to pay for said courses, though purchased as a result of the mistaken belief engendered by respondents' deceptive practices, as herein alleged.

PAR. 6. The aforesaid acts and practices of the respondents, as herein set forth, had the tendency and capacity to mislead and deceive members of the purchasing public into the mistaken and erroneous belief that the representations made by the respondents were true. As a result thereof, trade has been unfairly diverted to the respondents from their competitors in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondents, as hereinafter, were all to the prejudice and injury of the public and of respondents' competitors and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents in which answer respondents admit all the material allegations of fact set forth in said complaint, with the exception of the allegations pertaining to the use of the words "Bureau of Engraving" in the corporate name of respondent, Bureau of Engraving, Inc., 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, Bureau of Engraving, Inc., a corporation, and Art Instruction, Inc., a corporation, their respective officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of correspondence courses in commercial art in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing or implying that competing resident art schools do not have competent instructors, or required facilities for the teaching of commercial designing, cartooning and illustrating; or that respondents' correspondence courses in said subjects are of greater value or benefit than similar courses offered by resident schools.

2. The use of undated testimonial letters in their catalogs and other advertising literature.

3. The use of fictitious trade names for the purpose of collecting delinquent accounts, or representing or implying that any collection agency is an independent and separate organization when it is in fact owned, operated or controlled by respondents.

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

IN THE MATTER OF

WILLIAM M. IRVINE, TRADING AS CONSOLIDATED
SILVER COMPANY OF AMERICA

MODIFIED CEASE AND DESIST ORDER

Docket 3789. Order, September 23, 1944

Modified order, in proceeding in question—in which original order issued on March 29, 1940, 30 F. T. C. 866—requiring respondent, his representatives, etc., in connection with offer, etc., in commerce, of silverware or of sales promotional plans, including sales cards, gift cards, premium certificates or coupons redeemable in silverware or other articles of merchandise, to cease and desist from misrepresenting his connections and arrangements with others, goods as free, refunds, terms and conditions, and undertakings in general, as in said order specified.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having heretofore been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Webster Ballinger, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief on behalf of the Commission in support of the complaint (respondent not having filed brief and oral argument not having been requested), and the Commission having duly made and issued its findings as to the facts, conclusion and order to cease and desist dated March 29, 1940; and the Commission having further considered said order to cease and desist and having given due notice to the respondent to show cause why the proceeding should not be reopened for the purpose of modifying said order in the respects and to the extent set out in said notice, and the respondent having indicated in writing his intention not to oppose such modification; and the Commission having considered the matter and the record herein, and having concluded that the public interest requires the modification of said order in the respects and to the extent set out in said notice.

It is ordered, That the respondent, William M. Irvine, trading as Consolidated Silver Co. of America, or trading under any other name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of silverware or of sales promotional plans, including sales cards, gift cards, premium certificates or coupons redeemable in silverware or other articles of merchandise, do forthwith cease and desist from:

1. Representing that the respondent is a representative of, or has any connection with, the manufacturer of Wm. A. Rogers silverware; *provided, however,* that this order shall not be construed to prohibit the respondent from dealing in such silverware.

2. Representing that the respondent is conducting any special campaign or advertising campaign to introduce or advertise any article of mer-

chandise on behalf of the manufacturer of Wm. A. Rogers silverware or on behalf of any other manufacturer or concern.

3. Representing that certificates, coupons or trading cards will be redeemed with certain articles of merchandise unless the merchandise described is delivered to the holders of such certificates, coupons or trading cards without cost or condition.

4. Representing that respondent will refund any sum of money to dealer purchasing said sales cards, gift cards, premium certificates or other and similar devices on the redemption of a specified number of cards or certificates unless said sales cards, gift cards, premium certificates or other and similar devices are redeemed without cost to the holder thereof and unconditionally, and said refund is made to said dealer upon the redemption of the specified number of sales cards, gift cards, premium certificates or other and similar devices.

5. Representing that respondent will give silverware or other merchandise free, when such silverware or other merchandise is not actually given free.

6. Representing that respondent will advertise his sales promotional plan locally for dealers purchasing such plan or that respondent will assist such dealers in putting such plan into operation, when in fact respondent does not conduct such advertising and render such assistance.

7. Representing that respondent will supply dealers purchasing respondent's sales promotional plan with display sets of silverware or other merchandise for use in putting such plan into operation, when respondent does not supply such display sets as represented.

8. Representing merchandise delivered in redeeming certificates, coupons or trading cards as "free" or as a gift or gratuity or as delivered without cost to the holders of said certificates, coupons or trading cards when said merchandise is not in fact delivered to the holders of said certificates, coupons or trading cards without cost and unconditionally.

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

IN THE MATTER OF

P. J. McBRIDE AND GEORGE B. McCLENNEN, TRADING
AS DELTA EQUIPMENT COMPANY¹

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

Docket 4803. Complaint, Feb. 19, 1944²—Decision, Sept. 25, 1944

Where two partners engaged in the interstate purchase and sale of machinery, including motor-driven iron-shearing and punching machines and pumps, in competition with others except insofar as said competition had been restricted or forestalled, as below set forth;

Following (1) arrangements by the Navy with a shipbuilding company for the construction of naval vessels and the rehabilitation of said company's facilities, including office buildings and shipways, at its shipyards, and agreement to advance funds for the purchase of the materials and the performance of the work involved, with the understanding that their expenditure would be under the supervision and subject to the approval of officials of the Navy; and (2) agreement by said shipbuilding company in contracting for such materials to obtain competitive offers from not less than two—or three where specified—reputable firms and to award a contract to the firm quoting the minimum price, such bids to be opened by or in the presence of the Navy Supervisor of Shipbuilding or his representative, and to be subject to his approval—

Cooperated, combined, agreed and conspired, together and with others, during a period of some fifteen months or more, to, and did, restrain and suppress competition in the purchase and sale of machinery, including motor-driven iron-shearing and punching machines and pumps, in commerce; and pursuant to and as a part of said understanding, etc.—

- (a) Promoted, established and carried out a practice of maintaining a false appearance of competition between and among themselves and other sellers of such products in their submission of price quotations and bids to buyers and prospective buyers;
- (b) Conveyed to such buyers, including official awarding authorities of the United States Government, and others involved in the purchase of such products, the representation that they and other sellers were rival bidders and competitors when in fact they were acting collusively in preparing and submitting bids;
- (c) Avoided and prevented competition in the sale and distribution of such products, including aforesaid machines and pumps, and prevented quotation of genuine competitive bids on said commodities to purchasers; and

Where said partners, on numerous occasions, with the cooperation of said shipbuilding company, its agents and employees including a certain two—

- (d) Secured from four certain sellers of machinery printed stationery bearing their respective letterheads, and made use thereof in the preparation, and submission

¹ The instant case is one of a group of eight having to do with the preparation and submission of sham, false, fictitious, fraudulent and non-competitive bids in connection with the Navy's arrangement for the construction of ships by the Cramp Shipbuilding Co. at its shipyards in Philadelphia. For list of these cases, see footnote to the case of the Grater-Bodey Co., et al., Docket 4799, p. 113.

² Amended.

Complaint

over the respective names of such sellers, of fictitious bids for the furnishing of machinery including that herein concerned, to said shipbuilding company, in which prices specified were higher than and non-competitive with those submitted in each comparable instance by said partners; and

Where said shipbuilding company and its employees—

(e) In turn submitted said bids, as and for genuine and competitive bids, to representatives of the Navy Supervisor of Shipbuilding, who were thereby misled and deceived into considering and approving them as genuine and competitive;

With the result that aforesaid partners enjoyed awards of contracts to them by said shipbuilding company, with the approval of its officials and representatives of the Navy Supervisor of Shipbuilding, secured through deception as aforesaid, and with the effect of depriving buyers and prospective buyers of such machinery, the United States Government, and the public in general, of the benefit of competition in commerce between and among said partners, and others with whom they normally would be in competition in making bids and price quotations:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public, had a dangerous tendency to and did restrain and eliminate competition in the purchase and sale of machinery in question; unreasonably restrained such commerce in said products and tended so to do; had a dangerous tendency to create a monopoly in the purchase, sale, and distribution of said products; and constituted 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.

Mr. Everette MacIntyre and *Mr. V. W. Summers* for the Commission.
Mr. Thomas D. McBride, of Philadelphia, Pa., for respondents.

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the persons and partnership named or included by reference in the caption hereof, and more particularly hereinafter described and referred to as respondents, have violated the provisions of Section 5 of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, P. J. McBride and George B. McClennen, are partners, trading as Delta Equipment Co., with office and principal place of business located at 148 North Third Street, Philadelphia, Pa. Said respondents are sometimes hereinafter referred to as Delta Equipment Co. Throughout the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942, they were engaged in the business of purchasing and selling machinery, including motor driven iron shearing and punching machines and pumps, and in the course of such business shipped and caused to be shipped such machinery from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and to locations in other States.

Said respondents are in competition with others not named herein as re-

spondents in making and seeking to make sales of the aforesaid types of machinery in "commerce" (as "commerce" is defined in the Federal Trade Commission Act) between and among the various States of the United States, except insofar as said competition and commerce have been hindered, lessened, restricted or forestalled by the cooperation, concert or common course of action, understanding, combination, agreement and conspiracy and the acts, things, practices, policies and methods done pursuant thereto and in furtherance thereof as hereinafter set forth.

PAR. 2. During 1940, as a part of its work in the defense program of the United States of America, the United States Navy Department arranged with Cramp Shipbuilding Co., whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the construction of naval vessels and the rehabilitation of facilities including office buildings and shipways at said shipyards and in that connection agreed to advance funds for the purchase of the materials and the performance of the work involved, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon, the said Cramp Shipbuilding Co. undertook to contract with various parties, including respondents, P. J. McBride and George B. McClennen, for the furnishing of materials for use in the construction of naval vessels and rehabilitation of the said shipyards, and in that connection also agreed with officials of the United States Navy Department that it would obtain competitive offers from as many as practicable but not less than two (not less than three where specified) reputable firms in a position to provide the material, equipment, or services as required at a reasonable cost, and to award a contract to that firm quoting the minimum price, and with the further understanding that the said offers, proposals, or bids were to be opened by, or in the presence of, the Supervisor of Shipbuilding, U. S. Navy, or his representative, and subject to his approval before award of the subcontract for materials or services.

In connection with the aforesaid contract the Cramp Shipbuilding Co. negotiated with and made awards of contracts directly and through agents to respondents, P. J. McBride and George B. McClennen, trading as Delta Equipment Co., for machinery, including motor driven iron shearing and punching machines and pumps.

PAR. 3. Throughout a period of time beginning on or about the first day of October, 1940, and continuing thereafter until subsequent to January 1, 1942, the respondents as named in the caption hereof have, through understandings together and with others, cooperated, confederated, combined, agreed and conspired to frustrate, hinder, restrain and suppress competition in the purchase and sale of machinery, including motor driven iron shearing and punching machines and pumps, in "commerce" (as "commerce" is defined in the Federal Trade Commission Act) and have in fact, through such cooperation, confederation, combination, agreement, and conspiracy, frustrated, hindered, restrained, and suppressed competition in the purchase and sale of machinery, including motor driven iron shearing and punching machines and pumps in commerce.

Pursuant to, in furtherance of, and as a part of the aforesaid understanding, cooperation, confederation, combination, agreement, and conspiracy, the aforesaid respondents have done, performed, and used, among other acts, things, practices, policies, and methods, the following:

Complaint

1. Promoted, established, carried out, and continued a practice of maintaining a false appearance of competition between and among respondents, P. J. McBride and George B. McClennen, and other sellers of machines, including motor driven iron shearing and punching machines and pumps, in their submission of price quotations and bids to buyers and prospective buyers;

2. Conveyed to buyers and prospective buyers, including official awarding authorities of the United States Government, and others involved in the purchase of machinery, including motor driven iron shearing and punching machines and pumps, the representation that said respondents, P. J. McBride and George B. McClennen, and other sellers were rival bidders and competitors when they in reality were acting collusively in preparing and submitting bids;

3. Avoided and prevented competition in the sale and distribution of machinery, including motor driven iron shearing and punching machines and pumps; and

4. Prevented quotation of genuine competitive bids or price quotations on said commodities to purchasers thereof.

5. On numerous occasions, the exact number and dates of which are unknown to the Commission, respondents, P. J. McBride and George B. McClennen, acting as individuals, and in their capacities as partners in the Delta Equipment Co., with the cooperation of Cramp Shipbuilding Co., its agents and employees, including one George Ward and one William C. Darragh, secured from other sellers of machinery (including Calco Machinery Co., 1420 Chestnut Street, Philadelphia, Pa.; Albert Hepworth, Fifth and Arch Streets, Philadelphia, Pa.; James F. Marran, 123 North Third Street, Philadelphia, Pa.; Worthington Pump and Machinery Corporation, general offices and principal place of business, Harrison, N. J., with branch or district office located at 1616 Walnut Street, Philadelphia, Pa.; and others), printed stationery of such sellers bearing their respective letterheads and used the same in the preparation and submission of sham, false, fictitious, fraudulent and noncompetitive bids and price quotations for the furnishing of machinery, including motor driven iron shearing and punching machines and pumps, over the respective names of such sellers of machinery to said Cramp Shipbuilding Co., and its agents and employees, in furtherance of the deception, as described herein, the prices specified therein being different from, higher than and noncompetitive with the bid and price quotations submitted in each comparable instance by the said respondents, P. J. McBride and George B. McClennen, trading as Delta Equipment Co. Thereupon, in each of the number of instances where respondents, P. J. McBride and George B. McClennen, thus submitted to Cramp Shipbuilding Co., its agents and employees, different bids on stationery bearing the letterheads of other sellers of machinery, including motor driven iron shearing and punching machines and pumps, such bids were in turn submitted as and for genuine and competitive bids for furnishing such machinery, to representatives of the Supervisor of Ships, United States Navy, who were, through the appearance of such bids, misled and deceived in considering and approving them as genuine and competitive.

6. Respondents, P. J. McBride and George B. McClennen, trading as Delta Equipment Co., as a result of the submission of the aforesaid sham,

false, fictitious, fraudulent and noncompetitive bids to furnish machinery as aforesaid, enjoyed awards of contracts to them by said Cramp Shipbuilding Co., its employees and agents, with the approval of officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, United States Navy, secured through deception as aforesaid.

PAR. 4. The aforesaid understandings, agreements, combination, and conspiracy, and the doing and performing of the acts and things and the use of the methods set forth in the preceding paragraphs hereof tend to have and have had the effect of depriving buyers and prospective buyers of machinery, including motor driven iron shearing and punching machines and pumps, of the United States Government and the public in general, of the benefit of competition in commerce between and among respondents, P. J. McBride and George B. McClennen, trading as Delta Equipment Co., and others with whom they normally would be in competition in making bids and price quotations.

PAR. 5. The acts, practices, methods, understandings, agreements, combination, and conspiracy of the respondents, as hereinbefore alleged, are all to the prejudice of the public, have a dangerous tendency to, and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the purchase and sale of machinery, in commerce within the intent and meaning of the Federal Trade Commission Act, and have the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said products, have a dangerous tendency to create a monopoly in the purchase, sale, and distribution of such 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 February 19, 1944, issued and subsequently served its amended complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of Section 5 of said act. After the issuance of said amended complaint, respondents filed their answer thereto admitting all of the material allegations of fact set forth in said amended complaint and waiving all intervening procedure and further hearing as to the facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said amended complaint and the answer thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, P. J. McBride and George B. McClennen, are partners, trading as Delta Equipment Co., with their office and prin-

cipal place of business located at 148 North Third Street, Philadelphia, Pa. Said respondents are sometimes hereinafter referred to as Delta Equipment Co. Throughout the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942, they were engaged in the business of purchasing and selling machinery, including motor-driven iron-shearing and punching machines and pumps, and in the course of such business shipped such machinery and caused it to be shipped from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and to locations in other States. Said respondents are in competition with others not named herein as respondents in making and seeking to make sales of the aforesaid types of machinery in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States, except insofar as said competition has been hindered, lessened, restricted, or forestalled by the cooperation, concert of common course of action, understanding, combination, agreement, and conspiracy and the acts and things done and the practices, policies, and methods followed pursuant thereto and in furtherance thereof as hereinafter set forth.

PAR. 2. During 1940, as a part of its work in the defense program of the United States of America, the United States Navy Department arranged with the Cramp Shipbuilding Co., whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the construction of naval vessels and the rehabilitation of the facilities, including office buildings and shipways, at said shipyards, and in that connection agreed to advance funds for the purchase of the materials and the performance of the work involved, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon, the said Cramp Shipbuilding Co. undertook to contract with various parties, including respondents, P. J. McBride and George B. McClennen, for the furnishing of materials for use in the construction of naval vessels and the rehabilitation of the said shipyards, and in that connection also agreed with officials of the United States Navy Department that it would obtain competitive offers from as many as practicable but not less than two (not less than three were specified) reputable firms in a position to provide the material, equipment, or services as required, at a reasonable cost, and to award a contract to that firm quoting the minimum price, and with the further understanding that the said offers, proposals, or bids were to be opened by, or in the presence of, the Supervisor of Shipbuilding, United States Navy, or his representative, and were to be subject to his approval before award of the subcontract for materials or services. In connection with the aforesaid contract the Cramp Shipbuilding Company negotiated with and made awards of contracts, directly and through agents, to respondents, P. J. McBride and George B. McClennen, trading as Delta Equipment Co., for machinery, including motor-driven iron-shearing and punching machines and pumps.

PAR. 3. Throughout a period of time beginning on or about the first day of October 1940 and continuing thereafter until subsequent to January 1, 1942, the respondents herein have, through understandings together and with others, cooperated, confederated, combined, agreed, and conspired to frustrate, hinder, restrain, and suppress competition in the purchase and

sale of machinery, including motor-driven iron-shearing and punching machines and pumps, in commerce, as "commerce" is defined in the Federal Trade Commission Act, and have in fact, through such cooperation, confederation, combination, agreement, and conspiracy, frustrated, hindered, restrained, and suppressed competition in the purchase and sale of machinery, including motor-driven iron-shearing and punching machines and pumps in commerce. Pursuant to, in furtherance of, and as a part of the understanding, cooperation, confederation, combination, agreement, and conspiracy, the aforesaid respondents have done, performed, and used, among other acts, things, practices, policies, and methods, the following:

(a) Promoted, established, carried out, and continued a practice of maintaining a false appearance of competition between and among respondents, P. J. McBride and George B. McClennen, and other sellers of machines, including motor-driven iron-shearing and punching machines and pumps, in their submission of price quotations and bids to buyers and prospective buyers.

(b) Conveyed to buyers and prospective buyers, including official awarding authorities of the United States Government and others involved in the purchase of machinery, including motor-driven iron-shearing and punching machines and pumps, the representation that said respondents, P. J. McBride and George B. McClennen, and other sellers were rival bidders and competitors when in reality they were acting collusively in preparing and submitting bids.

(c) Avoided and prevented competition in the sale and distribution of machinery, including motor-driven iron-shearing and punching machines and pumps.

(d) Prevented quotation of genuine competitive bids or price quotations on said commodities to purchasers thereof.

(e) On numerous occasions respondents, P. J. McBride and George B. McClennen, acting as individuals, and in their capacities as partners in the Delta Equipment Co., with the cooperation of the Cramp Shipbuilding Co., its agents and employees, including one George Ward and one William C. Darragh, secured from Calco Machinery Co., 1420 Chestnut Street, Philadelphia, Pa.; Albert Hepworth, Fifth and Arch Streets, Philadelphia, Pa.; James F. Marran, 123 North Third Street, Philadelphia, Pa.; Worthington Pump and Machinery Corporation, Harrison, N. J., with branch or district office located at 1616 Walnut Street, Philadelphia, Pa.; and other sellers of machinery, printed stationery of such sellers bearing their respective letterheads and used the same in the preparation and submission, over the respective names of such sellers of machinery, of sham, false, fictitious, fraudulent, and non-competitive bids and price quotations for the furnishing of machinery, including motor-driven iron-shearing and punching machines and pumps, to said Cramp Shipbuilding Co. and its agents and employees, in furtherance of the deception as described herein, the prices specified therein being different from, higher than, and non-competitive with the bid and price quotations submitted in each comparable instance by the said respondents, P. J. McBride and George B. McClennen, trading as Delta Equipment Co. Thereupon, in each of the number of instances where respondents, P. J. McBride and George B. McClennen, thus submitted to the Cramp Shipbuilding Co., its agents and employees, different bids on stationery bearing the letterheads of other sellers of ma-

chinery, including motor-driven iron-shearing and punching machines and pumps, such bids were in turn submitted, as and for genuine and competitive bids for furnishing such machinery, to representatives of the Supervisor of Shipbuilding, United States Navy, who were, through the appearance of such bids, misled and deceived into considering and approving them as genuine and competitive.

(f) Respondents, P. J. McBride and George B. McClennen, trading as Delta Equipment Co., as a result of the submission of the aforesaid sham, false, fictitious, fraudulent, and non-competitive bids to furnish machinery as aforesaid, enjoyed awards of contracts to them by said Cramp Shipbuilding Co., its employees and agents, with the approval of officials of the Cramp Shipbuilding Co. and representatives of the Supervisor of Shipbuilding, United States Navy, secured through deception as aforesaid.

PAR. 4. The aforesaid understandings, agreements, combination, and conspiracy, and the doing and performing of the acts and things and the use of the methods set forth above tend to have, and have had, the effect of depriving buyers and prospective buyers of such machinery, the United States Government and the public in general, of the benefit of competition in commerce between and among respondents, P. J. McBride and George B. McClennen, trading as Delta Equipment Co., and others with whom they normally would be in competition in making bids and price quotations.

CONCLUSION

The acts, practices, methods, understandings, agreements, combination, and conspiracy of the respondents, as hereinbefore alleged, are all to the prejudice of the public, have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the purchase and sale of machinery in commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said products; have a dangerous tendency to create a monopoly in the purchase, sale, and distribution of such 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 amended complaint of the Commission and the answer of respondents, in which answer respondents admit all of the material allegations of fact set forth in said amended 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 respondents, P. J. McBride and George B. McClenen, individually, and as partners, trading as Delta Equipment Co., their joint or respective representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of machinery, including motor-driven iron-shearing and punching machines and pumps, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between themselves, or between either or both of them and any other person, partnership, or corporation not a party hereto, to do or perform any of the following acts, things, or practices:

1. Conveying or assisting in conveying to buyers or prospective buyers, or to any official or awarding authority of any Federal agency, or to any one contracting with such agency, or to any one acting for or on behalf of such agency or for or on behalf of any contractor with such agency, any representation that any two or more apparent sellers are rival bidders or competitors, when in reality they are acting collusively in preparing and submitting bids.

2. Aiding, assisting, or cooperating in any manner in the submission of any sham, fictitious, fraudulent, or non-competitive bids or price quotations to any buyer or prospective buyer, or to any Federal agency or to any one acting for or on its behalf, or for or on behalf of any party purchasing material or equipment in fulfillment of a contract with such agency.

3. Interfering with or assisting in interfering with the procurement or consideration of genuinely competitive bids or price quotations by any Federal agency or any official or awarding authority of such agency, or by any buyer or prospective buyer.

4. Promoting, establishing, carrying out, or continuing any act or practice for the purpose or with the effect of maintaining or presenting a false appearance of competition between sellers in the submission of price quotations or bids to buyers or prospective buyers.

5. Arranging or attempting to arrange for the filing of any bid in the name of one ostensibly competing bidder when the prices and terms are in fact determined by some other bidder, or when in fact the bid is not a bona fide bid.

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

Syllabus

IN THE MATTER OF

FRANK L. O'BRIEN AND CLARENCE J. O'BRIEN,
TRADING AS THE O'BRIEN MACHINERY COMPANY¹COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4805. Complaint, Feb. 19, 1944²—Decision, Sept. 25, 1944*

Where two partners engaged in the city concerned in the interstate purchase and sale of new and used machinery, including pipe- and nipple-threading machines, along with C. and R., similarly engaged therein; and in competition with others, except insofar as said competition had been restricted or forestalled by the agreement, conspiracy, or acts, etc. below set forth;

Following arrangements by the Navy with a ship-building company under which said company was to undertake construction of naval vessels, and in which connection the Navy agreed to and did arrange for the advancement of funds for the purchase of materials for such construction and for the rehabilitation of the company's shipyards, including office buildings and shipways, to be expended under its general supervision and subject to approval of its officials, and the company, in securing materials and services, agreed to obtain competitive offers from not less than two—or three where specified—reputable firms and to award the contract to the firm quoting the minimum price; the bids to be opened by the Navy Supervisor of Ships or his representative, and to be subject to his approval before award of the contract—

- Cooperated, combined, agreed and conspired together and with others, during a period of some fifteen months or more, to, and did, restrain and suppress competition in the purchase and sale of machinery, including pipe- and nipple-threading machines in commerce; and pursuant to and as a part of said understanding, etc.—
- (a) Promoted, established and carried out a practice of maintaining a false appearance of competition between themselves, C., R., and other sellers of such machinery in their submission of price quotations and bids to buyers and prospective buyers;
- (b) Conveyed to such buyers, including official awarding authorities of the United States Government, and others involved in the purchase of such machinery, representations that they, and said C. and R. were rival bidders and competitors, when in reality they were acting collusively between and among themselves;

¹ The instant case is one of a group of eight having to do with the preparation and submission of sham, false, fictitious, fraudulent and non-competitive bids in connection with the Navy's arrangement for the construction of ships by the Cramp Shipbuilding Co. at its shipyards in Philadelphia. For list of these cases, see footnote to the case of the Grater-Bodey Co., et al., Docket 4799, p. 113.

² Amended complaint. The Commission by order of Mar. 20, 1944 dismissed the original complaint as to certain respondents, not joined by the amended complaint, as follows:

This matter coming on to be heard by the Commission upon the record, and as is shown by the amended complaint herein, the Commission for sufficient cause did not name as respondents therein, William J. Cattie, W. B. Rapp, Charles F. Rohleder, Allen McLaine Ward and J. R. Baldrige, Jr., 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 as to respondents, William J. Cattie, an individual, operating under the name of Cattie Tool Company; W. B. Rapp; Charles F. Rohleder; Allen McLaine Ward, individually, and as an agent of Charles F. Rohleder; and J. R. Baldrige, Jr., individually, and as an agent of Charles F. Rohleder.

- (c) Avoided and prevented competition in the purchase and sale of machinery and prevented consideration of genuinely competitive bids or price quotations by purchasers; and

Where said ship-building company on numerous occasions, acting directly and through its agents, including a certain two—

- (d) Cooperated with said partners in the preparation and submission to it and its agents, including the aforesaid two, of sham bids and price quotations for the furnishing of such machinery, and submitted such bids in turn to purchasing officials of said ship-building company and representatives of the Navy Supervisor of Ships, as genuinely competitive bids and price quotations; and

Where said partners, on numerous occasions, in cooperation with said ship-building company and its employees and agents, including the aforesaid two—

- (e) Secured from said C. and R. sham bids for the furnishing of said machinery, on stationery bearing their respective letterheads and over their respective names, in which higher prices were quoted than those they specified in each comparable case for the furnishing thereof, and proceeded on each occasion to submit the same along with their own, to said ship-building company and its employees and agents, including one of the aforesaid two; and

Where said ship-building company, and its employees and agents, as aforesaid—

- (f) In turn submitted such sham bids to officials of said ship-building company and to representatives of the Navy Supervisor of Ships, who were thereby misled and deceived into considering and approving them as genuine and competitive; and—

Where said partners, and said C. and R.—

- (g) Participated in the preparation and submission of the aforesaid sham and non-competitive bids, with the intent and result of deceiving and misleading officials of said ship-building company and representatives of the Navy Supervisor of Ships into believing, considering and approving them as genuine and competitive bids for the furnishing of such machinery to said ship-building company;

With the result that said partners profited by securing awards of contracts for machinery from said ship-building company, and with effect of depriving buyers and prospective buyers of supplies and equipment, including contractors and subcontractors with the United States Government, and the public in general, of the benefit of competition in commerce between said partners, C., R., and others, with whom they normally would be in competition in making bids and price quotations, and with tendency so to do:

Held, That such acts, practices and combination of said partners, as above set forth, were all to the prejudice of the public; had a dangerous tendency to, and did, actually restrain and eliminate competition in the purchase and sale of machinery, including pipe- and nipple-threading machines, in commerce; had the capacity and tendency to and did restrain unreasonably such commerce in said products; had a dangerous tendency to create in said partners a monopoly in the purchase, sale and distribution of said products; and constituted 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.

Mr. Everett MacIntyre and *Mr. V. W. Summers* for the Commission.

Mr. Raymond A. White, Jr., of Philadelphia, Pa., for *W. B. Rapp*, *Frank L. O'Brien, Jr.* and *Thomas J. O'Brien*, and along with *Mr. Arthur G. Lambert*, of Washington, D. C., for *Frank L. O'Brien* and *Clarence J. O'Brien*.

Mr. James F. Masterson, of Philadelphia, Pa., for *Charles F. Rohleder*, *Allen McLaine Ward* and *J. R. Baldrige, Jr.*

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 persons and partnership named or included by reference in the caption hereof, and more particularly hereinafter described and referred to as respondents, have violated the provisions of Section 5 of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint against each of the said parties, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The O'Brien Machinery Co., with principal place of business located at 113 North Third Street, Philadelphia, Pa., operated as a partnership under the ownership and direction of respondent, Frank L. O'Brien, and respondent, Clarence J. O'Brien, trading as The O'Brien Machinery Co., throughout the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942. The said partners are sometimes hereinafter referred to as respondent, The O'Brien Machinery Co. Throughout the said period of time they were engaged in the business of buying and selling new and used machinery, including pipe and nipple threading machines, and in the course of such business shipped and caused to be shipped such machinery from locations in States other than the State of Pennsylvania to Philadelphia, Pa.

William J. Cattie, an individual, with principal place of business located at 100 North Third Street, Philadelphia, Pa., throughout the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942, operated under the name of Cattie Tool Co. and was engaged in the business of buying and selling new and used machinery, including pipe and nipple threading machines, and in the course of such business shipped and caused to be shipped such machinery from locations in States other than the State of Pennsylvania to Philadelphia, Pa.

W. B. Rapp, an individual, with principal place of business located at 132 North Third Street, Philadelphia, Pa., throughout the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942, was engaged in the purchase and sale of new and used machinery, including pipe and nipple threading machines and in the course of such business shipped and caused to be shipped such machinery from locations in States other than the State of Pennsylvania to Philadelphia, Pa.

PAR. 2. On numerous occasions during the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942, Cramp Shipbuilding Co., whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., directly and through its agents, including one George Ward and one William C. Darragh, negotiated with and brought from respondent, The O'Brien Machinery Co., and others in competition with that concern machinery, including pipe and nipple threading machines, which were shipped or caused to be shipped from points located in States other than the State of Pennsylvania by respondent, The O'Brien Machinery Co., and others in competition with

that concern, to the said Cramp Shipbuilding Co., and its agents in Philadelphia, Pa.

PAR. 3. The O'Brien Machinery Co. is engaged in competition with others in the purchase and sale of machinery, including pipe and nipple threading machines in "commerce" (as "commerce" is defined in the Federal Trade Commission Act) between and among the various States of the United States, except insofar as said competition has been hindered, lessened, restricted or forestalled by the understanding, combination, agreement or conspiracy, or the acts, things, practices, policies or methods done or carried on in pursuance thereto or in furtherance thereof, as hereinafter set forth.

PAR. 4. During 1940, as a part of its work in the defense program of the United States of America, the United States Navy Department arranged with the aforesaid Cramp Shipbuilding Co. for the latter to undertake the construction of naval vessels and in that connection agreed to and did arrange for the advancement of funds for the purchase of materials in the construction of naval vessels and in the rehabilitation of the facilities of the Cramp Shipbuilding Co.'s shipyard located at Richmond and Norris Streets, Philadelphia, Pa., including office buildings and shipways, with the understanding that the expenditure of said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon, the said Cramp Shipbuilding Co. undertook to contract with various parties, including respondent, The O'Brien Machinery Co., for the furnishing of materials and other facilities for the construction of naval vessels and the said office building and shipways. Its undertaking involved an understanding with officials of the United States Navy Department that in securing materials and services it would obtain competitive offers from as many as practicable but not less than two (not less than three, where specified) reputable firms in a position to provide the materials, equipment or services as required at a reasonable cost, and to award contract to that firm quoting the minimum price, and with the further understanding that the said offers, proposals or bids were to be opened by, or in the presence of, the Supervisor of Ships, U. S. Navy, or his representative, and subject to his approval before award of the said contract for materials, equipment or services.

In connection with the aforesaid contracts, Cramp Shipbuilding Co. negotiated with, and made awards of contracts for the purchase of machinery, including pipe and nipple threading machines, from respondent, The O'Brien Machinery Co.

PAR. 5. Throughout the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942, respondents have through understanding together and with others cooperated, confederated, combined, agreed and conspired to frustrate, hinder, restrain and suppress competition in the purchase and sale of machinery, including pipe and nipple threading machines, in "commerce" (as "commerce" is defined in the Federal Trade Commission Act, in which sense it is hereinafter used) and have in fact through such understanding, cooperation, confederation, combination, agreement and conspiracy frustrated, hindered, restrained and suppressed competition in the purchase and sale of machinery, including pipe and nipple threading machines.

Complaint

Pursuant to, in furtherance of, and as a part of the aforesaid understanding, cooperation, confederation, combination, agreement and conspiracy the aforesaid respondents have done and performed and used, among other acts, things, practices, policies and methods, the following:

1. Promoted, established, carried out and continued a practice of maintaining a false appearance of competition between and among respondent, The O'Brien Machinery Co., Cattie Tool Co. and W. B. Rapp, and other sellers of machinery, including pipe and nipple threading machines, in their submission of price quotations and bids to buyers and prospective buyers;

2. Conveyed to buyers and prospective buyers, including official awarding authorities of the United States Government, and others involved in the purchase of machinery, including pipe and nipple threading machines, representations that said respondent, The O'Brien Machinery Co., Cattie Tool Co. and W. B. Rapp, were rival bidders and competitors when they in reality were acting collusively between and among themselves in preparing and submitting bids;

3. Avoided and prevented competition in the purchase and sale of machinery;

4. Prevented consideration of genuinely competitive bids or price quotations by purchasers;

5. On numerous occasions, the exact numbers and dates of which are unknown to the Commission, Cramp Shipbuilding Co., acting directly and through its agents, including one George Ward and one William C. Darragh, cooperated with respondents, Frank L. O'Brien and Clarence J. O'Brien, in the preparation and submission to said Cramp Shipbuilding Co., its agents and employees, including one George Ward and one William C. Darragh, sham, false, fictitious, fraudulent and non-competitive bids and price quotations for the furnishing of machinery, including pipe and nipple threading machines, for use in the Cramp Shipbuilding yards, Richmond and Norris Streets, Philadelphia, Pa., and submitted such sham, false, fictitious, fraudulent and non-competitive bids and price quotations in turn to purchasing officials of the Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, U. S. Navy Department, for consideration and approval as genuinely competitive bids and price quotations;

6. On numerous occasions, the exact number and dates of which are unknown to the Commission, respondents, Frank L. O'Brien and Clarence J. O'Brien, acting as individuals, and in their capacities as partners in The O'Brien Machinery Co., in cooperation with Cramp Shipbuilding Co., its employees and agents, including one George Ward, secured from William J. Cattie (Cattie Tool Co.) and W. B. Rapp, sham, false, fictitious, fraudulent and non-competitive bids for the furnishing of said machinery, on stationery bearing their respective letterheads and over their respective names in which different, higher and non-competitive bids or price quotations were included than it specified on each comparable occasion in a bid for the furnishing of said machinery, on the stationery bearing the letterhead and over the name of The O'Brien Machinery Co., and then proceeded on each such occasion to submit such sham, false, fictitious, fraudulent and non-competitive bids of Cattie Tool Company and W. B. Rapp along with the bid of The O'Brien Machinery Co., prepared as aforesaid, to Cramp Shipbuilding Co. and its agents and employees, including one George Ward. Thereupon, in each of the said number of instances where said re-

spondents, Frank L. O'Brien and Clarence J. O'Brien, thus submitted said sham, false, fictitious, fraudulent and non-competitive bids to Cramp Shipbuilding Co., its employees and agents, including one George Ward, such bids were in turn submitted by said Cramp Shipbuilding Co., its employees and agents, as and for genuine and competitive bids for the furnishing of said machinery, to officials of Cramp Shipbuilding Co. and to representatives of the Supervisor of Ships of the U. S. Navy who were, through the appearance of such bids, misled and deceived into considering and approving them as genuine and competitive;

7. Respondents, Frank L. O'Brien and Clarence J. O'Brien, and William J. Cattie and W. B. Rapp, participated in the preparation and submission of the aforesaid sham, false, fictitious, fraudulent and non-competitive bids or price quotations for the purpose and with the result of deceiving and misleading officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, U. S. Navy, into believing, considering and approving the aforesaid sham, false, fictitious, fraudulent and non-competitive bids and price quotations as independent, truthful, genuine and competitive bids for the furnishing of said machinery to Cramp Shipbuilding Co.;

8. As a result of the aforesaid bidding practice, respondent, The O'Brien Machinery Co. profited by securing awards of contracts for machinery from Cramp Shipbuilding Co.

PAR. 6. The doing and performing of the acts and things and the use of methods set forth in the preceding paragraphs hereof tend to have and have had the effect of depriving buyers and prospective buyers of supplies and equipment, including contractors and sub-contractors with the United States Government, and the public in general, of the benefit of competition in commerce between and among respondent, The O'Brien Machinery Co., Cattie Tool Co. and W. B. Rapp, and others with whom they normally would be in competition in making bids and price quotations.

PAR. 7. The acts, practices, methods, agreements and combination of the respondents, as hereinbefore alleged, are all to the prejudice of the public, have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained and eliminated competition in the purchase and sale of machinery, including pipe and nipple threading machines, in commerce within the intent and meaning of the Federal Trade Commission Act; and the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said products; have a dangerous tendency to create in respondents a monopoly in the purchase, sale and distribution of such 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 February 19, 1944, issued and subsequently served its amended complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods

of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of Section 5 of said act. After the issuance of said amended complaint respondents filed their answer thereto, admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to the facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said amended complaint and admission answers; and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Frank L. O'Brien and Clarence J. O'Brien, were, from about October 1, 1940, until after January 1, 1942, copartners, trading as The O'Brien Machinery Co., with their principal place of business located at 113 North Third Street, Philadelphia, Pa. During said period of time respondents were engaged in the purchase and sale of new and used machinery, including pipe- and nipple-threading machines, which they shipped or caused to be shipped from locations in other States into the State of Pennsylvania. Respondents are sometimes referred to hereinafter as The O'Brien Machinery Co. On or about February 1, 1943, the partnership between respondents was dissolved and respondent, Charles J. O'Brien, is not now a partner in the aforesaid business.

William J. Cattie, is an individual, with his principal place of business located at 100 North Third Street, Philadelphia, Pa. Throughout the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942, he operated under the name of Cattie Tool Co. and was engaged in the business of buying and selling new and used machinery, including pipe- and nipple-threading machines, and in the course of such business shipped such machinery and caused it to be shipped from locations in States other than the State of Pennsylvania to Philadelphia, Pa.

W. B. Rapp, is an individual, with his principal place of business located at 132 North Third Street, Philadelphia, Pa. Throughout the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942, he was engaged in the purchase and sale of new and used machinery, including pipe- and nipple-threading machines, and in the course of such business shipped such machinery and caused it to be shipped from locations in States other than the State of Pennsylvania to Philadelphia, Pa.

PAR. 2. The O'Brien Machinery Co. was engaged in *competition* with others in the purchase and sale of machinery, including pipe- and nipple-threading machines, in commerce as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States, except insofar as said competition has been hindered, lessened, restricted, or forestalled by the understanding, combination, agreement, or conspiracy, or the acts, things, practices, policies, or methods done or carried on in pursuance thereto or in furtherance thereof, as hereinafter set forth.

PAR. 3. During 1940, as a part of its work in the defense program of the United States of America, the United States Navy Department arranged with the Cramp Shipbuilding Co. for the latter to undertake the construction of naval vessels, and in that connection agreed to, and did arrange for, the advancement of funds for the purchase of materials for use in the construction of naval vessels and in the rehabilitation of the facilities of the Cramp Shipbuilding Co.'s shipyard located at Richmond and Norris Streets, Philadelphia, Pa., including office buildings and shipways, with the understanding that the expenditure of said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon, the said Cramp Shipbuilding Co. undertook to contract with various parties, including The O'Brien Machinery Co., for the furnishing of materials and other facilities for the construction of naval vessels and the said office buildings and shipways. Its undertaking involved an understanding with officials of the United States Navy Department that in securing materials and services it would obtain competitive offers from as many as practicable but not less than two (not less than three where specified) reputable firms in a position to provide the materials, equipment, or services as required, at a reasonable cost, and to award contract to the firm quoting the minimum price, and with the further understanding that the said offers, proposals, or bids were to be opened by, or in the presence of, the Supervisor of Ships, U. S. Navy, or his representative, and subject to his approval before award of the said contract for materials, equipment, or services.

In connection with the aforesaid contracts, Cramp Shipbuilding Co. negotiated with and made awards of contracts for the purchase of machinery, including pipe- and nipple-threading machines, from The O'Brien Machinery Co.

PAR. 4. On numerous occasions during the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942, Cramp Shipbuilding Co., directly and through its agents, including one George Ward and one William C. Darragh, negotiated with and bought from The O'Brien Machinery Co., and others in competition with that concern, machinery, including pipe- and nipple-threading machines, which were shipped or caused to be shipped by The O'Brien Machinery Co. and others in competition with that concern from points located in States other than the State of Pennsylvania to the said Cramp Shipbuilding Co. and its agents in Philadelphia, Pa.

PAR. 5. Throughout the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942, respondents have, through understanding together and with others, cooperated, confederated, combined, agreed, and conspired to frustrate, hinder, restrain, and suppress competition in the purchase and sale of machinery, including pipe- and nipple-threading machines, in commerce, as "commerce" is defined in the Federal Trade Commission Act, in which sense that term is hereinafter used, and have in fact, through such understanding, cooperation, confederation, combination, agreement, and conspiracy, frustrated, hindered, restrained, and suppressed competition in the purchase and sale of machinery, including pipe- and nipple-threading machines.

Pursuant to, in furtherance of, and as a part of the aforesaid understanding, cooperation, confederation, combination, agreement, and conspiracy, the aforesaid respondents have done and performed and used, among other acts, things, practices, policies, and methods, the following:

(a) Promoted, established, carried out, and continued a practice of maintaining a false appearance of competition between and among The O'Brien Machinery Co., Cattie Tool Co., W. B. Rapp, and other sellers of machinery, including pipe- and nipple-threading machines, in their submission of price quotations and bids to buyers and prospective buyers;

(b) Conveyed to buyers and prospective buyers, including official awarding authorities of the United States Government, and others involved in the purchase of machinery, including pipe- and nipple-threading machines, representations that said The O'Brien Machinery Co., Cattie Tool Co., and W. B. Rapp were rival bidders and competitors, when in reality they were acting collusively between and among themselves in preparing and submitting bids;

(c) Avoided and prevented competition in the purchase and sale of machinery;

(d) Prevented consideration of genuinely competitive bids or price quotations by purchasers;

(e) On numerous occasions Cramp Shipbuilding Co., acting directly and through its agents, including George Ward and William C. Darragh, cooperated with respondents, Frank L. O'Brien and Clarence J. O'Brien, in the preparation and submission to said Cramp Shipbuilding Co., its agents and employees, including George Ward and William C. Darragh, sham, false, fictitious, fraudulent, and non-competitive bids and price quotations for the furnishing of machinery, including pipe- and nipple-threading machines, for use in the Cramp Shipbuilding yard in Philadelphia, Pa., and submitted such sham, false, fictitious, fraudulent, and non-competitive bids and price quotations, in turn, to purchasing officials of the Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, U. S. Navy Department, for consideration and approval as genuinely competitive bids and price quotations;

(f) On numerous occasions, respondents, Frank L. O'Brien and Clarence J. O'Brien, acting as individuals, and in their capacities as partners in The O'Brien Machinery Co., in cooperation with Cramp Shipbuilding Co., its employees and agents, including George Ward, secured from William J. Cattie (Cattie Tool Co.) and W. B. Rapp, sham, false, fictitious, fraudulent, and non-competitive bids for the furnishing of said machinery, on stationery bearing their respective letterheads and over their respective names, in which different, higher, and non-competitive bids or price quotations were included than respondents specified on each comparable occasion in a bid in the name of The O'Brien Machinery Co. for the furnishing of said machinery, and then proceeded on each such occasion to submit such sham, false, fictitious, fraudulent, and non-competitive bids of Cattie Tool Co. and W. B. Rapp along with the bid of The O'Brien Machinery Co., prepared as aforesaid, to Cramp Shipbuilding Co. and its agents and employees, including George Ward. Thereupon, in each of the instances where said respondents, Frank L. O'Brien and Clarence J. O'Brien, thus submitted sham, false, fictitious, fraudulent, and non-competitive bids to Cramp Shipbuilding Co., its employees and agents, including George

Ward, such bids were in turn submitted by said Cramp Shipbuilding Co., its employees and agents, as and for genuine and competitive bids for the furnishing of said machinery to officials of Cramp Shipbuilding Co. and to representatives of the Supervisor of Ships of the U. S. Navy, who were, through the appearance of such bids, misled and deceived into considering and approving them as genuine and competitive;

(g) Respondents, Frank L. O'Brien and Clarence J. O'Brien, and William J. Cattie and W. B. Rapp participated in the preparation and submission of the aforesaid sham, false, fictitious, fraudulent, and non-competitive bids or price quotations for the purpose and with the result of deceiving and misleading officials of Cramp Shipbuilding Co. and representative of the Supervisor of Ships, U. S. Navy, into believing, considering, and approving the aforesaid sham, false, fictitious, fraudulent, and non-competitive bids and price quotations as independent, truthful, genuine, and competitive bids for the furnishing of said machinery to Cramp Shipbuilding Co.;

(h) As a result of the aforesaid bidding practice, respondent, The O'Brien Machinery Co., profited by securing awards of contracts for machinery from Cramp Shipbuilding Co.;

PAR. 6. The doing and performing of the acts and things and the use of methods set forth in the preceding paragraphs hereof tend to have, and have had, the effect of depriving buyers and prospective buyers of supplies and equipment, including contractors and subcontractors with the United States Government, and the public in general, of the benefit of competition in commerce between and among respondent, The O'Brien Machinery Co., Cattie Tool Co., and W. B. Rapp, and others with whom they normally would be in competition in making bids and price quotations.

CONCLUSION

The acts, practices, methods, agreements, and combination of the respondents, as hereinbefore set forth, are all to the prejudice of the public, have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the purchase and sale of machinery, including pipe- and nipple-threading machines, in commerce within the intent and meaning of the Federal Trade Commission Act; and have the capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said products; have a dangerous tendency to create in respondents a monopoly in the purchase, sale, and distribution of such 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 amended complaint of the Commission and the answer of the respondents, in which answer respondents admit all of the material allega-

tions of fact set forth in said amended complaint and waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that the said respondents have violated the provisions of Section 5 of the Federal Trade Commission Act.

It is ordered, That respondents, Frank L. O'Brien, an individual, and Clarence J. O'Brien, an individual, their respective representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of machinery, including pipe- and nipple-threading machines, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between themselves or with any other person, partnership, or corporation not a party hereto, to do or perform any of the following acts, things, or practices:

1. Conveying or assisting in conveying to buyers or prospective buyers, or to any official or awarding authority of any Federal agency, or to any one contracting with such agency, or to any one acting for or on behalf of any contractor with such agency, any representation that any two or more apparent sellers are rival bidders or competitors, when in reality they are acting collusively in preparing and submitting bids.

2. Aiding, assisting, or cooperating in any manner in the submission of any sham, fictitious, fraudulent, or non-competitive bids or price quotations to any buyer or prospective buyer, or to any Federal agency or to any one acting for or on its behalf, or for or on behalf of any party purchasing material or equipment in fulfillment of a contract with such agency.

3. Interfering with or assisting in interfering with the procurement or consideration of genuinely competitive bids or price quotations by any Federal agency or any official or awarding authority of such agency, or by any buyer or prospective buyer.

4. Promoting, establishing, carrying out, or continuing any act or practice for the purpose or with the effect of maintaining or presenting a false appearance of competition between or among the respondents or other sellers in the submission of price quotations or bids to buyers of prospective buyers.

5. Arranging or attempting to arrange for the filing of any bid in the name of one ostensibly competing bidder when the prices and terms are in fact determined by some other bidder or when in fact the bid is not a bona fide bid.

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

IN THE MATTER OF
ATLANTIC COMMERCIAL AGENCY, 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 5100. Complaint, Dec. 14, 1943—Decision, Sept. 25, 1944

Where a corporation and two individuals in control thereof, engaged in the interstate collection of accounts for clients and in employing in said connection, to secure needed information, certain form letters, the letterheads of which displayed the trade name "Continental Inheritance Service," and such legends and matter as "examiners for title companies," "actuaries," "correspondents in all principal cities of the world," "missing heirs located," "searchers of records," "genealogists," "estate counselors," and "Inheritance Bureau Division Suite 708, 6th North Michigan Avenue, Chicago, Illinois," and which forms, (1) in case of those to be addressed to the alleged debtor, under caption "Office Use Only" set out words and blanks "Section," "Checked by," "Disbursed by," etc., requested information, as a means of identification in "a matter of distinct importance to you if you are the individual in question," etc., including name and address, and those of spouse, parents, employers, banks, etc.; and (2) in case of forms addressed to other than the alleged debtor, advised addressee, as "relative," "friend," "acquaintance" of former, "We are trying to contact the above person," in a matter which "may be of importance to said person," and "Will you be kind enough to give us any or all the information that may lead us to such contact," followed by request for alleged debtor's last address, names and addresses of employer, relative, bank, or business house, and of any person who might supply information concerning him;

Making use of a plan under which such form letters were placed in envelopes addressed to the person concerning whom information was sought at his last known address, or to those believed to have information concerning him, along with envelopes for their return, addressed to "Inheritance Bureau Division 6 North Michigan Avenue, Suite 708, Chicago, Illinois."—which appeared also as the return address on the outer envelopes—and sent to said Chicago address, at which address of a Secretarial Service they were mailed under arrangement with one "D.B.," who also received replies at said address and forwarded them unopened to the others in New Jersey, and, during a certain period, to their attorney; and, aided in said plan by the essential participation of said "D.B.," and for a time by said attorney—

- (a) Represented directly and by implication to the person to whom said form letters were sent that "Continental Inheritance Service" had correspondents in all principal cities of the world, acted as counsellor to those in charge of estates, was engaged in the business of locating heirs to estates or to interests therein, acted as examiner for title insurance companies, and engaged in genealogical research, actuarial work and searches of records, and 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;

The facts being that, while said corporation and individuals had access to, and had used various legal and commercial directories, and directories of collection agencies, in connection with their business, which gave the names and addresses of attor-

Complaint

neys and collection agencies in all the principal cities of the world, they themselves did not have correspondents in such cities; they had no knowledge of any interest in estates or lands to which the persons concerning whom information was sought might be entitled; and various other representations made as above set forth were false and misleading;

- (b) Falsely represented directly and by implication, through use of the names "Continental Inheritance Service" and "Inheritance Bureau Division," that their said business bore some relation to estates and to the rights and interests of heirs thereof;

When in fact it had nothing to do with estates, other than those of debtors from whom they were trying to collect, or with the rights or interests of persons therein, and said names were merely disguises for the true nature of the business;

With the effect of misleading and deceiving many persons to whom the said form letters were sent, into the erroneous belief that said representations were true, and by reason thereof into giving information which they would not otherwise have supplied, and in many instances, to incur expense for postage in connection therewith:

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. Arthur F. Thomas*, trial examiner.
Mr. Randolph W. Branch for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Atlantic Commercial Agency, Inc., a corporation, Gerald H. Strickland and G. Russell Walsh, individually, and as managers, of said corporation, and S. Mortimer Hirshorn and Dorothy Boyden, 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, Atlantic Commercial Agency, Inc., is a corporation, organized and existing under the laws of the State of New Jersey. Respondents, Gerald H. Strickland and G. Russell Walsh, are now, and at all times mentioned herein have been, in control of the management, policies and operations of said corporation, particularly in respect to the acts and practices herein alleged. Respondent, S. Mortimer Hirshorn, is an individual. All said respondents have an office and principal place of business at 101 North Third Street, Camden, N. J., and in the course and conduct of the business referred to herein have used the names "Continental Inheritance Service," and "Inheritance Bureau Division" in the manner set forth herein. Respondent, Dorothy Boyden, is an individual, who does business under the name "Secretarial Service" with an office and principal place of business at 6 North Michigan Avenue, Chicago, Ill.

PAR. 2. For more than two years prior to about March 1, 1943, the respondents, Atlantic Commercial Agency, Inc., Strickland and Walsh, were

engaged in the business of collecting accounts owed to others; since on or about March 1, 1943, the said business has been conducted by respondents, Strickland, Walsh and Hirshorn, under the name of S. Mortimer Hirshorn. The business has at all times mentioned herein had clients who are located both within and without the State of New Jersey for whom the collection of accounts has been undertaken. Many of the said clients cause goods and other property to be transported from their respective places of business to purchasers thereof in other States of the United States, and maintain, and at all times mentioned herein have maintained courses of trade in such goods and property in commerce between and among the various States of the United States. The course and conduct of the said business by respondents during the periods prior to and subsequent to March 1, 1943, has involved intercourse of a commercial and business nature between said respondents and their clients, respondent, Dorothy Boyden, and persons concerning whom they sought information who are located in States other than the State of New Jersey.

PAR. 3. In the course and conduct of the said collection business, respondents, other than Dorothy Boyden, have frequently desired to ascertain the current addresses and occupations of persons alleged to owe money to their said clients, the names and addresses of the employers of such persons and of the banks in which such persons have money on deposit, and other information concerning them.

For this purpose said respondents have used certain form letters, substantially in the forms exemplified by photostatic copies thereof, marked Exhibits A and B attached hereto and by this reference incorporated herein and made a part hereof.¹

PAR. 4. Respondents, other than respondent, Dorothy Boyden, caused the form letters exemplified by Exhibit A to be placed in envelopes addressed to the persons concerning whom information was sought at their last known addresses, and the letters exemplified by Exhibit B to be placed in envelopes addressed to other persons believed to have information concerning them. Said envelopes bear in the upper left corner:

Inheritance Bureau Division
Suite 708
6 North Michigan Ave.,
Chicago, Illinois.

Also enclosed in these envelopes are other envelopes, for the return of the said form letter, addressed to:

Inheritance Bureau Division
6 North Michigan Avenue
Suite 708 Chicago, Illinois.

Respondents caused the said envelopes and enclosures to be transported to the said Chicago address, where they were received by respondent, Dorothy Boyden, who thereafter caused them to be placed in the United States mail. The said envelopes bore addresses of places located in various States of the United States.

Such of the form letters as were filled out and mailed by the recipients thereof were received by respondent, Dorothy Boyden in Chicago, Ill.,

¹ Exhibits published in the findings at pp. 230-232.

who thereafter caused them to be transported to respondents in the State of New Jersey. Respondents used the information so obtained in collecting, or attempting to collect, the accounts alleged to be due to the persons for whom they have acted. The participation of respondent Dorothy Boyden aided in and essential to the successful operation of the plan for obtaining the desired information.

PAR. 5. By means of the aforesaid form letters and envelopes, respondents have represented, directly and by implication, to the persons to whom they were sent, that "Continental Inheritance Service" has correspondents 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 genealogical research, actuarial work and searches 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.

The said representations were false and misleading. In truth and in fact respondents in conducting "Continental Inheritance Service" have not had correspondents in all the principal cities of the world. They have not acted as counsellors to those in charge of estates, nor engaged in the business of locating heirs to estates or interests therein. They have not engaged in making examinations for title insurance companies, or genealogical research, actuarial work or searches of records. They have had no knowledge of any interests in estates or lands to which the persons concerning whom information was sought may be entitled.

PAR. 6. Through the use of the names "Continental Inheritance Service," and "Inheritance Bureau Division" respondents have represented, directly and by implication that the said business bears some relation to estates and to the rights and interests of heirs thereof.

The 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 names are merely disguises 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 mislead and deceive, and has misled and deceived, many persons to whom the said form letters were sent, into the erroneous and mistaken belief that said statements, representations and designations were true and correct, 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. 8. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 14, 1943, issued and subsequently served its complaint upon the respondents, Atlantic Commercial

Agency, Inc., a corporation, and Gerald H. Strickland, G. Russell Walsh, S. Mortimer Hirshorn and Dorothy Boyden, 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 service of said complaint, and the filing of an answer by respondent, Hirshorn, no answer being filed by the other respondents, testimony and other evidence in support of the allegations of the complaint were introduced by R. W. Branch, attorney for the Commission, and in opposition to the allegations of the complaint by the respondents, before Arthur F. Thomas, an examiner of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, respondents waived the filing of a report upon the evidence by the examiner, the filing of briefs and oral argument and agreed that the matter might be disposed of by the Commission upon the record. Thereafter, the matter came on for final hearing upon the said complaint, answer of respondent, Hirshorn, and said testimony and other evidence, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Atlantic Commercial Agency, Inc., is a corporation, organized and existing under the laws of the State of New Jersey; it has not been active since on or about March 1, 1943. During its active corporate life, which began in 1937, respondents, Gerald H. Strickland and G. Russell Walsh, were in control of its management, policies and operation. The business of the corporation was the collection of debts owed to others. In November, 1943, the connection of respondent Walsh with the enterprise was severed, and the business was thereafter conducted by respondent Strickland under the trade name "Atlantic Commercial Agency." From about March 1, 1943, to the time of the withdrawal of respondent, Walsh, in November, 1943, liquidation of the corporation and the withdrawal of either Walsh or Strickland from the business was in contemplation, and during that period it was desired to keep the business intact, with a view to an orderly transfer of the business to the new ownership. During this period, respondent, S. Mortimer Hirshorn, was to notify those who sent claims to the Atlantic Commercial Agency, Inc., to send the claims to him, the clients to be notified when the transfer of the business to the new owner had been accomplished. This was done, and during this period, respondent, Hirshorn, operated the business through respondents, Walsh and Strickland who, in fact, conducted the business as they had previously done. Respondent, Hirshorn, who is an attorney at law practicing in Camden, N. J., was acting as a sort of conservator for the business; the business was conducted in his name, and he was aware of the use by respondents, Walsh and Strickland, of the form letters hereinafter referred to. During this period, so far as clients of the business were concerned, the claims were being collected by respondent, Hirshorn. The collection business was at all times conducted from 101 North Third Street, Camden, N. J.

Respondent, Dorothy Boyden, is connected with a secretarial service located in Suite 708 in the Tower Building, 6 North Michigan Avenue, Chicago, Ill., which service includes the furnishing of an address at which persons may have mail received and forwarded. The services rendered by respondent, Dorothy Boyden, to the other respondents, hereinafter set forth, were discontinued in November or December, 1943.

PAR. 2. Respondents, Atlantic Commercial Agency, Inc., Walsh and Strickland, were engaged, subsequent to 1937, in the business of collecting accounts owed to others. The business has at all times had clients who were located both within and without the State of New Jersey for whom the collection of accounts has been undertaken. Many of said clients caused goods and other property to be transported from their respective places of business to purchasers thereof in other States of the United States, and maintain, and have maintained, courses of trade in such goods and property in commerce between and among the various States of the United States. The course and conduct of the said business during the periods prior to and subsequent to March 1, 1943, has involved intercourse of a commercial and business nature between respondents, other than Dorothy Boyden, and their clients, and with respondent, Dorothy Boyden, and with persons concerning whom information was sought located in States other than the State of New Jersey.

PAR. 3. In the course and conduct of the said collection business, respondents, other than Dorothy Boyden, have frequently desired to ascertain the current addresses and occupations of persons alleged to owe money to their clients, the names and addresses of the employers of such persons and of the banks in which such persons have money on deposit, and other information concerning them.

For this purpose, these said respondents have used certain form letters, which are exemplified by copies thereof, marked Exhibits A and B, attached hereto, and by this reference incorporated herein and made a part hereof.

PAR. 4. Respondents, Walsh, Strickland and Atlantic Commercial Agency, Inc., caused the form letters exemplified by Exhibit A to be placed in envelopes addressed to the persons concerning whom information was sought at their last known addresses, and the letters exemplified by Exhibit B to be placed in envelopes addressed to other persons believed to have information concerning them. Said envelopes bear, in the upper left corner:

Inheritance Bureau Division
Suite 708
6 North Michigan Ave.,
Chicago, Illinois.

Also enclosed in these envelopes are other envelopes, for the return of the said form letters, addressed to:

Inheritance Bureau Division
6 North Michigan Avenue
Suite 708 Chicago, Illinois.

Respondents, Walsh, Strickland and Atlantic Commercial Agency, Inc., caused the said envelopes and enclosures to be transported to the said

Chicago address, where they were received by respondent, Dorothy Boyden, who thereafter caused them to be placed in the United States mail. The said envelopes bore addresses of places located in various States of the United States. The participation of respondent, Dorothy Boyden, aided in and was essential to the successful operation of the plan for obtaining the desired information.

Such of the form letters as were filled out and mailed by the recipients thereof were received by respondent, Dorothy Boyden, in Chicago, Ill., who thereafter caused them to be transported, unopened, to the other respondents in the State of New Jersey. Respondent, Boyden, was supplied with large envelopes in which to mail the returned form letters; some of these envelopes were already addressed to respondent, Hirshorn.

PAR. 5. By means of the aforesaid form letters and envelopes, respondents have represented, directly and by implication, to the persons to whom they were sent, that "Continental Inheritance Service" has correspondents 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 genealogical research, actuarial work and searches 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.

The said representations were false and misleading. In truth and in fact, respondents in conducting "Continental Inheritance Service" have not had correspondents in all the principal cities of the world, although they have had access to, and have used, various legal and commercial directories and directories of collection agencies in connection with the business. Such lists and directories give the names and addresses of attorneys and collection agencies in all the principal cities of the world. They have not acted as counsellors to those in charge of estates, nor engaged in the business of locating heirs to estates or interests therein. They have not engaged in making examinations for title insurance companies, or genealogical research, actuarial work or searches of records. They have had no knowledge of any interests in estates or lands to which the persons concerning whom information was sought may be entitled.

PAR. 6. Through the use of the names "Continental Inheritance Service" and "Inheritance Bureau Division," respondents have represented, directly and by implication, that the said business bears some relation to estates and to the rights and interests of heirs thereof.

The said representation is false and misleading. In truth and in fact, said business has nothing whatever to do with estates, other than those of debtors from whom they are trying to collect, or the rights or interests of persons therein, and the said names are merely disguises for the true nature of the business.

PAR. 7. The use, as hereinabove set forth, of the foregoing false and misleading statements and representations, including the use of the names "Continental Inheritance Service" and "Inheritance Bureau Division," has had the capacity and tendency to mislead and deceive, and has misled and deceived, many persons to whom the said form letters were sent, into the erroneous and mistaken belief that said statements and representations were true and that the names "Continental Inheritance Service" and "Inheritance Bureau Division" truthfully indicated and described the

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character of the concern making inquiry and requesting the information, 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.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, S. Mortimer Hirshorn, and testimony and other evidence taken before Arthur F. Thomas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, respondents having waived all intervening procedure and further hearings 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 respondent, Atlantic Commercial Agency, Inc., a corporation, its officers, agents, representatives and employees, and respondents, Gerald H. Strickland, G. Russell Walsh, S. Mortimer Hirshorn, and Dorothy Boyden, individuals, their agents, representatives and employees, directly or through the use of any corporate or other device, in connection with the use of form letters, post cards, or other mailable matter in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Continental Inheritance Service" or "Inheritance Bureau Division" or any other word or words which import or imply a relationship to estates or to the rights or interests of heirs thereof, to designate, describe or refer to the business of respondents, or any of them, in seeking information concerning debtors or alleged debtors.

2. Representing, directly or by implication, that respondents, or any of them, in the seeking of information concerning debtors or alleged debtors, have correspondents in all principal cities of the world.

3. Representing, directly or by implication, that respondents, or any of them, in the seeking of information concerning debtors or alleged debtors, act as counselors to those in charge of estates or are engaged in the business of locating heirs to estates or to interests therein.

4. Representing, directly or by implication, that respondents, or any of them, in the seeking of information concerning debtors or alleged debtors, act as examiners for title insurance companies.

5. Representing, directly or by implication, that respondents, or any of them, in the seeking of information concerning debtors or alleged debtors, are engaged in genealogical research, actuarial work or the searching of records.

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6. Representing, directly or by implication, that persons concerning whom information is sought by means of form letters, post cards or other mailable matter, to be used in the collection of debts, have or may have interests in estates or lands.

7. Using form letters, post cards or other mailable matter for the purpose of obtaining information to be used in the collection of debts which

Exhibit A

EXAMINERS FOR TITLE COMPANIES
ACTUARIESCORRESPONDENTS IN ALL PRINCIPAL CITIES OF THE WORLD
MISSING HEIRS LOCATEDSEARCHERS OF RECORDS
GENEALOGISTS**Continental Inheritance Service**

Established 1926

ESTATE COUNSELLORS

INHERITANCE BUREAU DIVISION
Suite 708
6 North Michigan Avenue
Chicago, IllinoisAll Replies Considered
Confidential

Office Use Only	
Section	
Checked By	
Disbursed By	
Date of Disbursement	
Ok'd By	
Date This Form Returned	

DEAR FRIEND:

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. So that we may verify our belief in this direction, we ask that you give us the information requested on the reverse side of this sheet.

The information contained will be treated in the strictest of confidence, and used to our best advantage.

A great many people write to us asking that we give an explanation of our action in sending this form. This we cannot do, as you can readily understand that if valuable information were to get in the hands of the wrong party, it would react to the disadvantage of the proper one. Therefore, please do not ask us to break our standard rule as we cannot do so.

This is a matter of distinct importance to you if you are the individual in question and we ask that you mail this form back to us IMMEDIATELY. You will be communicated with in three or four weeks. If it does not check with our records, the form will be carefully indexed, and filed in the event something develops later that will again bring you into the possibility of being the correct party.

Do not send any money, the service is rendered to you without charge.

Yours very truly,

By _____
Examiner

This form will not bear the name and address of the person to whom it is sent. Your name immediately refers us to this investigation. This is done so as to devote more time to accomplish results in the actual examination.

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Exhibit A

IF NECESSARY, USE SEPARATE SHEET FOR ADDITIONAL INFORMATION

Gentlemen: Date 194

I give you the following information with the distinct understanding that I am not obligated in any manner:

My Full Name _____

Present Address _____

City and State _____ Present Occupation _____

Place of Birth _____ Date _____

Do you have a son or father, who has the exact same name? _____ If so, state which _____ His age _____

Address _____ City and State _____

(check (✓) which) _____ (Such as Italian, German, Jewish, etc.) _____ Social Security No. _____

Color: White _____ Negro _____ Race _____

Previous Address

1 year ago _____ City and State _____

2 years ago _____ City and State _____

3 years ago _____ City and State _____

4 years ago _____ City and State _____

5 years ago _____ City and State _____

History

MY PARENTS

Father's Name _____

Address _____

Mother's Name _____

Address _____

Mother's Maiden Name _____

MY WIFE'S PARENTS

Father's Name _____

Address _____

Mother's Name _____

Address _____

(If it develops that it is your wife we are interested in, a separate form for her will follow.)

THE FOLLOWING PERSONS CAN IDENTIFY ME:
(To guard against imposters.)

Name _____ Address _____

Name _____ Address _____

Name _____ Address _____

I CAN ALSO BE IDENTIFIED BY THE FOLLOWING:

My present employer (name of firm) _____

Address _____ My badge number _____

My previous employer _____

Address _____ My badge number _____

Name of my banking institution _____

Address _____ Is it a checking or savings account _____

Does this institution have your signature on file _____

Other than my father and mother, the following relatives can vouch for me:

Name _____ Address _____

Name _____ Address _____

Cross Reference

My present wife's full name _____

Her present address _____

She was born at _____ Date _____

If wife is dead, give date and place _____

She can be identified by her employer, who is _____

Her employer's address _____ City and State _____

(If previously married, give first wife's full name) _____

Signed _____ (without obligation)

If you have reason to believe you have money coming to you, advise full details on separate sheet.

EXAMINERS FOR TITLE COMPANIES CORRESPONDENTS IN ALL PRINCIPAL CITIES OF THE WORLD SEARCHERS OF RECORDS
ACTUARIES MISSING HEIRS LOCATED GENEALOGISTS

Continental Inheritance Service

ESTABLISHED 1929

ESTATE COUNSELLORS

INHERITANCE BUREAU DIVISION

Suite 708
6 North Michigan Ave.
Chicago, Illinois

All Replies Considered
Confidential

This is the person we are trying to contact.

Dear Friend:

We are trying to contact the above person and our records include your name as one who is a relative, friend or acquaintance.

Will you be kind enough to give us any or all the information that may lead us to such contact, as follows:

His (or her) last known address _____ City & State _____

It may be that his (her) employer, has the proper address on file, therefore please advise name of employer _____ Address _____

Name of Relative _____ Address _____

Any Other Suggestion (such as his bank or business house who may have an address on their books) _____

If you haven't seen above mentioned party recently, kindly give name and address of person or persons that can supply the necessary information to help us in our important inquiry. _____

This may be of importance to said person. May we hear from you promptly by return mail in the enclosed envelope. We highly appreciate your courtesy.

Yours truly,
CONTINENTAL INHERITANCE SERVICE

represent, directly or by implication, that the purpose of the inquiry is other than that of obtaining information to be so used.
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
CRAVAT-SILKS, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT, APPROVED SEPT. 26, 1914, AND THE WOOL PRODUCTS LABELING ACT OF 1939, APPROVED OCT. 14, 1940

Docket 5022. Complaint, Aug. 10, 1943—Decision, Sept. 26, 1944

Where a corporation engaged in interstate sale and distribution of various types of fabrics used in the manufacture of men's neckties, including certain fabrics which were composed of approximately 93% rayon and 7% wool, and which simulated silk in texture and appearance—

- (a) Failed to follow practice of disclosing affirmatively to its customers—though supplying the information on inquiry—the fact that said fabrics contained rayon which, when made to simulate silk, is practically indistinguishable by the purchasing public from silk, a product of the cocoon of the silk worm and products of which have long been held in high esteem and widely demanded;

With tendency and capacity to mislead and deceive a substantial number of purchasers and prospective purchasers of such fabrics with respect to the fibers or materials of which they were made, and to cause them to purchase substantial quantities of such fabrics as a result of such erroneous belief; and

- (b) Sold certain wool products, misbranded in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that they did not have affixed thereto a stamp, tag, etc., showing the percentage of the total fiber weight of wool, reprocessed wool, and reused wool and non-wool fiber, and maximum percentage of adulterating matter; and proper identification of the manufacturer, seller, etc., as required by the Act:

Held, That such acts and practices, under the circumstances set forth, were in violation of the Wool Products Labeling Act, and the rules and regulations promulgated thereunder, and were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Kent & Kent, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission having reason to believe that Cravat-Silks, Inc., a corporation, hereinafter referred to as respondent, had violated the provisions of the said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Cravat-Silks, 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 located at 180 Madison Avenue, New York, N. Y. and its mills located in Paterson, N. J.

PAR. 2. Respondent is now, and for more than two years last past, has been engaged in manufacturing fabrics from rayon and wool, which fabrics are sold by respondents to manufacturers of men's ties.

Respondent causes its said fabrics, when sold, to be transported from its place of business in the State of New York or from its mills in Paterson, 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 substantial course of trade in said fabrics in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Rayon is a chemically manufactured fiber which may be manufactured so as to simulate silk and when so manufactured, it has the appearance and feel of silk and is by the purchasing public practically indistinguishable from silk. By reason of these qualities, rayon, when manufactured to simulate silk and not designated as rayon, is readily believed to be and is accepted by the purchasing public as being silk, the product of the cocoon of the silkworm.

PAR. 4. Over a period of many years, the word "silk" has had and still has, in the minds of the purchasing and consuming public generally, a definite and specific meaning as denoting the product of the cocoon of the silkworm. Silk products for many years have held and still hold great public esteem and confidence for their preeminent qualities and there is a widespread public demand for such products.

PAR. 5. The fabrics manufactured and sold by respondent in commerce as aforesaid, are composed of approximately 93 percent rayon and approximately 7 percent wool. Said fabrics simulate in texture and appearance fabrics composed of silk, the product of the cocoon of the silkworm. Respondent does not inform the purchasing public of the fact that its said fabrics are composed of rayon and wool and not of silk.

The practice of the respondent in offering for sale and selling its said fabrics manufactured from rayon and wool, which fabrics resemble in texture and appearance fabrics manufactured from silk, in commerce as aforesaid, without disclosing in words familiar to the purchasing public the fact that said fabrics are composed of rayon and wool, is misleading and deceptive, and many members of the purchasing public are thereby led to believe that the said fabrics are composed of silk, the product of the cocoon of the silkworm.

PAR. 6. In addition to misrepresenting the fiber content of its said fabrics, in the manner described above, the respondent has, in the course and conduct of its said business, further misrepresented the fiber content of its fabrics through the use of the word "Silks" in its corporate name which appears on its letterheads, in its invoices, price lists, tags, labels, and in various other ways.

By and through the use of the word "Silks" in the manner aforesaid, the respondent has represented and now represents that its said fabrics composed of rayon and wool are composed of silk, the product of the cocoon of the silkworm.

PAR. 7. The use by the respondent of the acts and practices hereinabove described, have the capacity and tendency to and do mislead and deceive the purchasers of its said fabrics as to the fiber content thereof. By said acts and practices respondent also places in the hands of the purchasers of its fabrics a means and instrumentality whereby they may and do mislead and deceive wholesalers, retailers and the purchasing public as to the fiber content of the ties manufactured from respondents' said fabrics. As a result of this deception substantial quantities of respondent's products are purchased in the belief that they are composed wholly of silk.

PAR. 8. Among the fabrics manufactured, sold and distributed by respondent in commerce, as aforesaid, since July 15, 1941, are some which are wool products within the intent and meaning of the Wool Products Labeling Act of 1939, in that such fabrics are composed in part of wool, reprocessed wool or reused wool, as those terms are defined in said act. Said fabrics are subject to the provisions of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder.

The said wool products sold and distributed by respondent in commerce, as aforesaid, were misbranded in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated under such act in that said wool products, when introduced into said commerce, did not have on or affixed thereto a stamp, tag, label or other means of identification or a substitute in lieu thereof as provided by said act, showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 percentum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of non-fibrous loading, filling, or adulterating matter; (c) the name of the manufacturer of the wool product, or in lieu thereof a registered number with the name of a reseller under the conditions provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to Section 3 of said act with respect to such wool product; (d) the percentages, in words and figures plainly legible, by weight of the wool contents of such wool product where said wool product contains a fiber other than wool.

PAR. 9. The aforesaid acts, practices and methods of the respondent, as herein alleged, were and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and are all to the prejudice and injury to the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning 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 the Wool Products Labeling Act of 1939, the Federal Trade Commission on August 10, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Cravat-Silks, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act, and with

violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder. After the filing of respondent's answer, 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 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, Cravat-Silks, 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 located at 180 Madison Avenue, 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 types of fabrics used in the manufacture of men's neckties, such fabrics being sold by respondent to manufacturers of such ties.

PAR. 2. In the course and conduct of its business respondent causes and has caused its fabrics, 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 fabrics in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Among the fabrics sold by respondent are some which are composed of approximately 93% rayon and approximately 7% wool. These fabrics simulate in texture and appearance fabrics composed entirely of silk.

The word "silk" has and for many years has had in the minds of the purchasing public a definite and specific meaning, to wit, the product of the cocoon of the silkworm. Silk products hold and for many years have held the esteem and confidence of the public for their preeminent qualities, and there is a wide-spread public demand for such products.

Rayon is a chemically manufactured fiber which may be so manufactured as to simulate silk, and when so manufactured it has the appearance and feel of silk and is practically indistinguishable from silk by the purchasing public. By reason of these qualities, rayon, when manufactured to simulate silk and not designated as rayon, is readily believed by the purchasing public to be silk and is accepted as such.

In the sale of its fabrics composed of rayon and wool, respondent has not in the past followed the practice of affirmatively disclosing to its customers the fact that the fabrics contained rayon, although such information has been supplied by respondent when inquiry as to the fiber content of the fabrics was made by the customer.

PAR. 4. The failure of respondent to make adequate disclosure of the rayon content of its fabrics had the tendency and capacity to mislead and deceive a substantial number of purchasers and prospective purchasers of such fabrics with respect to the fibers or materials of which such fabrics were made, and the tendency and capacity to cause such parties to purchase substantial quantities of such fabrics as a result of the erroneous and mistaken belief so engendered.

PAR. 5. Some of the fabrics sold and distributed by respondent are "wool products" within the meaning of the Wool Products Labeling Act of 1939, in that they are composed in part of wool, reprocessed wool, or reused wool, as those terms are defined in that act. Such fabrics are subject to the provisions of the act and the rules and regulations promulgated thereunder.

These fabrics have in the past been misbranded by respondent in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that the fabrics, when introduced into commerce, did not have on or affixed thereto a stamp, tag, label, or other means of identification or a substitute in lieu thereof, as provided by such Act, showing (a) the percentage of the total fiber weight of the product, exclusive of ornamentation not exceeding five percentum of the total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where the percentage by weight of such fiber was five percentum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling, or adulterating matter; and (c) the name of the manufacturer of the wool product or, in lieu thereof, a registered number with the name of a reseller under the conditions provided for in the rules and regulations promulgated under the act, or the name of one or more persons subject to Section 3 of the act with respect to such product.

PAR. 6. The record indicates that since this proceeding was instituted and the foregoing matters brought to the respondent's attention, respondent has adopted the practice of disclosing affirmatively the rayon content of its fabrics, and also of labeling its fabrics in accordance with the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

CONCLUSION

The acts and practices of the respondent, as herein found, were in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade 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 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 and the provisions of the Wool Products Labeling Act of 1939.

I. It is ordered, That the respondent, Cravat-Silks, 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 fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Advertising, offering for sale, or selling fabrics composed in whole or in part of rayon without clearly disclosing such rayon content; and when such fabrics are composed in part of rayon and in part of other fibers or materials, all of such fibers or materials, including the rayon, shall be clearly and accurately disclosed.

II. It is further ordered, That the respondent, Cravat-Silks, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid acts, do forthwith cease and desist from misbranding fabrics or other "wool products," as defined in and subject to the Wool Products Labeling Act of 1939, which contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said act, by failing to securely affix to or place on such products a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

(a) the percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

(b) the maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter;

(c) the name of the manufacturer of such wool product; or the manufacturer's registered identification number and the name of a seller of such wool product; or the name of one or more persons introducing such wool product into commerce, or engaged in the sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of Section 3 of the Wool Products Labeling Act of 1939; and *provided,* further, that nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the rules and regulations promulgated thereunder.

III. 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.

IV. It is further ordered, That that portion of the complaint relating to the use by respondent of the word "Silks" in its corporate name be, and it hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should future facts so warrant.

Complaint

IN THE MATTER OF
 HARRY V. PLATTNER, TRADING AS PLATTNER
 DISTRIBUTING COMPANY

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

Docket 4655. Complaint, Dec. 8, 1941—Decision, Sept. 28, 1944

Where an individual engaged in competitive interstate sale and distribution of various articles of merchandise, including cigarette lighters, cosmetics, barber supplies, and razor blades to wholesalers, jobbers and retailers—

Furnished in connection with the sale of certain merchandise, lottery devices for the purchaser's use in the resale thereof to the purchasing public, a typical assembly consisting of a cigarette lighter, together with a push card for use in its sale under a plan by which the amount paid for a chance was dependent upon the number disclosed by a punch on one of the twelve months of the year—as displayed on the card—ranging from one cent to twenty-nine cents, and the person selecting by chance the month found to correspond with that concealed under the card's master seal, secured the lighter, others receiving nothing; and thereby—

Supplied to and placed in the hands of retail dealers who, as direct or indirect purchasers, exposed and sold his merchandise in accordance with such sales plans, means of conducting lotteries in the sale of his products, contrary to an established public policy of the United States government, and in competition with those who do not use, in the sale and distribution of their merchandise, sales plans or methods involving lotteries or games of chance;

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 aforesaid competitors, and with tendency and capacity, by reason thereof, to divert substantial trade unfairly to him from them, whereby substantial injury was done by him to competition in commerce:

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

Before *Mr. John W. Addison* and *Mr. Lewis C. Russell*, trial examiners.
Mr. J. W. Brookfield, Jr. for the Commission.
Mr. Gordon L. Bazelon, of Chicago, Ill., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, Harry V. Plattner, is trading as the Plattner Distributing Co., with his office and principal place of business located at 1330 Oak Street, in the city of Kansas City, State of Missouri. Respondent is now and for more than six months last past has been engaged in the sale and distribution of cigarette lighters, cosmetics, barber supplies, razor blades, novelties and other merchandise, to wholesale dealers, jobbers, salesmen and retail dealers, located in the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise when sold to be transported from his principal place of business in the city of Kansas City, State of Missouri, to purchasers thereof at their respective points of location in various States of the United States other than Missouri, and in the District of Columbia. There is now, and has been for more than six months last past a course of trade by respondent in such cigarette lighters and other merchandise between and among the various States of the United States, and in the District of Columbia.

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

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, salesmen and retail dealers, certain assortments of merchandise so packed and assembled as to involve the use of a lottery scheme or game of chance when sold and distributed to the purchasers thereof. One of said assortments consists of a cigarette lighter and a device commonly known as a push card. The push card bears on its face the names of the twelve months of the year with a space underneath each name for writing in the name of the purchaser of the name selected. Said push card has twelve small partially perforated discs on the face of which is printed the word "Push." Concealed within each disc is a number which is disclosed when the disc is pushed or separated from the card. The price to be paid for the push or chance is determined by the number appearing under the disc. The purchaser who pushes No. 1 pays 1¢, the purchaser of No. 2 pays 2¢, and so forth. The push card also has a larger master seal and concealed within the master seal is the name of one of the months appearing on the face of the card. The person selecting the name of the month corresponding to the one under the master seal receives a Dunhill cigarette lighter. The push card bears the legend or instructions as follows:

PICK YOUR LUCKY MONTH & WIN!

		PAY 1¢ to 29¢	NONE HIGHER
LUCKY MONTH	(Green seal)		This card is used
WINS THIS	Remove		in lieu of advertising
VALUABLE	This Seal		to bring you good
ARTICLE	When All		merchandise at a
	Sold		fraction of the retail price
(PUSH)	JANUARY	:	JULY (PUSH)
(PUSH)	FEBRUARY	:	AUGUST (PUSH)
(PUSH)	MARCH	:	SEPTEMBER (PUSH)
(PUSH)	APRIL	:	OCTOBER (PUSH)
(PUSH)	MAY	:	NOVEMBER (PUSH)
(PUSH)	JUNE	:	DECEMBER (PUSH)
		:	

No. 300 PLATTNERS—1330 Oak St., Kansas City, Mo.

Sale of respondent's lighters by means of the said push cards are made in accordance with the above described legend or instructions. The facts as to whether a purchaser of a push receives a lighter or nothing, and the amount of money paid for a push are thus determined wholly by lot or chance.

Respondent sells and distributes and has sold and distributed various other assortments of merchandise involving a lot or chance feature but the sales plans or methods by which said merchandise is distributed are similar to the one above described, varying only in detail.

PAR. 3. Retail dealers and others who purchase respondent's merchandise directly or indirectly expose and sell the same to the purchasing public in accordance with the sales plans aforesaid. Respondent thus supplies to and places in the hands of others a means of conducting a lottery in the sale of 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 by the method or sales plan hereinabove set forth involves a game of chance or the sale of a chance to procure merchandise at a price much less than the normal retail price thereof. Many persons, firms and corporations who sell and distribute products in competition with respondent, as above found, do not use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method which is contrary

to public policy. Many persons are attracted by said sales plans or methods employed by respondent in the sale and distribution of his products and by the element of chance involved therein, and are thereby induced to buy and sell respondent's products in preference to products of said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent because of said game of chance has a tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or equivalent methods, and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States, and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 8, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Harry V. Plattner, an individual, trading as Plattner Distributing Co., charging him with the use of unfair methods of competition in commerce and unfair acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced 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 of 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, Harry V. Plattner, is an individual, trading as Plattner Distributing Co., with his office and principal place of business located at 1330 Oak Street, Kansas City, Mo. 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, cigarette lighters, cosmetics, barber supplies, and razor blades, such merchandise being sold to wholesale dealers, jobbers, and retail dealers.

PAR. 2. Respondent causes and has caused his merchandise, when sold, to be transported from his place of business in the State of Missouri to pur-

chasers thereof located in various other States of the United States. Respondent maintains and at all times mentioned herein has maintained a course of trade in his merchandise in commerce among and between the various States of the United States.

PAR. 3. In the sale and distribution of his merchandise respondent is and has been in competition with other individuals and with corporations and partnerships engaged in the sale and distribution of similar merchandise in commerce among and between the various States of the United States.

PAR. 4. In connection with the sale of certain of his merchandise respondent supplies to the purchasers thereof lottery devices for use in the resale of such merchandise to the purchasing public. One of such articles of merchandise is a cigarette lighter, with which is supplied a device commonly known as a push card. The push card bears the names of the twelve months of the year, and opposite each name is a small, partially perforated disc on which is printed the word "Push." Concealed within each disc is a number which is disclosed when the disc is pushed or separated from the card, and the amount to be paid by the person pushing the disc is determined by this number. For example, one who pushes a disc revealing the number "1" pays one cent, while on pushing a disc revealing the number "29" pays twenty-nine cents. The card also contains a large master seal, under which is concealed the name of one of the twelve months. The person who happens to select the month whose name corresponds to that under the master seal receives as a prize a cigarette lighter having a retail value of approximately \$1.95. The persons pushing the other discs on the card receive nothing. The amount of money paid for the privilege of pushing the card and whether those pushing the card receive a cigarette lighter or nothing for the amount paid are thus determined wholly by lot or chance. The card reads as follows:

PICK YOUR LUCKY MONTH & WIN!

PAY 1¢ to 29¢

NONE
HIGHER

LUCKY MONTH	(Green seal) Remove This Seal When All Sold	THIS CARD IS USED IN LIEU OF ADVERTISING TO BRING YOU GOOD MERCHANDISE AT A FRACTION OF THE RETAIL PRICE.
(PUSH) JANUARY	:	JULY (PUSH)
(PUSH) FEBRUARY	:	AUGUST (PUSH)
(PUSH) MARCH	:	SEPTEMBER (PUSH)
(PUSH) APRIL	:	OCTOBER (PUSH)
(PUSH) MAY	:	NOVEMBER (PUSH)
(PUSH) JUNE	:	DECEMBER (PUSH)

Order

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Respondent supplies various other lottery devices for use in the sale of his merchandise to the public, but the sales plans or methods used in connection with such devices are similar in principle to that described above, varying only in detail.

PAR. 5. Retail dealers who directly or indirectly purchase respondent's merchandise expose and sell such merchandise to the public in accordance with the sales plans or methods referred to above. Respondent thus supplies to and places in the hands of others a means of conducting lotteries in the sale of his merchandise. The use by respondent of such sales plans or methods in the sale of his merchandise and the sale of the merchandise to the public through the use and by the aid of such plans or methods is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 6. Among the competitors of respondent referred to in paragraph 3 hereof are those who do not use in the sale and distribution of their merchandise sales plans or methods involving the conducting of lotteries or games of chance. Many persons are attracted by the sales plans or methods employed by respondent and by the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to that of his competitors who do not use such plans or methods. The use by respondent of such plans or methods therefore has the tendency and capacity to divert substantial trade unfairly to respondent from his competitors, and in consequence, substantial injury is being and has been done by respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before trial examiners 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, Harry V. Plattner, individually, and trading as Plattner Distributing 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 merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Order

1. Supplying to or placing in the hands of others, push cards, punch-boards, or other lottery devices, either with merchandise or separately, which are to be used or may be used in the sale or distribution of respondent's merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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

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

IN THE MATTER OF
SLAGTER OIL & GREASE COMPANY

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

Docket 4720. Complaint, Mar. 4, 1942—Decision, Sept. 28, 1944

Where the distinctive emblem of the Pennsylvania Grade Crude Oil Association had come to indicate pure and unadulterated oil products derived from the Pennsylvania Grade oil fields—decidedly preferred by a substantial part of the purchasing public—and, along with the name “Pennsylvania” and derivatives therefrom, had come to acquire a definite secondary meaning when used in connection with motor and lubricating oils and greases, due to the activities of said long organized association of the refiners of motor oil produced from said fields and a large number of jobbers and distributors thereof, which had spent large sums to acquaint the purchasing public with oils made from such crude oil, and provided advertising for use by member refiners and distributors, and its emblem certifying that the oil sold under it was a pure unadulterated product derived from the Pennsylvania Grade oil fields, guaranteed by each member’s bond; and thereafter a corporation engaged in the compounding and blending of motor lubricating oils and greases and in the sale and distribution thereof to wholesalers and retailers for resale to the purchasing public, including products designated by it as its “Bonded Penn,” “Cream O’ Penn” and “Mr. Penn”—

- (a) Represented directly and by implication, through use of aforesaid brand names and such statements as “Bonded Penn 100% Pure Pennsylvania 1500 Mile Motor Oil,” “Cream O’Penn Motor Oil 100% Pure Pennsylvania; Made from Selected 100% Pure Pennsylvania Crude. Refined and Filtered by Latest and Most Improved Refining Methods,” “Mr. Penn 2,000 Mile Motor Oil,” picture of a Quaker on the containers of its “Mr. Penn” Oil, and display of the aforesaid Association emblem on its advertising circulars, that its aforesaid oil products were made entirely from oil derived from the Pennsylvania Grade oil fields; when in fact all of said products contained large amounts of oil from other fields;
- (b) Falsely represented that a bond had been given by it to guarantee the Pennsylvania Grade origin of its “Bonded Penn” motor oil;
- (c) Falsely represented that it was a member of the aforesaid Pennsylvania Grade Crude Oil Association; and
- (d) Falsely represented that it owned an oil field from which its products or some of them were obtained, through inclusion of words “Oil Field,” in characterization of its various business activities;

With tendency and capacity to mislead and deceive a substantial number of dealers and a substantial portion of the purchasing public with respect to the nature and origin of its products and its business status, and to cause such persons as a result to purchase substantial quantities of its products; and with result of placing in the hands of uninformed or unscrupulous wholesalers and retailers means and instrumentalities whereby they were enabled to mislead and deceive the purchasing public:

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

Before *Mr. Edward E. Reardon* and *Mr. Miles J. Furnas*, trial examiners.
Mr. S. Brogdyne Teu, II and *Mr. William L. Pencke* for the Commission.

Mr. Guy S. Conrad, of Milwaukee, Wisc., 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 Slagter Oil & Grease 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, Slagter Oil & Grease Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 4253 North Port Washington Avenue in the city of Milwaukee, State of Wisconsin. For several years last past the respondent has been engaged in the business of selling and distributing motor and lubricating oils and greases to wholesalers and to retailers for resale to the purchasing public. Respondent causes its said products when sold to be transported from its place of business in the State of Wisconsin to purchasers thereof located in other States of the United States.

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

PAR. 2. The Pennsylvania Grade Crude Oil Association, is a non-profit association, organized in 1923, which has been in continuous operation since that time. Its membership is composed of practically all of the refiners of motor oil produced from the Pennsylvania grade oil field and a large number of jobbers and distributors of such oil. Its purpose has been and is to promote the sale of oil produced and derived from the Pennsylvania grade oil field and to establish and maintain high standard therefor, to which end large sums of money have been spent in advertising and other ways. The Association provides an emblem and advertising matter to be used by refiners and distributors signifying that they are members of the Association. The emblem certifies that the oil sold under it is a pure unadulterated oil product from the Pennsylvania grade oil fields, and a bond is given by each member as a guarantee of these facts. The emblem is quite distinctive in arrangement, shape, coloring and wording. As a result of the activity of the Association the emblem and insignia referred to, as well as the name Pennsylvania and derivations thereof, have acquired a definite secondary meaning to the public when used in connection with motor and lubricating oils and greases. They indicate pure and unadulterated oil products derived from the Pennsylvania grade oil fields, for which a substantial portion of the purchasing public has a decided preference.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its products, the respondent has made, and now makes, false, misleading and deceptive statements and represen-

tations with respect to certain of its products by means of statements and emblems imprinted upon the containers in which such products are sold and distributed. Among and typical of such statements and emblems are the following:

Bonded Penn 100% Pure Pennsylvania 1500 Mile Motor Oil

Cream O'Penn Motor Oil 100% Pure Pennsylvania; Made From Selected 100% Pure Pennsylvania Crude. Refined and Filtered By Latest and Most Improved Refining Methods.

Mr. Penn 2,000 Mile Motor Oil

On the container in which "Mr. Penn" oil is sold and distributed the portrait of a Quaker is imprinted which figure has long been associated with the State of Pennsylvania, also an emblem simulating, in general appearance, the emblem of the Pennsylvania Grade Crude Oil Association.

Respondent has also distributed circulars and other advertising material to wholesalers and retailers of oil products bearing the genuine seal of the Pennsylvania Grade Crude Oil Association in connection with the offer for sale of oils not made entirely from oil derived from the Pennsylvania grade oil field. Said advertising material also contained the phrase "Jobbers—Oil Field."

PAR. 4. Through the use of the statements and labels appearing on the containers and the statements and representations in the advertising material set out in paragraph 3 hereof, the respondent has represented and now represents that its said products are made entirely from oil derived from the Pennsylvania grade oil fields; that a bond has been given to guarantee Pennsylvania grade origin as to the oil designated "Bonded Penn" motor oil; that it owns the oil field from which its products are obtained, and that it is a member of the Pennsylvania Grade Crude Oil Association.

The use by the respondent of the brand names "Bonded Penn," "Cream O' Penn" and "Mr. Penn," within themselves, constitutes representations that such products are oils made entirely from oil derived from the Pennsylvania grade oil fields.

PAR. 5. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact, respondent's "Bonded Penn" oil, "Cream O'Penn" oil and "Mr. Penn" oil are not made entirely from oil derived from the Pennsylvania grade oil fields but contain large amounts of oil derived from oil fields other than the Pennsylvania fields. Respondent's product designated "Bonded Penn" oil is not bonded in any sense of the term. Respondent does not own the oil field from which its products are obtained but buys said products from others. Respondent, during the period mentioned herein, was not a member of the Pennsylvania Grade Crude Oil Association, and was not and is not entitled to use the official emblem thereof.

PAR. 6. The use by the respondent of the aforesaid false, deceptive and misleading statements and representations with respect to its products, disseminated as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial number of wholesalers, retailers and members of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and

causes, and has caused, a substantial number of said purchasing public to purchase substantial quantities of respondent's products because of such erroneous and mistaken belief so engendered.

PAR. 7. The respondent's said acts and practices further serve to place in the hands of wholesalers and retailers a means and instrumentality whereby such persons may mislead and deceive the purchasing public with respect to the origin and quality of respondent's merchandise.

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 March 4, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Slagter Oil & Grease Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by respondent of its answer to the complaint, a hearing was held before a trial examiner of the Commission theretofore duly designated by it, at which a stipulation as to certain facts was entered into by the attorney for the Commission and the attorney for the respondent, such stipulation being in lieu of testimony and other evidence in support of or in opposition to the allegations of the complaint. Subsequently, the proceeding came on for hearing before the Commission upon the complaint, answer, stipulation of facts, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed on behalf of respondent and oral argument not having been requested). Thereafter the Commission, upon motion of its Assistant Chief Counsel and after due notice to respondent, entered its order reopening the proceeding for the taking of testimony and other evidence in support of and in opposition to the allegations of the complaint. Subsequently, supplemental stipulations relating to certain facts not included in the original stipulation were entered into by the attorney for the Commission and the attorney for the respondent, after which the proceeding again came on for hearing before the Commission; and the Commission, having considered the entire record and being now fully advised in the premises, finds that this proceeding is in the interest 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, Slagter Oil & Grease Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 4253 North Port Washington Avenue, Milwaukee, Wis. Respondent is now, and for a number of years last past, has been engaged in the compounding and blending of oils and greases, and in the sale and

distribution of motor and lubricating oils and greases to wholesale and retail dealers for resale to the purchasing public.

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

PAR. 3. The Pennsylvania Grade Crude Oil Association is a non-profit association organized in 1923 and which has been in continuous operation since that time. Its membership is composed of practically all of the refiners of motor oil produced from the Pennsylvania Grade oil fields, and a large number of jobbers and distributors of oil made from Pennsylvania Grade crude oil. The purpose of the Association has been and is now to promote the sale of oil produced and derived from the Pennsylvania Grade oil fields and to establish and maintain high standards therefor. To this end the Association has over a period of the last several years spent large sums of money in advertising and in other ways to acquaint the purchasing public with oils made from Pennsylvania Grade crude oil.

The Association provides an emblem and advertising matter to be used by refiners and distributors, signifying that they are members of the Association. The emblem certifies that the oil sold under it is a pure, unadulterated oil product derived from the Pennsylvania Grade oil fields, and a bond is given by each member as a guarantee of these facts. The emblem is quite distinctive in arrangement, shape, coloring, and wording. As a result of the activity of the Association, its emblem, and the name "Pennsylvania" and derivations therefrom, have acquired a definite secondary meaning to the public when used in connection with motor and lubricating oils and greases. The emblem indicates pure and unadulterated oil products derived from the Pennsylvania Grade oil fields, for which a substantial part of the purchasing public has a decided preference.

PAR. 4. The respondent, for the purpose of inducing the purchase of its products, has made various statements and representations with respect thereto, such statements and representations being made by means of emblems, words and phrases used in advertising circulars and imprinted upon the containers in which respondent's products are packed and sold. Among and typical of such statements and representations are the following:

Bonded Penn 100% Pure Pennsylvania 1500 Mile Motor Oil

Cream O'Penn Motor Oil 100% Pure Pennsylvania; Made From Selected 100% Pure Pennsylvania Crude. Refined and Filtered By Latest and Most Improved Refining Methods.

Mr. Penn 2,000 Mile Motor Oil

Slagter Oil & Grease Co. Manufacturers—Compounders—Marketers * * *
Jobbers—Oil Field

On the containers in which respondent's "Mr. Penn" oil is packed and sold, the picture of a Quaker is imprinted, which figure has long been associated with the State of Pennsylvania. On respondent's advertising circulars there appears the emblem of the Pennsylvania Grade Crude Oil Association.

PAR. 5. Through the use of these statements and representations and others of similar import, respondent has represented, directly or by implication, that its oil products designated "Bonded Penn," "Cream O'Penn," and "Mr. Penn" are made entirely from oil derived from the Pennsylvania Grade oil fields; that a bond has been given by respondent to guarantee the Pennsylvania Grade origin of the oil designated "Bonded Penn" motor oil; that respondent is a member of the Pennsylvania Grade Crude Oil Association; and that respondent owns an oil field from which its products, or some of them, are obtained.

The brand names "Bonded Penn," "Cream O'Penn," and "Mr. Penn," as used by respondent, constitute representations within themselves that the products so designated are oils made entirely from oil derived from the Pennsylvania Grade oil fields.

PAR. 6. These representations are erroneous and misleading. None of respondent's oils designated "Bonded Penn," "Cream O'Penn," and "Mr. Penn" is made entirely from oil derived from the Pennsylvania Grade oil fields, but all of such products contain large amounts of oil derived from other fields. The oil designated "Bonded Penn" is not in fact bonded. Respondent is not, and has not, been a member of the Pennsylvania Grade Crude Oil Association, and is not entitled to use the emblem of the Association. Respondent does not own an oil field.

PAR. 7. The use by respondent of these erroneous and misleading representations has the tendency and capacity to mislead and deceive a substantial number of wholesale and retail dealers and a substantial portion of the purchasing public with respect to the nature and origin of respondent's products and with respect to respondent's business status, and the tendency and capacity to cause such persons to purchase substantial quantities of respondent's products as a result of the erroneous and mistaken belief so engendered.

Respondent's acts and practices serve also to place in the hands of uninformed or unscrupulous wholesale and retail dealers a means and instrumentality whereby such dealers are enabled to mislead and deceive the purchasing public.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, a stipulation as to certain facts in lieu of testimony and other evidence entered into by the attorney for the Commission and the attorney for the respondent at a hearing held before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, brief

in support of the complaint (no brief having been filed on behalf of respondent and oral argument not having been requested), and supplemental stipulations of fact subsequently entered into by the attorney for the Commission, and the attorney for the respondent; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Slagter Oil & Grease 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 motor and lubricating oils and greases in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Pennsylvania," or the abbreviation or derivation "Penn," or any other abbreviation or derivation of such word, alone or in conjunction with any other word, to designate or describe products not composed entirely of oil derived from the Pennsylvania Grade oil fields; provided, however, that in the case of a product composed in part of oil derived from the Pennsylvania Grade oil fields, this order shall not be construed as prohibiting respondent from stating truthfully the percentage of such oil in such product.

2. Representing in any manner or by any means that products are composed in whole or in part of oil derived from the Pennsylvania Grade oil fields, when such is not the fact.

3. Using the picture of a Quaker in connection with products not composed entirely of oil derived from the Pennsylvania Grade oil fields.

4. Using the emblem of the Pennsylvania Grade Crude Oil Association, or any simulation thereof.

5. Representing in any manner or by any means that respondent is a member of the Pennsylvania Grade Crude Oil Association.

6. Representing through the use of the word "Bonded," or in any other manner or by any other means, that a bond has been given by respondent to guarantee the origin of its products, unless such a bond has in fact been given by respondent.

7. Using the words "oil fields," or any other words of similar import, to designate or describe respondent's business; or otherwise representing, directly or by implication, that respondent owns an oil field.

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

NEW YORK MERCHANDISE COMPANY, INC.

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

Docket 4765. Complaint, May 26, 1942—Decision, Sept. 28, 1944

Where a corporation engaged in the interstate sale and distribution of numerous articles, including tooth brushes—

Represented directly or by implication that certain of its tooth brushes were designed by certain physicians, dentists, or dental surgeons named "Dr. Strong," "Dr. Pasteur," or "Dr. Pasteur, Jr.," through adoption and use as trade names thereof of the aforesaid names, which it displayed upon the brushes and upon their cartons and in depictions in its catalogues;

Notwithstanding the fact they were not designed by anyone thus named, but by a physician who had for many years been connected with its business;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the identity, origin, and design of said brushes, and to cause its purchase of substantial quantities thereof as a result of the erroneous belief so engendered:

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

Before *Mr. Clyde M. Hadley* and *Mr. John W. Addison*, trial examiners.
Mr. B. G. Wilson for the Commission.
Mr. David J. Moscovitz, of New York City, for respondent.

COMPLAINT ¹

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

PARAGRAPH 1. The respondent, New York Merchandise Co., Inc., is a corporation, duly chartered, organized and existing under and by virtue of the laws of the State of New York with its principal office and place of busi-

¹ The complaint is published as amended by order dated October 6, 1943, which substituted paragraphs 2, 3 and 4 as published herewith for the correspondingly numbered paragraphs in the original complaint, and which further provide—

"That the testimony and other evidence heretofore introduced in support of, and in opposition to the allegations of the complaint, insofar as the same may be competent and material, shall be considered and is hereby made applicable to the complaint as amended," and

"That a copy of this order shall be served upon the respondent by registered mail and that said respondent shall, within 20 days after the service thereof, be permitted to file an answer to said amended complaint, and to introduce evidence in opposition to the allegations thereof, if it shall so desire."

ness located at 32-46 West 23rd Street, city of New York, State of New York. Respondent is now, and for several years last past has been, engaged in the sale and distribution of numerous articles of merchandise, including tooth brushes.

Said respondent causes and has caused said products, when sold, to be transported from its principal place of business in the city of New York, State of New York, to purchasers thereof located in States of the United States other than the State of New York and in the District of Columbia. For several years last past said respondent has maintained a course of trade in the aforesaid products 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 aforesaid business respondent has adopted as the trade names for certain of its tooth brushes the names "Dr. Strong," "Dr. Pasteur" and "Dr. Pasteur, Jr." and has caused said names to be imprinted upon said tooth brushes and upon the cartons in which they are enclosed, which said tooth brushes are caused to be transported, in commerce, to jobbers and to retailers for display and sale to the purchasing public. Respondent has also advertised said tooth brushes by the aforesaid trade names in its catalogues distributed throughout the United States, which catalogues also contain depictions of said tooth brushes showing the said trade names imprinted thereon.

Through the use of the said trade names "Dr. Strong," "Dr. Pasteur" and "Dr. Pasteur, Jr." in the manner above set forth, respondent represents that said tooth brushes are made in accordance with the design or under the supervision of physicians, dentists or dental surgeons by names of Dr. Strong, Dr. Pasteur and Dr. Pasteur, Jr. and that said tooth brushes possess special or scientific features not found in ordinary tooth brushes because of such designing or supervision.

PAR. 3. The use by the respondent of the aforesaid brand and trade names is misleading and deceptive. In truth and in fact, the tooth brushes labeled, branded and advertised under said trade names are not and were not made in accordance with the design or under the supervision of physicians, dentists or dental surgeons by the names of Dr. Strong, Dr. Pasteur or Dr. Pasteur, Jr. and they do not possess special or scientific features not found in ordinary tooth brushes and do not differ materially from ordinary tooth brushes.

PAR. 4. The use by the respondent of the aforesaid trade names, brands and designations has had and now has the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that its said tooth brushes were designed by or constructed under the supervision of physicians, dentists or dental surgeons by the names of Dr. Strong, Dr. Pasteur or Dr. Pasteur, Jr. and that by reason thereof possess features not common to ordinary tooth brushes. In consequence of such mistaken and erroneous belief, so engendered, a substantial number of the purchasing public have purchased respondent's said product.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 26, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, New York Merchandise Co., Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by respondent of its answer, testimony and other evidence in support of and in opposition to 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 came on for hearing before the Commission upon the complaint, answer, testimony and other evidence, report to the trial examiner upon the evidence, briefs in support of and in opposition to the complaint, and oral argument. Subsequently the Commission, upon the motion of its Assistant Chief Counsel and after due consideration of respondent's objections to the motion, issued its order amending the complaint in certain respects and directing that the evidence theretofore introduced in support of and in opposition to the original complaint, insofar as it was competent and material, be considered as applicable to the complaint as amended. The order further provided that the respondent might answer the amended complaint and introduce evidence in opposition thereto if it should so desire. Thereafter, respondent having filed its answer to the complaint as amended, a further hearing was held before a trial examiner of the Commission theretofore duly designated by it, at which a stipulation as to certain facts was entered into by the attorney for the Commission and the attorney for respondent. The attorneys also waived the filing by the trial examiner of a further report upon the evidence, and waived the filing of additional briefs in support of and in opposition to the complaint and oral argument before the Commission. Subsequently the proceeding came on for final hearing before the Commission upon the entire record, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, New York Merchandise Co., Inc., is a corporation, chartered, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 32-46 West 23d 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 numerous articles of merchandise, including tooth brushes.

PAR. 2. Respondent causes and has caused its merchandise, 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 respondent has adopted and used as trade names for certain of its tooth brushes the names "Dr. Strong," "Dr. Pasteur," and "Dr. Pasteur, Jr." These names are imprinted both upon the brushes themselves and upon the cartons in which the brushes are enclosed. The brushes are displayed by retailers to the purchasing public and are advertised in respondent's catalogs, which are distributed throughout the United States. These catalogs contain pictures of the brushes showing the trade names imprinted thereon.

PAR. 4. Through the use of these trade names to designate and describe its tooth brushes, respondent represents, directly or by implication, that such brushes were designed by certain physicians, dentists, or dental surgeons named Dr. Strong, Dr. Pasteur, and Dr. Pasteur, Jr., respectively.

PAR. 5. These representations are erroneous and misleading. None of respondent's brushes was designed by any physician, dentist, or dental surgeon named Dr. Strong, Dr. Pasteur, or Dr. Pasteur, Jr. The brushes were in fact designed by a physician named Dr. Harold M. Weinberg, who has for many years been connected with respondent's business.

PAR. 6. The use by respondent of these trade names to designate and describe its brushes has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the identity, origin, and design of respondent's brushes, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such brushes 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 original and amended complaints of the Commission, the answers of respondent thereto, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, report of the first trial examiner upon the evidence (a report by the second trial examiner having been waived), briefs in support of and in opposition to the original complaint (briefs in support of and in opposition to the amended complaint having been waived), oral argument, and a stipulation as to certain facts entered into by the attorney for the Commission and the attorney for respondent; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, New York Merchandise 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 tooth brushes in

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

1. Using the names "Dr. Strong," "Dr. Pasteur," or "Dr. Pasteur, Jr." to designate, describe or refer to respondent's brushes; or otherwise representing, directly or by implication, that such brushes were designed by physicians, dentists, or dental surgeons bearing such names.

2. Representing, through the use of trade names or otherwise, that respondent's brushes were designed by any person other than the person who did in fact design such brushes.

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
WESTINGHOUSE ELECTRIC SUPPLY COMPANY ET AL.¹

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

Docket 4798. Complaint, Aug. 6, 1942—Decision, Sept. 29, 1944

Where an individual, agent in city concerned of a corporation engaged in the interstate purchase and sale of "electrical equipment and supplies" (including electric cable, wire, switches, conduits, fittings, condulets, potheads, cableheads, transformers, insulators, lighting fixtures, lamps and accessories), along with others similarly there engaged, and in competition among themselves and with others, including two certain concerns, except insofar as said competition had been restricted or forestalled as below set forth; instrumental, together with a second similarly engaged agent of said corporation, in effecting purchase and sale of such equipment and supplies;

Following arrangements by the Navy with a shipbuilding company under which latter was to undertake construction of naval vessels, and pursuant to which (1) the Navy agreed to arrange for the advancing of the necessary funds to rehabilitate the facilities at the company's shipyards in said city, including office buildings and shipways, to be expended under the general supervision of the Navy and subject to its approval, and (2) the company contracted with a general contractor for the reconstruction by him of said office buildings and shipways on a cost-plus-a-fixed-fee basis, with the understanding that in securing materials or services he would obtain competitive offers from as many as practicable, but not less than two—or three where specified—reputable firms, and award a contract to the firm quoting the minimum price; bids to be opened by or in the presence of the Supervisor of Shipbuilding of the Navy or his representative, and to be subject to his approval before award of the subcontract—

With intent and effect of deceiving and misleading buyers and prospective buyers into believing, considering and approving bids submitted as genuine and competitive bids of three competing sellers of "electric equipment and supplies," prepared and submitted to them over a period of some fifteen months or more fictitious bids, which he prepared on stationery bearing the letterheads of other firms, and competitors (including the two concerns aforesaid), and procured by him from them, and which, over the purported but false signatures of officials of said concerns, written by him or at his direction, tendered bids quoting higher prices than his own;

With the result that said corporation enjoyed awards of numerous contracts to it by said contractor, his employees, agents and subcontractors, with the approval of officials of said ship building company and representatives of the Navy Supervisor of Shipbuilding, secured through deception as aforesaid; and with the effect of depriving buyers and prospective buyers of electrical equipment and supplies, of the benefit of competition in commerce between and among said sellers thereof, and between them and their competitors:

¹ The instant case is one of a group of eight having to do with the preparation and submission of sham, false, fictitious, fraudulent and non-competitive bids in connection with the Navy's arrangement for the construction of ships by the Cramp Shipbuilding Co. at its shipyards in Philadelphia. For list of these cases, see footnote to the case of the Grater-Bodey Co., et al., Docket 4799, p. 113.

Held, That such acts, practices and methods, under the circumstances set forth, were all to the prejudice of the public; had a dangerous tendency to and did actually restrain and eliminate competition in the sale of said products in commerce; had the tendency and capacity to and did unreasonably restrain such commerce in said products; had a dangerous tendency to create in aforesaid corporation a monopoly in the sale and distribution of said products; and constituted unfair methods of competition and unfair and deceptive acts and practices and commerce.

Mr. Everette MacIntyre and Mr. V. W. Summers for the Commission.
Saul, Ewing, Remick & Harrison, of Philadelphia, Pa., for Westinghouse Electric Supply Co.

Rawle & Henderson, of Philadelphia, Pa., for R. R. Dewees.

COMPLAINT

Pursuant to the provisions of the Federal 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 Westinghouse Electric Supply Co. and R. R. Dewees, named in the caption hereof and more particularly hereinafter described and referred to as respondents, have violated the provisions of Section 5 of the said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint against each of the said parties, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Westinghouse Electric Supply Co., is a corporation, organized and existing under the laws of the State of Delaware with its office and principal place of business located at 150 Varick Street, New York, N. Y. and with a branch or district office located at 1101 Race Street, Philadelphia, Pa.

Respondent, R. R. Dewees, is an individual, who has served as an employee and agent of the respondent, Westinghouse Electric Supply Co., 1101 Race Street, Philadelphia, Pa. during the period covered by the activities involved in the charges of this complaint.

PAR. 2. Charles F. Rohleder, is an individual, engaged in general contracting and construction work, with office and principal place of business located at 2134 Cherry Street, Philadelphia, Pa.

Allen McLaine Ward and J. R. Baldrige, Jr., during the period covered by the activities involved in the charges of this complaint served as employees and agents of said Charles F. Rohleder.

J. P. Rainey, is an individual, engaged in the electrical contracting business and trading as J. P. Rainey & Co., 511 North Broad Street, Philadelphia, Pa. He, during the period covered by the activities involved in the charges in the complaint also served as an employee and agent of Charles F. Rohleder.

Walker Bros., is a corporation, with its office and principal place of business located at Conshohocken, Pa. It is engaged in the purchase, manufacture and sale of "electrical equipment and supplies."

Anthony M. Callanan, is an individual, who during the period covered by the activities involved in the charges of this complaint served as a vice president and agent of said Walker Bros.

Adelphia Electric Co., is a Pennsylvania corporation, with principal place of business located at 125 North 10th Street, Philadelphia, Pa.

Norman T. Leithold, is an individual, who during the period covered by the activities involved in the charges of this complaint served as secretary and agent of said Adelphia Electric Co.

PAR. 3. At all times hereinafter mentioned Charles F. Rohleder, directly and through his agents, Allen McLaine Ward, J. R. Baldrige, Jr., and J. P. Rainey, has been engaged in negotiating with and buying from respondent, Westinghouse Electric Supply Co., J. P. Rainey & Co., and Walker Bros., directly and through their agents, including respondent, R. R. Dewees, J. P. Rainey and Anthony M. Callanan, "electrical equipment and supplies" which were shipped from many points located in States other than the State of Pennsylvania by the sellers or their suppliers to Charles F. Rohleder or his agents at Cramp Shipbuilding Co. shipyard, Richmond and Norris Streets, Philadelphia, Pa.

At all times hereinafter mentioned, J. P. Rainey, doing business as J. P. Rainey & Co., has been engaged in the electrical contracting business and in that capacity, and also as an agent of Charles F. Bohleder, has purchased "electrical equipment and supplies" from respondent, Westinghouse Electric Supply Co., Walker Brothers, and others, and caused such "electrical equipment and supplies" to be shipped from locations in States other than the State of Pennsylvania to him in Philadelphia, Pa.

At all times hereinafter mentioned, respondent, Westinghouse Electric Supply Co., has been engaged in the purchase and sale of "electrical equipment and supplies" and causing the same to be shipped from points of manufacture in various States through and to locations in other States, including Philadelphia, Pa., where such "electrical equipment and supplies" were used by the buyers.

At all times hereinafter mentioned, Walker Brothers, has been engaged in the manufacture, purchase and sale of "electrical equipment and supplies" and causing the same to be shipped from points of manufacture in various States through and to locations in other States, including Philadelphia, Pa., where such electrical supplies and equipment were used by the buyers.

At all times hereinafter mentioned, Adelphia Electric Co., has been engaged in the purchase and sale of "electrical equipment and supplies" and causing the same to be shipped from points of manufacture in various States through and to locations in other States, including Philadelphia, Pa., where such electrical supplies and equipment were used by the buyers.

At all times hereinafter mentioned respondent, R. R. Dewees, and Anthony M. Callanan, as agents of respondent, Westinghouse Electric Supply Co. and Walker Bros., respectively, have been instrumental in effecting purchase and sale of "electrical equipment and supplies" and causing the same to be shipped from points of manufacture in various States through and to locations in other States, including Philadelphia, Pa., where such "electrical equipment and supplies" were used by the buyers.

PAR. 4. Respondent, Westinghouse Electric Supply Co., Walker Bros., Adelphia Electric Co., and others not named herein are engaged in the purchase and sale of "electrical equipment and supplies" in Philadelphia, Pa., have been and are in competition between and among themselves and with one or more purchasers and sellers of electrical supplies in making or

seeking to make sales in commerce between and among the various States of the United States of "electrical equipment and supplies" except in so far as said competition has been hindered, lessened, restricted or forestalled by the acts, things, practices, policies and methods done and carried on as hereinafter set forth.

PAR. 5. The term "electrical equipment and supplies" as used herein includes, but is not limited to, such items as electric cable, electric wire, electric switches, electric conduit, fittings, condulets, potheads, cableheads, transformers, insulators, lighting fixtures, lamps and accessories.

PAR. 6. During 1940, as a part of its work in the Defense Program of the United States of America, the Navy Department arranged with Cramp Shipbuilding Co., whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities at the said shipyard, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon the said Cramp Shipbuilding Co. contracted with Charles F. Rohleder for the latter to reconstruct certain office buildings and shipways on a cost plus a fixed fee basis, with the understanding that the said Rohleder in securing materials and services would obtain competitive offers from as many as practicable, but not less than two (and not less than three where specified) reputable firms in a position to provide the material, equipment and services, as required at a reasonable cost, and to award contract to that firm quoting the minimum price; and with the further understanding that the said offers, proposal or bids were to be opened by or in the presence of the Supervisor of Shipbuilding, U. S. Navy, or his representative, and subject to his approval before award of the sub-contract for materials, equipment and services.

In connection with his aforesaid contract with Cramp Shipbuilding Co., Charles F. Rohleder negotiated with and made awards of contracts for the purpose, directly and through agents, of "electrical equipment and supplies" from J. P. Rainey, respondent, R. R. Dewees, respondent, Westinghouse Electric Supply Co., Walker Bros., Adelpia Electric Co. and others.

PAR. 7. Throughout a period of time beginning on or about the first day of October 1940, and continuing thereafter until subsequent to January 1, 1942, said respondent, R. R. Dewees, in his capacity as an employee and agent of said respondent, Westinghouse Electric Supply Co., engaged in the practice of preparing and submitting sham, false, fictitious, fraudulent and non-competitive bids to buyers and prospective buyers of "electrical equipment and supplies" in "commerce" (as "commerce" is defined in the Federal Trade Commission Act). As part of the aforesaid practice on each of a number of occasions, in response to invitations which he received as an agent of respondent, Westinghouse Electric Supply Co., from buyers and prospective buyers of electrical supplies, for bids and quotations, said respondent proceeded to and did prepare on the stationery bearing the letterhead of respondent, Westinghouse Electric Supply Co., a bid or price quotation and then prepared bids quoting higher and different prices on stationery bearing the letterheads of other firms including Walker Bros.,

Conshohocken, Pa., and Adelpia Electric Co., Philadelphia, Pa., which said respondent, R. R. Dewees, procured from said competitors. Said bids and price quotations as thus prepared and written by respondent, R. R. Dewees, were over the purported, but false, signatures of officials of Walker Bros. and Adelpia Electric Co. but such signatures were in fact written by respondent, R. R. Dewees, or at his direction or by other employees and agents of respondent, Westinghouse Electric Supply Co. In each instance when three bids, one purporting to be the bid of respondent, Westinghouse Electric Supply Co., one the bid of Adelpia Electric Co., and one the bid of Walker Bros., were thus prepared or caused to be prepared by respondent, R. R. Dewees, he submitted or caused the same to be submitted to buyers and prospective buyers of "electrical equipment and supplies" for the purpose and with the result of deceiving and misleading such buyers and prospective buyers into believing, considering and approving such said bids as genuine and competitive bids of three competing sellers of "electrical equipment and supplies."

Respondent, Westinghouse Electric Supply Co., as a result of the submission of sham, false, fictitious, fraudulent and noncompetitive bids by its agent, respondent, R. R. Dewees, as aforesaid, enjoyed awards of numerous contracts to it by said Charles F. Rohleder, his employees, agents and subcontractors, with the approval of officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, U. S. Navy, secured through deception as aforesaid.

PAR. 8. The doing and performing of the acts and things and the use of the method set forth in the immediately preceding paragraph hereof tend to have and have had the effect of depriving buyers and prospective buyers of "electrical equipment and supplies" of the benefit of competition in commerce between and among sellers of electrical supplies and equipment and between them and their competitors.

PAR. 9. The acts, practices and methods, as hereinbefore alleged, are all to the prejudice of the public; have a dangerous tendency and have actually frustrated, hindered, suppressed, lessened, restrained and eliminated competition in the sale of "electrical equipment and supplies" in commerce within the intent and meaning of the Federal Trade Commission Act; have the tendency and capacity to restrain unreasonably and have restrained unreasonably such commerce in such products; have a dangerous tendency to create in respondent, Westinghouse Electric Supply Co., a monopoly in the sale and distribution of such 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 August 6, 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 and unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act. After the issuance

of the said complaint and the filing of the respondents' answers, the Commission, by order entered herein, granted the requests of respondents for permission to withdraw their answers and to substitute therefor answers admitting all of the material allegations of fact set forth in the said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answers were duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answers; and the commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (a) Respondent, Westinghouse Electric Supply Co., is a corporation, organized and existing under the laws of the State of Delaware, with its office and principal place of business located at 150 Varick Street, New York, N. Y., and with a branch or district office located at 1101 Race Street, Philadelphia, Pa.

(b) Respondent, R. R. Dewees, was an individual, who served as an employee and agent of respondent, Westinghouse Electric Supply Co., 1101 Race Street, Philadelphia, Pa., during the period covered by the activities hereinafter specified. He died on August 10, 1944.

PAR. 2. (a) Charles F. Rohleder, is an individual, engaged in general contracting and construction work, with his office and principal place of business located at 2134 Cherry Street, Philadelphia, Pa.

(b) Allen McLaine Ward and J. R. Baldrige, Jr., during the period covered by the activities hereinafter specified, served as employees and agents of said Charles F. Rohleder.

(c) J. P. Rainey, is an individual, engaged in the electrical contracting business trading as J. P. Rainey & Co., 511 North Broad Street, Philadelphia, Pa. During the period covered by the activities hereinafter specified he also served as an employee and agent of Charles F. Rohleder.

(d) Walker Bros., is a corporation, with its office and principal place of business located at Conshohocken, Pa. It is engaged in the purchase, manufacture, and sale of "electrical equipment and supplies."

(e) Anthony M. Callanan, is an individual, who during the period covered by the activities hereinafter specified, served as vice president and agent of said Walker Bros.

(f) Adelpia Electric Co., is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business located at 125 North 10th Street, Philadelphia, Pa.

(g) Norman T. Leithold, is an individual, who during the period covered by the activities hereinafter specified, served as secretary and agent of said Adelpia Electric Co.

PAR. 3. (a) At all times hereinafter mentioned Charles F. Rohleder, directly and through his agents, Allen McLaine Ward, J. R. Baldrige, Jr., and J. P. Rainey, has been engaged in negotiating with and buying from respondent, Westinghouse Electric Supply Co., J. P. Rainey & Co.,

and Walker Bros., directly and through their agents, including J. P. Rainey, Anthony M. Callanan, and respondent, R. R. Dewees, "electrical equipment and supplies" which were shipped by the sellers or their suppliers from many points located in States other than the State of Pennsylvania to Charles F. Rohleder or his agents at the Cramp Shipbuilding Co. shipyard, Richmond and Norris Streets, Philadelphia, Pa.

(b) At all times hereinafter mentioned J. P. Rainey, doing business as J. P. Rainey & Co., has been engaged in the electrical contracting business, and in that capacity and also as an agent of Charles F. Rohleder has purchased "electrical equipment and supplies" from respondent Westinghouse Electric Supply Co., Walker Brothers, and others, and has caused such "electrical equipment and supplies" to be shipped from locations in States other than the State of Pennsylvania to him in Philadelphia, Pa.

(c) At all times hereinafter mentioned respondent, Westinghouse Electric Supply Co., has been engaged in the purchase and sale of "electrical equipment and supplies" and has caused the same to be shipped from points of manufacture in various States to locations in other States, including Philadelphia, Pa., where such "electrical equipment and supplies" were used by the buyers.

(d) At all times hereinafter mentioned Walker Bros. has been engaged in the manufacture, purchase, and sale of "electrical equipment and supplies" and has caused the same to be shipped from points of manufacture in various States to locations in other States, including Philadelphia, Pa., where such electrical supplies and equipment were used by the buyers.

(e) At all times hereinafter mentioned Adelphia Electric Co. has been engaged in the purchase and sale of "electrical equipment and supplies" and has caused the same to be shipped from points of manufacture in various States to locations in other States, including Philadelphia, Pa., where such electrical supplies and equipment were used by the buyers.

(f) At all times hereinafter mentioned respondent, R. R. Dewees, and Anthony M. Callanan, as agents of respondent, Westinghouse Electric Supply Co., and Walker Bros., respectively, have been instrumental in effecting the purchase and sale of "electrical equipment and supplies" and causing the same to be shipped from points of manufacture in various States to locations in other States, including Philadelphia, Pa., where such "electrical equipment and supplies" were used by the buyers.

PAR. 4. Respondent, Westinghouse Electric Supply Co., Walker Bros., Adelphia Electric Co., and others not named herein, are engaged in the purchase and sale of "electrical equipment and supplies" in Philadelphia, Pennsylvania, and have been, and are, in competition between and among themselves and with one or more purchasers and sellers of electrical supplies in making or seeking to make sales of "electrical equipment and supplies" in commerce between and among the various States of the United States, except insofar as said competition has been hindered, lessened, restricted, or forestalled by the acts and things done and the practices, policies, and methods followed, as hereinafter set forth.

PAR. 5. The term "electrical equipment and supplies" as used herein includes, but is not limited to, such items as electric cable, electric wire, electric switches, electric conduit, fittings, condulets, potheads, cableheads, transformers, insulators, lighting fixtures, lamps, and accessories.

PAR. 6. During 1940, as a part of its work in the defense program of the United States of America, the Navy Department arranged with the Cramp Shipbuilding Co., whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels, and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities at the said shipyard, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon, the said Cramp Shipbuilding Co. contracted with Charles F. Rohleder for the latter to reconstruct certain office buildings and shipways on a cost-plus-a-fixed-fee basis, with the understanding that the said Rohleder, in securing materials and services, would obtain competitive offers from as many as practicable, but not less than two (and not less than three where specified) reputable firms in a position to provide the material, equipment, and services as required, at a reasonable cost, and to award contract to that firm quoting the minimum price; and with the further understanding that the said offers, proposals, or bids were to be opened by, or in the presence of, the Supervisor of Shipbuilding, United States Navy, or his representatives, and were to be subject to his approval before award of the subcontract for materials, equipment, and services. In connection with his said contract with the Cramp Shipbuilding Co., Charles F. Rohleder negotiated with and made awards of contracts for the purchase, directly and through agents, of "electrical equipment and supplies" from respondent, R. R. Dewees, respondent, Westinghouse Electric Supply Co., J. P. Rainey, Walker Bros., Adelphia Electric Co., and others.

PAR. 7. Throughout a period of time beginning on or about the first day of October 1940 and continuing thereafter until subsequent to January 1, 1942, respondent, R. R. Dewees, in his capacity as an employee and agent of respondent, Westinghouse Electric Supply Co., engaged in the practice of preparing and submitting sham, false, fictitious, fraudulent, and non-competitive bids to buyers and prospective buyers of "electrical equipment and supplies" in commerce, as "commerce" is defined in the Federal Trade Commission Act. On each of a number of occasions, in response to invitations for bids and quotations which he received as an agent of respondent, Westinghouse Electric Supply Co., from buyers and prospective buyers of electrical supplies, said respondent, as a part of the aforesaid practice, proceeded to, and did, prepare a bid or price quotation on stationery bearing the letterhead of respondent, Westinghouse Electric Supply Co., and then prepared bids quoting higher and different prices on stationery bearing the letterheads of other firms, including Walker Bros., Conshohocken, Pa., and Adelphia Electric Co., Philadelphia, Pa., which letterheads respondent, R. R. Dewees, procured from said competitors. The bids and price quotations as thus prepared and written by respondent, R. R. Dewees, were over the purported, but false, signatures of officials of Walker Bros. and Adelphia Electric Co., but such signatures were in fact written by respondent, R. R. Dewees, or at his direction, or by other employees and agents of respondent, Westinghouse Electric Supply Co. In each instance when three bids, one purporting to be the bid of respondent, Westinghouse Electric Supply Co., one the bid of Adelphia Electric Co.,

and one the bid of Walker Bros., were thus prepared or caused to be prepared by respondent, R. R. Dewees, he submitted or caused the same to be submitted to buyers and prospective buyers of "electrical equipment and supplies" for the purpose and with the result of deceiving and misleading such buyers and prospective buyers into believing, considering, and approving such said bids as genuine and competitive bids of three competing sellers of "electrical equipment and supplies." Respondent, Westinghouse Electric Supply Co., as a result of the submission of sham, false, fictitious, fraudulent, and noncompetitive bids by its agent, respondent, R. R. Dewees, as aforesaid, enjoyed awards of numerous contracts to it by said Charles F. Rohleder, his employees, agents, and subcontractors, with the approval of the officials of the Cramp Shipbuilding Co. and representatives of the Supervisor of Shipbuilding, United States Navy, secured through deception as aforesaid.

PAR. 8. The doing and performing of the acts and things and the use of the methods set forth above, tend to have, and have had, the effect of depriving buyers and prospective buyers of "electrical equipment and supplies" of the benefit of competition in commerce between and among sellers of electrical supplies and equipment and between them and their competitors.

CONCLUSION

The acts, practices, and methods, as hereinbefore found, are all to the prejudice of the public; have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the sale of "electrical equipment and supplies" in commerce within the intent and meaning of the Federal Trade Commission Act; have the tendency and capacity to restrain unreasonably, and have restrained unreasonably, such commerce in such products; have a dangerous tendency to create in respondent, Westinghouse Electric Supply Co., a monopoly in the sale and distribution of such 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 substitute answers of the respondents, in which answers respondents, Westinghouse Electric Supply Co. and R. R. Dewees, admitted all of the material allegations set forth in said complaint and waived 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 said respondents have violated the provisions of Section 5 of the Federal Trade Commission Act.

It is ordered, That respondent, Westinghouse Electric Supply Co., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of electric cable, electric

wire, electric switches, conduit, fittings, condulets, potheads, cableheads, transformers, insulators, lighting fixtures, lamps, and accessories, or other electrical equipment or supplies, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from doing or performing any of the following acts, things, or practices:

1. Conveying or assisting in conveying to buyers or prospective buyers, or to any official or awarding authority of any Federal agency, or to any one contracting with such agency, or to any one acting for or on behalf of such agency or for or on behalf of any contractor with such agency, any representation that any two or more apparent sellers are rival bidders or competitors, when in reality they are acting collusively in preparing and submitting bids.

2. Aiding, assisting, or cooperating in any manner in the submission of any sham, fictitious, fraudulent, or noncompetitive bids or price quotations to any buyer or prospective buyer, or to any Federal agency or any one acting for or on its behalf, or for or on behalf of any party purchasing material or equipment in fulfillment of a contract with such agency.

3. Interfering with or assisting in interfering with the procurement or consideration of genuinely competitive bids or price quotations by any Federal agency or any official or awarding authority of such agency, or by any buyer or prospective buyer.

4. Promoting, establishing, carrying out, or continuing any act or practice for the purpose or with the effect of maintaining or presenting a false appearance of competition between or among sellers in the submission of price quotations or bids to buyers or prospective buyers.

5. Arranging or attempting to arrange for the filing of any bid in the name of one ostensibly competing bidder when the prices and terms are in fact determined by some other bidder or when in fact the bid is not a bona fide bid.

Provided, however, That nothing contained in this order shall be deemed to prohibit any lawful action under any lawful license agreement under any patent.

It is further ordered, That, for the reason appearing in subparagraph (b) of paragraph 1 of the findings as to the facts herein, the complaint herein be, and the same hereby is, dismissed as to respondent, R. R. Dewees.

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

IN THE MATTER OF
ROBERT M. CALVERT AND RALPH D. WESTER

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

Docket 5019. Complaint, July 29, 1943—Decision, Sept. 29, 1944

Where two individuals engaged in interstate sale and distribution of incense, powders, oils, stones, etc., claimed by them to possess magical and supernatural powers, including among others, "*Lucky Mo-Jo Perfume*—\$1.00. Many say it brings luck and health in love affairs," "*Genuine Magnetic Loadstone*—\$1.00. Carry it in your pocket or purse always," "*Black Cat Ring*—\$1.50. Worn by many to ward off evil and to bring Success," "*Black Magic Voodooos Bring Back Powders*"; through statements in circular letters and other advertising material, including cards and price lists—

Falsely represented through their various statements and designations, including use of such words as "lucky" and "magic," directly or by implication, that the articles sold by them possessed mystic, magical, and supernatural powers, and that use thereof would bring to the user good luck, health, success, wealth, prosperity, happiness, and love, and enable him to solve any problem with which he might be confronted;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature and efficacy of their products, and thereby 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 constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Randolph W. Branch for the Commission.

Clarke, Longmire & Lane, 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 Robert M. Calvert and Ralph D. Wester, 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, Robert M. Calvert and Ralph D. Wester, are individuals, trading under the names West African Specialty Co. and African Specialty Co., with an office and principal place of business at 309 East 47th Street, Chicago, Ill.

PAR. 2. Respondents are now, and have been for more than two years last past, engaged in the business of selling powders, oils, incense, books and other goods. Respondents cause the said articles to be transported

from their aforesaid place of business in the State of Illinois to purchasers thereof in various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said articles in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 3. In the course and conduct of their said business and for the purpose of inducing the purchase of their wares, respondents have made and caused to be made and used, by means of advertising circulars, cards and price lists, representations and claims concerning and designations of their said wares.

PAR. 4. Among and typical of certain of said claims and representations so made are the following:

Yes, you can have prosperity, health and happiness—no matter what your problems may be, my service successfully takes care of them in the most reliable way—I guarantee to help you. —Send for this true method right now and secure yourself abundance of money; perfect love; health; happiness and whatever else your heart may desire. The price is \$5.00 complete. —We will gladly provide our special number service Free to those who desire it.

No matter what your troubles may be, we can help you.

Through the use of the foregoing statements and others similar thereto not specifically set out herein, respondents have represented, directly and by implication, that anyone who pays them five dollars will be enabled to attain wealth, love, health and happiness, and a solution to any other problem not solved by the attainment of the foregoing, and will receive a special service which will enable him to participate successfully in the gaming plans or schemes known as "policy" or "the numbers."

The said representations are false and misleading. In truth and in fact, the attainment of wealth depends upon many personal qualities such as industry, frugality, honesty and foresightedness, the mental talents with which the individual was endowed and the extent to which they have been cultivated by education, experience and environment, and upon various economic factors.

Health, wealth, love and happiness will not be attained by those who obtain from respondents the articles sent to those who accept respondents' offer, and who use them as directed. The articles, and their use, are as follows:

A vial, to be sewn in a black cloth and carried in the pocket; a packet of incense to be burned in the home after dark, and a packet of powder to be sprinkled where the purchaser's enemies will walk over it. The so-called "Number Service" consists of a pseudo-scientific brochure entitled "The Secret of Numbers Revealed" by one Godfrey Spencer, and elementary mathematics reveals the unlikelihood of gambling successfully in a scheme when the odds are 999 to 1 and the reward to the winner 600 to 1, even when the gambler wears an amulet or carries a rabbit's foot.

PAR. 5. Among and typical of the claims and representations and designations so made and used are the following:

The light of a candle. A symbol of faith to accomplish your desires. Learn how to burn candles—if burned and anointed correctly they will bring luck, love and happiness.

- Lucky Mo-Jo Perfume. Many say it brings luck and helps in love affairs.
 Van-Van Floor Wash . . . bring friends and money into your house.
 Genuine Magnetic Loadstone . . . \$1.00. Carry it—always.
 Special Herb Bag with Van-Van Oil—\$1.00. Directions with this bag for whatever purpose you wish.
- Black Cat Ring—\$1.50. Worn by many to ward off evil and to bring success.
 Race Horse Lucky Symbol Ring.
 Alleged Lucky African Lion Symbol Ring.
 Black Magic Voodos Bring Back Powers.
 Black Magic Stay Home Powers.
 Black Magic Prosperity Powers.
 Black Magic Drive Away Powers.
 Black Magic Controlling Powers.
 Black Magic Jinx Breaking Oil.
 Black Magic True Dream Incense.
 Black Magic True Dream Candles.
 Black Magic Lucky Powdered Incense.
 Lucky Mo-Jo 7-11 Holy Type Oil.
 Salep Root Hand.
 Mo-Jo Magnetic Sand.
 Plant of Peace.
 John the Conqueror Roots.
 High John the Conqueror Perfume.
 The Cuban B. O. Dream Book.
 The Three Witches Dream Book.
 The Book of Luck.
 The Book of Mental Influences.
 The Book of How to Remember Our Past Lives.
 The Book of How to Get Success and Happiness.

Through the use of the foregoing statements, claims, and designations, and others similar thereto not specifically set forth herein, respondents have represented, directly and by implication, that the burning of properly anointed candles, and the use of Lucky Mo-Jo Perfume will bring about good fortune and success in affairs of the heart; that washing the floor of a dwelling with Van-Van Floor Wash will cause friends and money to come in; that through the proper use of the Special Herb Bag with Van-Van Oil, the user can accomplish any desired purpose; that the "Black Cat," "Race Horse" and "African Lion" rings will bring good fortune to the wearer; that some benefits are derived from carrying a loadstone; that by the use of various "Black Magic" powders, candles and incense, errant loved ones will be brought back home, and potential errants caused to remain there, prosperity will be attained; evil or unwelcome people or influences kept away, control gained over others or events, "Jinxes" broken, dreams that truly show the future come to the sleeping, and good fortune become a willing slave; that "Lucky Mojo 7-11 Holy Type Oil" is some sort of semi-sanctified oil that will, in some fashion, be of help or benefit to the user, as will Salep Root Hand, Magnetic Sand, Plant of Peace, John The Conqueror Roots, and High John the Conqueror Perfume; that by the use of the "Cuban B.O." and "Three Witches" dream books the true significance of a dream can be ascertained; that by the use of the "Book of Luck" the

reader may become fortunate, and by following the precepts of "The Book of Mental Influences" will be enabled to influence the minds of others; that through the teachings of "How to Remember Our Past Lives" the reader will be able to remember events that occurred in previous incarnations; and that the reader of "How to Get Success and Happiness" will hold the key to those highly desirable things.

PAR. 6. The aforesaid representations, claims and designations are false and misleading. In truth and in fact, many of them are based upon superstitions and kindred beliefs in the magic properties of physical things which are wholly without foundation and are relics of earlier and less enlightened times. None of the various articles or books referred to herein will accomplish any of the results claimed for them by respondents.

PAR. 7. The use of the foregoing false and misleading statements, representations and designations, has had the capacity to, and has, misled and deceived many persons into the erroneous and mistaken belief that they were true and into the purchase of substantial quantities of respondents' wares by reason thereof.

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 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 29, 1943, issued and subsequently served its complaint in this proceeding upon the respondents, Robert M. Calvert and Ralph D. Wester, individuals, charging them with the use of 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 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 briefs in support and in opposition to the complaint (oral argument not having been requested); and the Commission, having only considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. For some two years immediately preceding January, 1944, the respondents, Robert M. Calvert and Ralph D. Wester, were engaged in business together under the trade names African Specialty Co. and West African Specialty Co., with their office and principal place of business located at 4656 South Indiana Avenue, Chicago, Ill. Their busi-

ness was the sale and distribution of various articles claimed by them to possess magical and supernatural powers, including incense, powders, oils, stones, etc. In January, 1944, respondent, Wester, severed his connection with the business, and since that time it has been conducted by respondent, Calvert, as his own individual enterprise.

PAR. 2. Respondents cause or 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 or have maintained a course of trade in their products in commerce among and between the various States of the United States.

PAR. 3. In promoting the sale of their products, respondents have mailed circular letters to many members of the public located throughout the United States. The letter read as follows:

YES, YOU CAN HAVE PROSPERITY, HEALTH AND HAPPINESS

Dear Friend:

No matter what your problems may be, my Service Successfully takes care of them in the most reliable way. When you send your first payment, also send along a letter giving the full details of the problems you desire to overcome and I will instruct you just what steps to take and if you will follow my instructions, I GUARANTEE TO HELP YOU!

Your problem may be lack of money. It may be concerned with love. These are the two greatest problems in life today. With money we can buy everything we need, except love, and if we have both money and love there is nothing to prevent us being perfectly happy in this world.

Money, love and happiness and all the many things which grow out of these three great desires are yours to command, for you HAVE right now the power to make them come to you. These things are YOURS by right.

Thousands of men and women, ill or unhappy last year at this time, have solved their problems, and are now enjoying, PEACE, POWER and PLENTY.

Happiness in life is worth all the millions in gold, but it cannot be obtained until you use the right method to get it.

Don't let this opportunity pass. Don't stand by and see others enjoy the things which you, too, should have.

Send for this true method right now and secure for yourself abundance of money; perfect love; health, happiness and whatever else your heart may desire. The price is \$5.00 complete. For those who are unable to send their first cash payment of \$2.00, if they desire our service and want to get started at once, send us 25 cents to pay C.O.D. fee and postage and we will ship C.O.D. \$2.00, then you can pay balance of \$3.00 in 30 days. After you have paid the balance of \$3.00 we will gladly provide our special number service Free to those who desire it. All we ask is that you keep it strictly confidential and send us whatever you see fit to help keep up the expenses of the services.

To those who remitted to respondents the required amount of money, respondents sent a small vial containing a powdered substance, a package of incense, and a package of powder, together with a book entitled "The Secret of Numbers." Respondents' directions for the use of the first three articles were as follows:

Sew Vial in a Black cloth. Carry it in your pocket. Burn the Incense in your home after dark. Sprinkle powder where your enemies will walk over it.

Respondents have also distributed among prospective purchasers located throughout the United States other advertising material, including cards and price lists. Among the products listed in such material and the representations concerning such products were the following:

LUCKY MO-JO PERFUME—\$1.00. Many say it brings Luck and helps in love affairs.

VAN-VAN FLOOR WASH—\$1.00. Said by many to bring friends and money into your home.

GENUINE MAGNETIC LOADSTONE—\$1.00. Carry it in your pocket or purse always.

SPECIAL HERB BAG with VAN-VAN OIL—\$1.00. Directions with this Bag for whatever purpose you wish.

BLACK CAT RING—\$1.50. Worn by many to ward off evil and to bring Success.

BLACK MAGIC VOODOS BRING BACK POWDERS

BLACK MAGIC STAY HOME POWDERS

BLACK MAGIC PROSPERITY POWDERS

BLACK MAGIC DRIVE AWAY POWDERS

BLACK MAGIC CONTROLLING POWDERS

BLACK MAGIC JINX BREAKING OILS

BLACK MAGIC TRUE DREAM INCENSE

BLACK MAGIC TRUE DREAM CANDLES

BLACK MAGIC LUCKY POWDERED INCENSE

LUCKY MO-JO 7-11 HOLY TYPE OIL

LODESTONE POWDER

MO-JO MAGNETIC SAND

LODESTONE POWDER and MAGNETIC SAND in Bag

SALEP ROOT HAND

PLANT OF PEACE

HIGH JOHN THE CONQUEROR PERFUME

RACE HORSE LUCKY SYMBOL RING

ALLEGED LUCKY AFRICAN LION SYMBOL RING

AFRICAN TIGER EYE

WHITE LODESTONE

JOHN THE CONQUEROR ROOTS

PAR. 4. Through the use of these representations, including the use of such words as "lucky" and "magic" to designate their products, respondents have represented, directly or by implication, that the articles sold by them possess mystic, magical, and supernatural powers, and that the use of such articles will bring to the user good luck, health, success, wealth, prosperity, happiness, and love, and will enable the user to solve any problem with which he may be confronted.

PAR. 5. These representations are false and fraudulent in their entirety. None of respondents' products possesses any mystic, magical, or supernatural power, nor will any of such products bring to the user good luck, health, success, wealth, prosperity, happiness, or love, nor enable the user to solve any problem with which he may be confronted.

PAR. 6. The use by respondents of these false and fraudulent representations has had and has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature and

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efficacy 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 respondents, 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 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, Robert M. Calvert and Ralph D. Wester, individually, and trading as African Specialty Co. and West African Specialty Co., or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' incense, powders, oils, stones, or any other article or substance, do forthwith cease and desist from:

1. Representing, directly or by implication, that any of respondents' products possesses any mystic, magical, or supernatural power.
2. Representing, directly or by implication, that any of respondents' products will bring to the user good luck, health, success, wealth, prosperity, happiness, or love.
3. Representing, directly or by implication, that any of respondents' products will enable the user to solve any problem with which he may be confronted.

4. Using the word "lucky" or "magic," or any other word of similar import, to designate, describe, or refer to any of respondents' products.

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

VERA P. WILLIAMS, DOING BUSINESS AS THE
C. I. TOGSTAD COMPANY: AND L. O. WILLIAMS

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

Docket 5080. Complaint, Nov. 12, 1943—Decision, Sept. 29, 1944

Where an individual engaged in the manufacture and interstate sale and distribution of a product for cleaning garments and other fabrics, designated "Dip-Clean," and her agent and general manager; through advertisements in circulars and periodicals and in other ways—

- (a) Represented that said preparation completely took the place of and was better than soap, that it was not necessary to rinse articles that had been dipped in a solution thereof, that there was nothing in said "Dip-Clean" that would harm the most delicate fabrics, and that it would remove soiled spots and stains from garments and fabrics;

When in fact it was not an efficient substitute for soap in washing clothes, failure to rinse Dip-Clean solution out of garments or fabrics might cause damage to them, said solution would cause some dyes to run and color to fade, a strong solution was damaging to wool and silk, and dipping garments or fabrics in a solution thereof would not remove all spots and stains; and

- (b) Falsely represented that said "Dip-Clean" had no competition from other products for the same or similar purposes, through such statements as "Test this utterly new and different product yourself. Handle an item with absolutely no competition,"

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said representations were true and into purchase of substantial quantities of said product by reason thereof:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Joseph Callaway for the Commission.

McClure & Shenk, of Kokomo, Ind., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe, that Vera P. Williams, trading and doing business as The C. I. Togstad Co., and L. O. Williams, her agent and general manager of said business, 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, Vera P. Williams, is an individual, trading

and doing business as The C. I. Togstad Co., with her place of business at Togstad Building, Kokomo, Ind. L. O. Williams, is an individual, and is agent for the said Vera P. Williams and general manager of said business. His address is also Togstad Building, Kokomo, Ind. Said respondents have acted together and in cooperation with each other in conducting said business and in doing the acts and things hereinafter alleged.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the manufacture, sale and distribution of a certain detergent for cleaning garments and other fabrics now designated as Dip-Clean and formerly designated as Wonder-Kleen.

In the course and conduct of their said business the respondents cause said product, when sold, to be transported from their place of business in the State of Indiana 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 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 their said business and for the purpose of inducing the purchase of their said product in commerce, respondents have made and are now making certain false, deceptive and misleading statements and representations regarding the value and efficacy of their said product by means of printed circulars and advertisements inserted in magazines circulated generally among the purchasing public and in various other ways. Typical representations are as follows:

Just DIP

Things CLEAN

Dip-Clean, amazing new scientific discovery makes soap obsolete.

Cleans by Dipping

Needs no Rinsing

Dip-Clean

Saves Precious Silks, Nylons, Rayons, Woolens, Cottons. Can't harm most delicate fabrics or colors. Removes spots and stains.

Nothing in Dip-Clean which can possibly harm the most delicate garment if left in without rinsing.

Test this utterly new and different product yourself. Handle an item with absolutely no competition.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, the respondents have represented and are now representing, among other things, that the preparation designated as Dip-Clean completely takes the place of soap and is better than soap; that it is not necessary to rinse any articles that have been dipped in a solution of Dip-Clean; that there is nothing in Dip-Clean that will harm the most delicate fabrics or colors; that it will remove soiled spots and stains from garments and fabrics; that Dip-Clean has no competition from other products offered for the same or similar purposes.

PAR. 5. The foregoing representations are false, deceptive and misleading in the following respects: The preparation designated as Dip-Clean will

not take the place of soap nor is it an efficient substitute for soap in washing clothes. Failure to rinse Dip-Clean solution out of garments or fabrics may cause damage to them. Dip-Clean solution will cause some dyes to run and the color to fade. A strong solution is damaging to wool and silk. Dipping garments or fabrics in a solution of Dip-Clean will not remove all spots and stains. Other detergent preparations are sold in competition with Dip-Clean.

PAR. 6. The use by the respondents of the foregoing false, deceptive and misleading statements and representations disseminated as aforesaid in connection with the offering for sale and sale of their said products in commerce among and between the several States and in the District of Columbia, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and into the purchase of substantial quantities of such product in said commerce because of such erroneous and mistaken belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 12, 1943, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and substitute answer; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Vera P. Williams, is an individual, trading and doing business as The C. I. Togstad Co., with her place of business in the Togstad Building, Kokomo, Ind. Respondent, L. O. Williams, is an individual, and is agent for the said Vera P. Williams and general manager of said business. His address is also Togstad Building, Kokomo, Ind. Said respondents have acted together and in cooperation with each other in conducting said business and in doing the acts hereinafter set forth.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the manufacture, sale, and distribution of a certain detergent product for cleaning garments and other fabrics, now designated as "Dip-Clean" and formerly designated as "Wonder-Kleen." In the course and conduct of their business the respondents cause said product, when sold, to be transported from their place of business in the State of Indiana 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 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 and for the purpose of inducing the purchase of their said product in commerce, as herein described, respondents have made, and are now making, certain false, deceptive, and misleading statements and representations regarding the value and efficiency of their said product by means of printed circulars and advertisements inserted in magazines circulated generally among the purchasing public, and in various other ways. Typical of such representations are the following:

Just DIP

Things CLEAN

Dip-Clean, amazing new scientific discovery makes soap obsolete.

Cleans by Dipping

Needs no Rinsing

Dip-Clean

Saves Precious Silks, Nylons, Rayons, Woolens, Cottons. Can't harm most delicate fabrics or colors. Removes spots and stains.

* * * * *

Nothing in Dip-Clean which can possibly harm the most delicate garment if left in without rinsing.

* * * * *

Test this utterly new and different product yourself. Handle an item with absolutely no competition.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, the respondents have represented, and are now representing, among other things, that the preparation designated as "Dip-Clean" completely takes the place of soap and is better than soap; that it is not necessary to rinse any articles that have been dipped in a solution of Dip-Clean; that there is nothing in Dip-Clean that will harm the most delicate fabrics or colors; that it will remove soiled spots and stains from garments and fabrics; and that Dip-Clean has no competition from other products offered for the same or similar purposes.

PAR. 5. The foregoing representations are false, deceptive, and misleading in the following respects: The preparation designated as "Dip-Clean" will not take the place of soap, nor is it an efficient substitute for soap in washing clothes; failure to rinse Dip-Clean solution out of garments or

fabrics may cause damage to them; Dip-Clean solution will cause some dyes to run and the color to fade; a strong solution of Dip-Clean is damaging to wool and silk; dipping garments or fabrics in a solution of Dip-Clean will not remove all spots and stains; and other detergent preparations are sold in competition with Dip-Clean.

PAR. 6. The use of the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their said product, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and into the purchase of substantial quantities of such product in said commerce because of such erroneous and mistaken belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondents, in which answer respondents admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts, 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, Vera P. Williams, an individual, trading as The C. I. Togstad Co., or under any other name, and L. O. Williams, individually, or as general manager of Vera P. Williams, trading as The C. I. Togstad Co., or under any other name, jointly or severally, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of the product "Dip-Clean," or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That said product will take the place of soap or that it is an efficient substitute for soap.
2. That it is unnecessary to rinse articles which have been dipped in a solution containing said product, without disclosing that failure to do so may result in damage to such articles.
3. That said product will not cause colors to run or fade.
4. That said product will not harm fabrics, without disclosing that a strong solution of said product may damage silk or wool.

Order

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5. That said product will remove soiled spots and stains from garments and fabrics, unless such representation is accurately qualified.

6. That sellers of said product have no competition from products offered for the same or similar purposes by others.

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

FRED GREENBERG AND ROSE GREENBERG, TRADING AS
NATIONAL MERCHANDISING COMPANY, AND MAX H.
GREEN

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

Docket 4986. Complaint, Mar. 29, 1943—Decision, Oct. 2, 1944

Where two individuals engaged in the competitive interstate sale and distribution of various articles of merchandise, including jackets, fishing tackle, silverware, radios, rifles, wallets and pen and pencil sets—

Furnished devices and plans of merchandising involving the operation of games of chance, gift enterprises or lottery schemes, through distributing to members of the public sales literature and a 50 disk push card for use in the sale of the merchandise under a plan, as there explained, by which the amount paid for a chance was determined by the number revealed by punching the disk over the feminine name selected from those displayed on the card, the person selecting the name corresponding to that under the card's master seal received as a prize his choice of certain articles, including fishing tackle, a set of silverware, a rifle, a radio and a clock, and persons pushing numbers 20, 30, 40 and the last disk on the card each received a pair of small copper drinking cups, others receiving nothing for their money; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries in the sale of their merchandise, in accordance with aforesaid plans under which the amounts paid by persons, and whether they would receive an article or nothing for their money were determined wholly by luck or chance, contrary to an established public policy of the United States Government and in competition with those who do not use any such sales plan;

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 said merchandise in preference to that of aforesaid competitors, whereby substantial trade was diverted unfairly from said competitors to them:

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

Before *Mr. J. Earl Cox*, trial examiner.

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Fred Greenberg and Rose Greenberg, individuals, trading as National Merchandising Co., and Max H. Greenberg, 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, Fred Greenberg and Rose Greenberg, are individuals, trading under the name of National Merchandising Co., and respondent, Max H. Greenberg, is an individual. All respondents have their office and principal place of business located at 326 Erie Building in the city of Cleveland, Ohio. All of said respondents act together and in cooperation with each other in doing the acts and things herein alleged. Respondents are now and have been for more than one year last past engaged in the sale and distribution of jackets, fishing tackle, silverware, radios, rifles, wallets, pen and pencil sets, sporting goods and other merchandise, and they have caused said merchandise when sold to be transported from their place of business in Cleveland, Ohio, to purchasers thereof at their respective points of location in the various States of the United States other than Ohio and in the District of Columbia. There is now, and has been for several years last past, a course of trade by respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

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

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents, in soliciting the sale of and in selling and distributing their merchandise, furnish and have furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes, when said merchandise is sold and distributed to the ultimate consumers thereof. The method or sales plan adopted and used by respondents is substantially as follows:

Respondents distribute and have distributed to operators and the purchasing public certain literature and instructions, including among other things, push cards, order blanks, illustrations of their said merchandise and circulars explaining respondents' plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of respondents' push cards bears 60 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 60 partly perforated discs, on the face of each of which is printed the word "push." Each of said discs is set over one of the aforesaid feminine names. Concealed within each disc is a number which is disclosed only when the disc is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal receives his choice of fishing tackle, silverware, a rifle or a radio. The push card bears the following legend or instructions:

Complaint

[SEAL]
 EXTRA PRIZES
 Nos. 20, 30, 40
 AND LAST SALE
 Each Receive
 A Pair (2) of
 Solid Copper
 "NIP CUPS"

Two Items Given
 Seller and party selecting girl's name
 under seal each receive choice of
 FISHING TACKLE
 Bait Casting—Fly Casting
 or Salt Water Fishing
 RADIO
 Portable Model
 Wilson GOLF BALLS
 A Dozen Hol-Hi Brand

CHIME CLOCK
 Chimes Every Hour and Half Hour
 REPEATING RIFLE
 8 Shot—Clip Type—Bolt Action

34 Pc. SILVERWARE SET
 Knives have hollow handles in
 new "Viande" style

As Listed on Back of this Card.

Nos. 11 to 29 pay
 what you draw.
 Nos. over 29 pay
 only 29¢.

Sales of respondents' merchandise by means of said push cards are made in accordance with the above-described legends or instructions. Said prizes of premiums are allotted to the customers or purchasers in accordance with the above-described legends or instructions. Whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and the amount to be paid for any merchandise received, are thus determined wholly by lot or chance.

Respondents furnish and have furnished various other push cards accompanied by order blanks, instructions and other printed matter for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise or lottery scheme. The sales plan or method involved in the sale of all of said merchandise by means of said other push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondents furnish, and have furnished, the said push cards use the same in purchasing, selling and distributing respondents' merchandise in accordance with the aforesaid sales plan. Respondents thus supply to, and place in the hands of, others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner

above alleged, involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms and corporations who sell or distribute merchandise in competition with the respondents, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their merchandise and the element of chance involved therein, and thereby are induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said method by respondents, because of said game of chance, has a tendency and capacity to unfairly divert substantial trade in commerce between and among the various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or an equivalent method.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 29, 1943, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce and unfair acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' answers, 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 answers 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. Respondents, Fred Greenberg and Rose Greenberg, are individuals, trading under the name National Merchandising Co., with

their office and principal place of business located at 326 Erie Building, Cleveland, Ohio. They are now and for a number of years last past have been engaged in the sale and distribution of various articles of merchandise, including, among others, jackets, fishing tackle, silverware, radios, rifles, wallets, and pen and pencil sets.

Respondent, Max H. Green, (referred to in the complaint as Max H. Greenberg) is an individual whose mailing address is 5869 Forbes Street, Pittsburgh, Pa.

The Commission having concluded that the evidence is sufficient to show that respondent, Max H. Green, participated in the acts and practices hereinafter described, the term "respondents" as used hereinafter will include only respondents Fred Greenberg and Rose Greenberg unless the contrary is indicated.

PAR. 2. Respondents cause and have caused their merchandise, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located in various other States of the United States. Respondents maintain and have maintained a course of trade in their merchandise in commerce among and between the various States of the United States.

PAR. 3. Respondents are and have been in substantial competition with other individuals and with corporations and partnerships engaged in the sale and distribution of similar merchandise in commerce among and between the various States of the United States.

PAR. 4. In the sale and distribution of some of their merchandise, respondents have furnished to others certain devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes when such merchandise was sold and distributed to the ultimate consumers thereof. The sales plan or method adopted and used by respondents was substantially as follows:

Respondents distributed to members of the public certain sales literature and instructions, together with a device commonly known as a push card. The push card bore fifty feminine names, with ruled columns in which could be written the names of the customers selecting the various names. The card had fifty partially perforated discs, on each of which was printed the word "Push," each of such discs being placed above one of the feminine names. Concealed within each disc was a number, which was disclosed only when the disc was pushed or separated from the card. The amount paid by each person pushing the card was determined by the number concealed under the particular disc pushed. For example, one pushing a disc revealing the number eleven would pay eleven cents, while one pushing a disc revealing the number twenty-nine would pay twenty-nine cents. Those pushing numbers higher than twenty-nine paid only twenty-nine cents. The card also had a large master seal under which was concealed a feminine name corresponding to one of those appearing on the face of the card. The person who happened to select the name corresponding to that under the master seal received as a prize his choice of certain articles of merchandise, including fishing tackle, a set of silverware, a rifle, a radio, and a clock. The other persons playing the card received nothing, except that those pushing numbers twenty, thirty, forty, and the last disc on the card each received a pair of small copper drinking cups. The card bore the following legends and instructions:

Findings

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(Seal)
Do not
remove seal
until entire
card is
sold

EXTRA PRIZES
Nos. 20, 30, 40
AND LAST SALE
Each Receive
A Pair (2) Of
Solid Copper
"NIP CUPS"

TWO ITEMS GIVEN
Seller And Party Selecting Girl's Name
Under Seal Each Receive Choice Of

FISHING TACKLE
Bait Casting—Fly Casting
Or Salt Water Fishing

RADIO
Portable Model

Wilson GOLF BALLS
A Dozen Hol-Hi Brand

CHIME CLOCK
Chimes Every Hour And Half Hour

REPEATING RIFLE
8 Shot—Clip Type—Bolt Action

34 PC. SILVERWARE SET
Knives Have Hollow Handles In
New "Viande" Style

As Listed On Back Of This Card

Nos. 11 to 29 Pay
What You Draw.
Nos. Over 29
Pay Only 29¢.

Order by Item Number
and description

Sales of respondents' merchandise were made to the public in accordance with these instructions. The amounts paid by persons pushing the card and whether such persons would receive an article of merchandise or nothing for the amount paid were thus determined wholly by lot or chance.

PAR. 5. Respondents thus supplied to and placed in the hands of others the means of conducting lotteries in the sale of their merchandise. The use by respondents of this sales plan or method in the sale of their merchandise and the sale of the merchandise to the public through the use and with the aid of such sales plan or method is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 6. Among the competitors of respondents referred to in paragraph 3 hereof are those who do not use in the sale of their merchandise any plan or method involving a lottery or game of chance. Many persons were attracted by the sales plan or method employed by respondents and by the element of chance involved therein, and were thereby induced to buy and sell respondents' merchandise in preference to that offered for sale and sold by those competitors of respondents who do not use such sales plan or method. The use by respondents of such sales plan or method therefore had the tendency and capacity to divert and did divert substantial trade unfairly to respondents from their competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony and other evidence 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 respondents Fred Greenberg and Rose Greenberg have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Fred Greenberg and Rose Greenberg, individually, and trading as National Merchandising 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 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, punchboards, 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 to the public by means of a game of chance, gift enterprise, or lottery scheme.

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

It is further ordered, That the 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 respondent, Max H. Green.

IN THE MATTER OF
ELIZABETH ARDEN, INCORPORATED, ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUB-SECS. (a) AND (e) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936, AND OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3133. Complaint, May 9, 1939, 1—Decision, Oct. 3, 1944

Under the provisions of sub-section (e) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act—which make it unlawful for any person to discriminate in favor of one purchaser against another, etc., of a commodity bought for resale, etc., by contracting to furnish or furnishing, etc., any services or facilities connected with the processing etc., of such commodity upon terms not accorded to all purchasers on proportionally equal terms—the seller is afforded a free election in the first instance as to the services or facilities, if any, he will provide to purchasers of his products; but, having elected to furnish a particular service or facility to a particular purchaser or purchasers, he thereby assumes the obligation of accordng similar service to all competing purchasers to the extent required by the statute, and the furnishing of a service or facility which cannot be proportionalized for the benefit of competing purchasers or, in the alternative, the failure or refusal to proportionalize the terms upon which services or facilities are granted, so as to make it reasonably possible for competing purchasers to avail themselves of such services or facilities if they desire to do so, constitutes a failure to accord such services or facilities upon proportionally equal terms, the proportionalization of the terms contemplated in the phrase concerned necessarily including the proportionalization of the service or facility, as well, and the statute does not permit a seller so to tailor his terms as to favor a particular customer or group of customers and exclude all the rest.

Where two corporations and an individual—owner, respectively, of ninety percent and all of their outstanding capital stock, and active head of both—engaged in the manufacture and interstate sale and distribution of their “prestige” line of cosmetics and toilet preparations—totaling about one thousand different items—to customers selected with a view to maintaining and enhancing such “prestige,” and including some 725 department stores, 25 specialty shops and 2,250 drug stores;

In furnishing so-called “demonstrators”—i.e., retail sales employees, who, trained to that end, by them, were skilled in presenting to the public the use and advantages of their product in the manner desired by them and in keeping with their “prestige” policy, and whose salary or compensation, in whole or in part, they directly or indirectly bore, or contributed to customers on the basis of individual negotiation by them with each, in which connection they (1) had no definite fixed requirement; but (2) sought assurance as to such various matters as maintenance of a “representative” stock of their products, considering the type of the particular store, its location, etc.; prominently located display counters devoted exclusively to their products; the advertising of their products at least once or twice a month, a portion of the cost of which they bore in varying degrees;

¹ Amended and supplemental complaint.

window displays; and the tying-in of their products with fashion shows given by the store; and (3) made their final determination as to whether or not demonstrator services would be furnished, by deciding whether aggregate "cooperation" which they could secure made the transaction a desirable one from their standpoint—

Discriminated as among competing purchasers of their products by furnishing said demonstrators—a material saving and profitable service to the store concerned—upon terms and conditions which were such that only a few of their customers could comply therewith, by which more than ninety percent who could not comply were excluded from any opportunity to secure such services on a proportional basis or any basis whatever, and which failed to accord such services to customers desiring the same and competing in the resale of their products with those favored; not acting in good faith, in so doing, to meet the action of a competitor, but following a policy intended to beat competition and formulated and executed for the broad purpose of promoting their general interests without special reference to specific demonstrator competition in particular accounts, and as an aggressive rather than defensive one:

Held, That such acts and practices, under the circumstances set forth, constituted a violation of sub-section (e) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

In considering the question as to whether or not certain sellers of a "prestige" line of cosmetics and toilet preparations violated the provisions of sub-section (e) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act in furnishing demonstrators or trained retail sales employees, expenses of whom they bore in whole or in part, to certain customer-purchasers without making such services available to all on proportionally equal terms, and in considering in said connection (1) sellers' assertion that they were willing to furnish demonstrator service to any customer who requested it and who could and would comply with their requirements, and that this satisfied the section involved, where it appeared that in establishing their requirements they were well aware that more than 90% of their customers could not qualify thereunder for such service; (2) the fact that they withdrew such service from time-to-time from customers who did not supply satisfactory "cooperation"; (3) frankly stated they would refuse it to any customer who could not and did not offer to meet their requirements; and (4) treated the granting or withholding of it in particular cases as a matter to be determined solely in accordance with the best interest of the seller; and when, as aforesaid noted, their terms were not proportionally equal as required by the statute but were such that only a few could comply therewith, their position would not have been helped by the futile gesture of informing their customers of the terms in question.

As respects sellers' defense of their practice of granting demonstrator service to some customers and not to competing customers upon the ground that their competitors furnished similar services and facilities and it was necessary for them to meet such competition: Where it appeared that beginning with about 1930 said sellers had installed demonstrator service in more than twenty accounts prior to any of various competitors involved, maintained such service in thirteen other accounts where none of said competitors had demonstrators and—contrary to their assertion that they did not furnish demonstrator services until 1930, long after their competitors were engaged in the practice—were furnishing permanent demonstrators

at least as early as 1925 (as an outgrowth of a practice ante-dating 1930 of furnishing forms of selling services of a temporary nature to some of their larger customers) and where such evidence showed they had not pursued a "no-demonstrator" policy from which occasional exceptions were made to meet the action of a competitor, but had actively pursued a demonstrator policy intended to beat competition and formulated and executed to promote their general interest without reference to specific competition in particular accounts, and as an aggressive rather than a defensive policy, and that they made no effort to comply with the provisions of the sub-section concerned after its enactment in 1936, by either discontinuing the service or removing the discrimination by proportionalizing the term, they failed to show that the demonstrator services furnished by them were supplied in good faith to meet the actions of a competitor or competitors.

Before *Mr. John W. Addison* and *Mr. John L. Hornor*, trial examiners.
Mr. Fletcher G. Cohn, *Mr. Frank Hier* and *Mr. P. R. Layton* for the Commission.

Townley, Updike & Carter, of New York City, for respondents.

AMENDED AND SUPPLEMENTAL COMPLAINT ¹

COUNT I

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particu-

¹ By order dated June 5, 1942 the Commission dismissed Count III of the amended and supplemental complaint herewith, and Count II of the amended complaint, as follows:

This matter coming on to be heard by the Commission upon the request of counsel for the Commission for dismissal of those charges contained in the amended and the amended and supplemental complaints herein which refer to violation of Section 5 of the Federal Trade Commission Act, and the Commission having considered said request and the record herein and being now fully advised in the premises.

It is ordered, That Count II of the amended complaint and Count III of the amended and supplemental complaint herein, both of which counts charge violation of Section 5 of the Federal Trade Commission Act by the respondent herein, be, and the same hereby are, dismissed.

Count II of the amended complaint, above referred to, reads as follows:

PARAGRAPH 1. Paragraphs 1 and 2 of Count I hereof are hereby adopted and made a part of this Count as fully as if set out herein verbatim.

[Said paragraphs 1 and 2 follows:]

[Paragraph 1. Respondent, Elizabeth Arden, Inc., is a corporation, organized and existing under the laws of the State of New York, and respondent, Elizabeth Arden Sales Corporation, is a corporation, organized and existing under the laws of the State of Delaware.

[Respondent, Florence N. Louis, owns and controls ninety percent of the issued, outstanding capital stock of respondent corporation, Elizabeth Arden, Inc., and all of the issued, outstanding capital stock of respondent corporation, Elizabeth Arden Sales Corporation, and is now, and has been during all material times hereinafter mentioned, in active direction and control of the business and business methods and policies of respondent corporations; and in all things hereinafter alleged has been and now is acting with and through respondent corporations. All respondents have their principal place of business at 681 Fifth Avenue, New York, N. Y.

[Par. 2. For more than one year last past, respondents, Florence N. Louis and Elizabeth Arden, Inc., have been and now are engaged in the manufacture of cosmetics and other toilet articles; and said respondents, Florence N. Louis and Elizabeth Arden Sales Corporation, have been and are engaged in the sale of said products in interstate commerce to their customers located in the several states of the United States, causing said products, when sold, to be shipped from their said place of business in the State of New York to said customers.]

PAR. 2. In the course and conduct of their business as aforesaid, respondents furnish to certain of their customers engaged in the resale of their products the services of sales persons or clerks, generally known as demonstrators, who are assigned to the stores of such customers for the purpose of displaying, demonstrating and selling the said products manufactured by respondents to the customers and prospective cus-

larly designated and described, have violated the provisions of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13), hereby issues its amended and supplemental complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Elizabeth Arden, Inc., is a corporation, organized under the laws of the State of New York with its office and principal place of business located at 681 Fifth Avenue in the city of New York, State of New York.

Respondent, Elizabeth Arden Sales Corporation, is a corporation, organized under the laws of the State of New York with its office and principal place of business also located at 681 Fifth Avenue in the city of New York, State of New York. Said respondent is the sole distributor for the commodities manufactured by respondent, Elizabeth Arden, Inc.

Respondent, Florence N. Lewis, owns and controls 90 percent of the issued outstanding capital stock of said respondent, Elizabeth Arden, Inc., and all of the issued outstanding capital stock of said respondent, Elizabeth Arden Sales Corporation, and is now and has been during all times herein mentioned in active direction and control of the business, business methods and business policies of the aforesaid respondent corporations, and in all things herein alleged, has been and now is acting with and through said respondent corporations. Said respondent, Florence N. Lewis, office and principal place of business is likewise located at 681 Fifth Avenue in the city of New York, State of New York.

Respondents, Elizabeth Arden, Inc., Elizabeth Arden Sales Corporation and Florence N. Lewis, are engaged in the manufacture, sale and distribution of cosmetics and toilet preparations as herein described. Respondents cause said commodities when sold to be transported from their place of business in the State of New York to the purchasers thereof located in the various States of the United States and in the District of Columbia.

tomers of such retail stores. Such demonstrators appear to the public to be employees of, and to be acting solely for, the dealer in whose store they are placed, and the public is not informed that they are in fact employees of, and acting in the interest of, respondents.

PAR. 3. The foregoing acts and practices of respondents, as described in paragraph 2 hereof, constitute unfair methods of competition in that said acts and practices deceive the public, have a tendency to, and do, place a restraint not only upon competition between respondents and other manufacturers, but also upon competition between favored retail customers of respondents and those retail customers of respondents and of other manufacturers who do not receive the benefits of said described unfair methods of competition. The said methods cast upon competitors of the respondents the burden of the loss of business unless they engage in similar acts and practices.

PAR. 4. There are among respondents' competitors many manufacturers and distributors of cosmetic products who do not employ demonstrators. As a result of the practices of respondents, there has been, and does exist, a tendency to suppress and stifle competition in the sale of cosmetics and other toilet articles in interstate commerce and in the retail sale of said products, and trade has been unfairly diverted to the respondents from their said competitors, as well as from those retail customers of respondents and of other manufacturers who do not receive the benefits of such practices to such of respondents' customers who do receive the benefit of said practices; and the ability of said manufacturers to compete successfully with respondents, and of said retail customers to compete with said favored customers, has been and is lessened and injured by the methods of respondents hereinabove set forth.

PAR. 5. The acts and things, hereinabove alleged, to have been done by the respondents are to the prejudice of the public and the competitors of respondents, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said cosmetics and toilet preparations sold and distributed by them in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondents in the course and conduct of their business as aforesaid, are in actual and substantial competition with other corporations and partnerships, firms and individuals engaged in the sale and distribution of cosmetics and toilet preparations in commerce among and between the various States of the United States and in the District of Columbia. Respondents in such course and conduct of their business in commerce as aforesaid, are in competition with other corporations and with partnerships, firms and individuals engaged in the sale and distribution of cosmetics and toilet preparations, and many purchasers of respondents' aforesaid commodities and other sellers and distributors of like commodities, are competitively engaged in the resale and distribution of such commodities.

PAR. 3. In the course and conduct of their business as aforesaid, respondents are selling and distributing their cosmetics and toilet preparations to different purchasers engaged in reselling and distributing the same within the United States and the District of Columbia.

In the course of such sale and distribution of their cosmetics and toilet preparations, respondents are differentiating in price between such different purchasers of their said commodities of like grade and quality sold to such purchasers for resale as aforesaid, by giving and allowing to certain of such purchasers varied price discounts more favorable than given or allowed to other of such purchasers, in manner and method among others as follows:

(a) By giving and allowing a price discount of 25% from the retail or list prices of their cosmetic and toilet preparations of like grade and quality to such purchasers as aforesaid whose total annual purchases valued at retail or list prices amount to less than \$200.00, and by giving and allowing a price discount of 33 $\frac{1}{3}$ % from the retail or list prices of their cosmetic and toilet preparations of like grade and quality to other of such purchasers as aforesaid whose total annual purchases valued at retail or list prices amount to \$200.00 or more but less than \$3,000.00 and further

(b) By giving and allowing a price discount of 33 $\frac{1}{3}$ % plus 5% from the retail or list prices of their cosmetic and toilet preparations of like grade and quality to other of such purchasers whose total annual purchases valued at retail or list prices amount to \$3,000.00 or more but less than \$7,500.00, and by giving and allowing a price discount of 40% from the retail or list prices of their cosmetic and toilet preparations of like grade and quality to other of such purchasers whose total annual purchases valued at retail or list prices amount to the sum total of \$7,500.00 or more.

PAR. 4. Respondents' variant price discounts as given and allowed in manner and method as hereinbefore set out, constitute discriminations in price between different purchasers of respondents' commodities of like grade and quality sold and distributed to such purchasers for resale, the effect of which may be substantially to lessen competition in such purchasers line of commerce and to injure, destroy and prevent competition with such customers of respondents as receive the benefits of said discriminatory price discounts by such other competing customers of respondents as do not receive the benefits of such greater discounts.

PAR. 5. The aforesaid methods, acts and practices of the respondents, Elizabeth Arden, Inc., Elizabeth Arden Sales Corporation and Florence N. Lewis, as herein alleged, are in violation of Paragraph (a) of Section 2 of the Clayton Act as amended (U. S. C., Title 15, Sec. 13).

COUNT II

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and herein more particularly designated and described, have violated the provisions of Section 2 of the Clayton Act as amended by the Robinson-Patman Anti-Discrimination Act, approved June 19, 1936 (U. S. C., Title 15, Sec. 13), in this its amended and supplemental complaint, herewith further states its charges with respect thereto as follows:

PARAGRAPH 1. Paragraph 1 of Count I is hereby adopted and made a part of this Count as fully as if herein set out verbatim.

PAR. 2. In the sale and distribution of cosmetics and toilet preparations and in the course of trade as aforesaid, respondents are selling and distributing their cosmetics and toilet preparations directly to purchasers engaged in reselling and distributing the same directly to the purchasing and consuming public. In the furtherance of such sale and distribution and such resale and distribution of their cosmetics and toilet preparations as aforesaid, respondents are also contracting to furnish, are furnishing and are contributing to the furnishing to some but not all of such foregoing purchasers the services and facilities of special personnel known and described in the cosmetic and toilet preparations industry and trade as demonstrators.

Such demonstrators so furnished by respondents, in manner and method aforesaid, are installed in the places of business of certain of such foregoing purchasers of respondents' commodities to display, demonstrate, offer for sale and sell cosmetics and toilet preparations and as so furnished, installed and used, constitute substantially valuable services and facilities in connection with such purchasers' resale and distribution of the aforementioned commodities.

PAR. 3. Many of the foregoing purchasers of respondents' cosmetics and toilet preparations bought for resale are in competition with each other in the resale and distribution of said commodities, and respondents are discriminating in favor of such of said competitive purchasers who are furnished and accorded on terms the aforescribed services and facilities in manner and method as hereinbefore set out, against all of such competitive purchasers of respondents' commodities who are not accorded the same on proportionally equal terms.

PAR. 4. The aforesaid methods, acts and practices of the respondents, Elizabeth Arden, Inc., Elizabeth Arden Sales Corporation and Florence N. Lewis, as herein alleged, are in violation of Paragraph (e) of Section 2 of the Clayton Act, as amended (U. S. C., Title 15, Sec. 13).

Complaint

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COUNT III

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Elizabeth Arden, Inc., as corporation, Elizabeth Arden Sales Corporation, a corporation, and Florence N. Lewis, 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, in this its amended and supplemental complaint now states its charges in respect thereto as follows:

PARAGRAPH 1. Paragraphs 1 and 2 of Count I and paragraph 2 of Count II are hereby adopted and made a part of this Count as fully as if herein set out verbatim.

PAR. 2. The confidence of the purchasing and consuming public in the merit of the merchandise carried by, and in the integrity of the personnel and the reputation for the business practices of, many of the retail stores purchasing respondents' said commodities for resale, is conducive to the ready sale by such retail stores of said commodities, and prospective purchasers and purchasers, in the selection, purchase and use of commodities as are herein described, have become accustomed to seek and accept as expert aid and advice the help and suggestions of such retail store personnel as are engaged in the sale of such commodities. Prospective purchasers and purchasers are guided largely by the aid and advice of such personnel in the selection and purchase of said commodities.

Such personnel as employed and furnished by respondents and installed in certain recipient purchasers' places of business as aforesaid, directly or impliedly are held out and appear to the prospective purchasing, the purchasing and consuming public as store sales personnel solely interested in such store sales as a whole, and the aforesaid public is not aware or informed of the true status of such personnel or of the fact that they are working directly in the interest of respondents.

Prospective purchasers and purchasers in the selection and purchase of cosmetics and toilet preparations as above, are misled and deceived into so relying upon such personnel as furnished by respondents and installed as aforesaid, under the erroneous impression and belief that such personnel is store sales personnel working solely and only in the interests of and under the instructions and control of the respective stores concerned. Such deception of the prospective purchasing, the purchasing and the consuming public is further enhanced by the active participation of said personnel in such functions and duties as are usually expected of and performed by the sales personnel of said stores.

PAR. 3. Personnel furnished to certain purchasers by respondents, in the manner and method, as hereinbefore set out, for the most part are skilled in displaying, demonstrating, offering for sale and selling cosmetics, and toilet preparations and in the giving of advice, suggestions and information designed to increase and further the sales and use of said commodities.

Such personnel, when furnished said purchasers and installed in their places of business, as aforesaid, are particularly able to push and stress the merits, sales and use of respondents' commodities over and above and in opposition to the like and similar commodities of respondents' competitors.

Personnel employed by respondents and furnished to said certain purchasers and installed as aforesaid, depend solely and only for continuance in such employment upon adequate sales of respondents' commodities. In addition to the foregoing incentive toward continuing in such employment through the meeting of respondents' sales requirements, such personnel, as a further spur toward sales of respondents' commodities, are also awarded such bonuses and commissions in these connections as their services and sales records warrant in the sole determination of respondents.

Respondents' aforesaid personnel plan as used in the manner and method as hereinbefore set out is deceptive to a substantial number of the prospective purchasing, the purchasing and the consuming public in their selection of cosmetics and toilet preparations for purchase and use, and additionally has the capacity and tendency to lend itself to misrepresentation of competitors' commodities and the substitution of respondents' therefor at the point of the retail sale of such commodities. Such plan further has the capacity and tendency to deprive and prevent a substantial number of the aforesaid public in their selection of cosmetics and toilet preparations for purchase and use, of the complete exercise of their right to full access to and free choice of said commodities or such of said commodities as may be most suitable or adaptable to their particular needs and requirements.

PAR. 4. There are among respondents' competitors in commerce and other competitive sellers and distributors of cosmetics and toilet preparations, many who do not contract to furnish and who do not furnish or contribute to furnishing of sales personnel as hereinbefore described, and there are among the customers of respondents and respondents' competitors in said commerce and other competitive sellers and distributors of cosmetics and toilet preparations many engaged in the resale and distribution of said commodities who are not furnished and who do not avail themselves of such sales personnel as aforementioned.

PAR. 5. The foregoing methods, acts and practices of respondents constitute unfair methods of competition and unfair and deceptive acts and practices in commerce in that said methods, acts and practices have the capacity and tendency to, and do, mislead and deceive a substantial portion of the prospective purchasing, the purchasing and the consuming public in the selection, purchase and use of cosmetics and toilet preparations and cause them to purchase respondents' said commodities and further place in the hands of unscrupulous dealers an instrumentality whereby fraud and deception therein may be practiced on said public. Said methods, acts and practices of respondents further have the capacity and tendency to, and do, place a restraint upon, stifle and substantially lessen competition between respondents and respondents' competitors in commerce and other sellers and distributors of cosmetics and toilet preparations, and between those customers of respondents and respondents' competitors and other sellers and distributors engaged in reselling and distributing cosmetics and toilet preparations who do not adopt, engage in or receive the benefits of the above described methods, acts and practices of respondents.

Respondents' said methods, acts and practices, as above described, place an uneconomical, unethical and unfair burden on present and poten-

tial competitors of respondents and certain of respondents' customers who are morally unwilling to engage in, adopt or enter the market and compete with the respondents and certain of respondents' customers on such basis and the burden of choice between loss of business and adoption and use of methods, acts and practices similar or equivalent to those engaged in and practiced by respondents and certain of their customers, as aforesaid, is thus unfairly cast by respondents upon the aforesaid competitors. Such methods, acts and practices as aforesaid unduly enhance the prices of cosmetics and toilet preparations to the purchasing public without any corresponding benefit to said public in exchange. All of said methods, acts and practices of respondents as hereinabove described are deceptive to the public, opposed to good morals in trade, and contrary to public policy.

As a result of the above described methods, acts and practices of the respondents, the public has been deceived and substantial injury has been done and is now being done by the said respondents to the public and to competition in the sale and distribution and the resale and distribution of cosmetics and toilet preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid methods, acts and practices of the respondents, Elizabeth Arden, Inc., Elizabeth Arden Sales Corporation and Florence N. Lewis, as herein alleged, are all to the prejudice of the public, and of respondents' competitors and other sellers and distributors of cosmetics and toilet preparations engaged in the sale and distribution and the resale and distribution of the same as aforesaid and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by Act approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission on May 15, 1937, issued and subsequently served its complaint upon respondents, Elizabeth Arden, Inc., and Elizabeth Arden Sales Corporation, charging them with violation of the provisions of subsections (a), (d), and (e) of Section 2 of the said Clayton Act as amended. Thereafter, on June 25, 1937, the Commission issued and subsequently served its amended complaint upon the aforesaid respondents and upon respondent Florence N. Lewis, charging them with violation of subsections (a), (d), and (e) of Section 2 of said Clayton Act as amended, and with violation of the provisions of the Federal Trade Commission Act. After the said respondents filed their answers to said amended complaint, the Commission on May 9, 1939, issued and subsequently served upon the corporate respondents and respondent, Florence N. Lewis, its amended and supplemental complaint, charging them with violation of subsections (a) and (e) of Section 2 of said Clayton Act as amended, and with violation of the provisions of the Federal Trade Commission Act in the sale and distribution of cosmetics, perfumes, toilet preparations, and accessories.

After the issuance of said amended and supplemental complaint and the filing of respondent's answers thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before an examiner of the Commission theretofore duly designated by it. Thereafter, this proceeding regularly came on for final hearing before the Commission on Counts I and II of said amended and supplemental complaint (Count III having been dismissed by order of June 5, 1942), the answers thereto, testimony and other evidence (report by the trial examiner having been waived), briefs in support of and in opposition to the complaint, and oral arguments of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (a) Respondent, Elizabeth Arden, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business at 681 Fifth Avenue, New York, N. Y.

(b) Respondent, Elizabeth Arden Sales Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 681 Fifth Avenue, New York, N. Y.

(c) Respondent, Florence N. Lewis, is an individual, with her office and principal place of business at 681 Fifth Avenue, New York, N. Y.

(d) Respondent, Florence N. Lewis, owns 90 percent of the outstanding capital stock of respondent, Elizabeth Arden, Inc., and all of the outstanding capital stock of Elizabeth Arden Sales Corporation. Respondent, Florence N. Lewis, generally known as Elizabeth Arden, controls, directs, and is the active head of both of the corporate respondents. The corporate respondents are mere instrumentalities through which she conducts the business of producing and selling cosmetics and toilet preparations, her manufacturing operations being carried on through respondent, Elizabeth Arden, Inc., and the sale and distribution of her products being handled through Elizabeth Arden Sales corporation. For all practical purposes the three respondents form a business entity, and except as otherwise specifically stated they are hereafter referred to as a unit without differentiation as among them.

PAR. 2. In the course and conduct of their aforesaid business of manufacturing, selling, and distributing various cosmetic and toilet preparations, respondents transport their said products, or cause them to be transported, from their place of business in New York to purchasers at their various points of location in States other than the State of New York, and maintain, and have maintained, a course of trade in said products in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 3. Respondents' products, known as the Elizabeth Arden line, consist of creams, lotions and oils, powder foundations, powders, rouge, lipsticks, eye make-up, hair preparations, deodorants and depilatories,

hand preparations, bath accessories, perfumes, and various other beauty preparations, appliances, and accessories. According to respondents' price list these products, including various sizes, shades, and odors, total approximately 1,000 different items. The Elizabeth Arden products, a "prestige" line, are said to stand at or near the top of the competitive field in their appeal to those who wish to purchase products having an aura of "exclusiveness" or representing "high fashion." Respondents sell their products to some 725 department stores, some 25 specialty shops, and about 2,250 drug stores. Their customers are selected with a view to enhancing and maintaining the "prestige" of the Elizabeth Arden line.

PAR. 4. (a) For a long period of years respondents, at their own expense, have furnished to a few of their customers salesgirls who act as clerks in such customers' stores to promote the sale of and sell Elizabeth Arden products to members of the public. Various terms have been used to designate the salesgirls thus furnished to retailers by respondents and other cosmetic manufacturers, but they are most frequently referred to as "demonstrators." This term is a misnomer in that a "demonstrator" is merely a retail sales employee, but because of its general use in the trade the term will be used hereafter to designate retail sales employees paid in whole or in part by manufacturers and furnished to their customers. The origin of the practice of cosmetic manufacturers supplying demonstrators to retail stores is unknown, but it is shown by the record to have existed for at least 50 years, and probably longer. Many of the cosmetic manufacturers who supplied demonstrators to their customers 20 or more years ago are now out of business and it is impracticable, if not impossible, to determine the originators of this practice in the cosmetic industry.

(b) Respondents sometimes send a demonstrator to the store where she is to be stationed and sometimes select and train a girl who is already a sales employee of the store in question, but in either instance such girls are skilled in presenting to the public the uses and advantages of respondents' products in the manner desired by respondents and which, in their view, is in keeping with their "prestige" policy. These demonstrators are actually under the immediate direction of the store where they work, but their duties are primarily, though not exclusively, the sale of Elizabeth Arden products. If a customer asks specifically for the product of another manufacturer, the demonstrator will sell it, and she will also make herself generally useful in the cosmetic department of the store insofar as she can do so without neglecting her principal business of promoting the sale of and selling Elizabeth Arden products.

(c) Respondents sometimes make salary payments directly to their demonstrators, but more frequently the store in which they work pays their weekly salaries and is reimbursed from time to time by respondents for these payments. Sometimes the payments to the stores are made by check and sometimes by credit memoranda pursuant to which the stores deduct the amount of such memoranda from their payments for merchandise purchased from respondents. To some of their customers respondents pay the full salary of the Arden demonstrators; to some they furnish more than one fully paid demonstrator; and to some they pay only part, usually one-half of the demonstrator's salary. In some instances a commission based upon a specified percentage of the invoice value of the Arden products purchased is paid to the store with the intention and understand-

ing that it be applied toward the payment of the salesgirl who devotes her time principally to the sale of Elizabeth Arden products. Occasionally, the store where a fully paid demonstrator is supplied may add a small sum to the weekly salary authorized and paid by respondents. In cases where they think it desirable, respondents pay a small commission to their demonstrators on sales made in excess of some fixed weekly sales quota. Regardless of the exact procedure followed in paying the salary of demonstrators, the purpose and effect is to furnish or contribute to the furnishing to selected retail stores of skilled sales employees to resell to the purchasing public the Elizabeth Arden products purchased from respondents by such stores.

PAR. 5. (a) Respondents contend that they have certain specific terms upon compliance with which by a customer they will furnish a demonstrator. This is not true, however, except in the broad general sense that respondents will furnish a demonstrator to a customer where in their own judgment the advantages received compensate them for the cost of the demonstrator and make it advantageous to them from a business standpoint to furnish a demonstrator.

(b) Where a demonstrator is furnished, respondents expect the customer to maintain what they term a "representative" stock of their products. This means a stock which includes all items for which there is likely to be any public demand, taking into consideration the type of the particular store, its location, the economic level of its customers, the display facilities available, the season of the year, and other factors. What constitutes a "representative" stock varies according to respondents' views in the particular instance. One of the duties of the demonstrator is to see that the stock of goods is maintained so that she can adequately meet the demands of customers.

(c) Where a demonstrator is furnished, respondents expect that the customer will make available adequate display counters in a prominent location in the store to be devoted exclusively to the display and sale of Elizabeth Arden products. The exact location and size of the space devoted to this purpose are flexible factors. Respondents seek the location they think most desirable and negotiate for a display as large and as elaborate as they can get. In some instances respondents have furnished counters and other store fixtures to customers. It is also their purpose to assure the display of all the Elizabeth Arden line in one place and not have it mixed with the goods of other cosmetic manufacturers. When demonstrator service is not furnished, the stores usually display the powders of a number of manufacturers in a group, lipsticks of a number of manufacturers in another group, and so on. One of the duties of the demonstrator is to maintain the segregated display of respondents' products in attractive form and condition.

(d) Where a demonstrator is furnished, respondents seek assurance that the customer will advertise Elizabeth Arden products at least once or twice a month. Respondents contribute to such advertising by defraying a portion of the cost, not to exceed a specified percentage of the value of the products purchased by the customer. In some cases respondents pay half the advertising cost; in other cases, pay two-thirds of the cost; and in rare instances, pay the full cost. This is a flexible factor and performance varies widely among the customers.

(e) Where a demonstrator is furnished, respondents seek to secure show window displays of their products. There is no specific requirement as to the number, duration, or type of such displays, but an effort is made to secure what respondents consider a reasonable number during the course of a year. Actual performance varies widely among customers.

(f) Where a demonstrator is furnished, respondents expect that if the store gives fashion shows for its customers Elizabeth Arden products will be "tied in" with the show and "mentioned" during it. They furnish cosmetics used by the models in such instances, and frequently their demonstrator or other employee applies the cosmetics to the models. This is a flexible factor and, of course, can be secured only from customers who stage fashion shows.

(g) Where a demonstrator is furnished, respondents seek to limit the cost of the demonstration service to themselves to not more than 10 per cent of the wholesale price of the Elizabeth Arden products purchased by the customer. This, however, is also a flexible factor in that the record shows costs of demonstrator services furnished to particular customers varying from about 7½ per cent to about 1½ per cent of the wholesale cost of goods purchased.

(h) As indicated in the preceding subparagraphs, respondents have no definite, fixed requirements and the things which they demand in return for demonstration service have not been reduced to a written schedule. Each agreement made with a customer for demonstrator service is negotiated upon an individual basis, with the respondents seeking as much as they can secure and making the final determination as to whether or not demonstrator service will be furnished by deciding whether the aggregate of the "cooperation" which they can secure makes it a desirable transaction from their standpoint. Actual performance among customers varies widely—some furnish little or none of one form of "cooperation" and perhaps more of another. In some instances customers who receive demonstrators are not aware of any requirements placed upon them, and apparently respondents believed from their information concerning such stores that sufficient "cooperation" in some form would be forthcoming to satisfy them.

PAR. 6. (a) Respondents actually furnish about 125 fully paid demonstrators to customers, but this does not mean that 125 customers receive that service. At least 22 customers have two or three demonstrators in one store, and other customers have demonstrators in more than one store. Respondents also furnish about 80 partially paid demonstrators to customers, and pay commissions to about 82 stores as a contribution to the compensation of girls selling Elizabeth Arden products. As stated in paragraph 3, respondents sell their products to some 725 department stores, 25 specialty shops, and 2,250 drug stores. It is plain, therefore, that only a few of respondents' customers are furnished with demonstrators to handle the sale of Elizabeth Arden products in their stores.

(b) Furnishing a demonstrator or contributing to the furnishing of a demonstrator constitutes a material service to a retail store purchasing respondents' products. It relieves the customer of all or part of the salary of the sales person needed to sell Elizabeth Arden products to the public. For example, respondents supply two demonstrators to Saks-Fifth Avenue store in New York City, and that store has about 40 salesgirls in its cos-

metic department, all paid by various manufacturers and not by the store; respondents furnish two demonstrators to Abraham & Strauss, and this customer has 33 salesgirls in its cosmetic department, only who of whom are paid by the store; respondents furnish one demonstrator to John Wanamaker, and this customer has about 26 salesgirls in its cosmetic department, only 10 of whom are paid by the store. It is not unusual for a large store to have from one-third to all of the clerk hire of its cosmetic department paid by cosmetic manufacturers. Respondents' demonstrator service also furnishes the store with a sales person particularly competent to sell Elizabeth Arden products to the public, and one whom respondents have, by intensive schooling, trained to that end. This skill reflects itself in increased sales of Elizabeth Arden products. For example, an instance appears in the record where the installation of an Arden demonstrator in a store tripled the store sales of Elizabeth Arden products over the sales for the preceding year, when no demonstrator was furnished.

(c) Respondents have customers who desire demonstrator services, but to whom such services are not accorded upon any basis. Respondent's terms and conditions are such that but few of their customers can comply, and their smaller customers are excluded from any opportunity to secure such services on a proportional basis or in any degree whatever.

PAR. 7. The record contains a list of all the stores to which respondents furnish demonstrators—whether fully paid, partly paid, or commission arrangements—together with the names of all other purchasers of respondents' products located in the same cities as the customers who receive demonstrator service. For example, in Philadelphia, Pa., respondents furnish fully paid demonstrators to the Blum Store, Bonwit Teller, B. F. Dewees, and Strawbridge & Clothier. They furnish partly paid demonstrators to Gimbel Brothers and N. Snellenberg & Company. They sell their products to 13 other purchasers in Philadelphia to whom no demonstrator service whatever is furnished. Witnesses representing several of these non-demonstrator accounts testified that they are in competition with other stores in Philadelphia who receive demonstrator services in the sale of Elizabeth Arden products to members of the purchasing public in Philadelphia. In some of the cities appearing in said list respondents have but one customer or, if more than one, all receive or none receive demonstrator service. In many of the cities so listed, however, respondents have customers some of whom receive and some of whom do not receive demonstrator services. In such instances the Commission infers from the location of such retail stores in the same city and from the general nature of the retail selling practices of department stores, specialty shops, and drug stores as shown in the record, and therefore finds, that the customers who offer respondents' products for sale to the purchasing public in the same city compete with each other for the patronage of members of that purchasing public.

PAR. 8. (a) Respondents assert that they are willing to furnish demonstrator service to any customer who requests it and who can and will comply with their requirements, and that this satisfies subsection (e) of Section 2 of the statute. In establishing the requirements which they did, respondents were well aware that more than 90 per cent of their customers could not qualify thereunder to receive demonstrator service. Respondents have not informed their customers generally of the demonstrator service which

they furnish or the terms upon which it will be furnished. Respondents have from time to time withdrawn demonstrator service from a customer who did not supply "cooperation" which satisfied them. They have frankly stated that they would refuse demonstrator service to any customer who could not and did not offer to meet their requirements. Respondents have treated the granting to or withholding of demonstrator service to particular customers as a matter to be determined solely according to the best interests of the seller. In other circumstances, the failure to inform their customers of the terms upon which demonstrator service would be furnished might be important, but respondents' position would have been no better in the present case if they had informed their customers of their terms. Where, as here, the only terms upon which the service or facility is granted are such that only a few customers could comply, the futile gesture of informing their customers generally of such terms would not satisfy the statute, because they would not be terms accorded to all purchasers on proportionally equal terms.

(b) The Commission is of the opinion that the statute affords the seller a free election in the first instance as to what services or facilities, if any, he will provide to purchasers of his products; but having elected to furnish a particular service or facility to a particular purchaser or purchasers, he thereby assumes the obligation of according similar services to all competing purchasers to the extent required by the statute. The furnishing of a service or facility which cannot be proportionalized for the benefit of competing purchasers or, in the alternative, the failure or refusal to proportionalize the terms upon which services or facilities are granted, so as to make it reasonably possible for competing purchasers to avail themselves of such services or facilities if they desire to do so, constitutes a failure to accord such services or facilities upon proportionally equal terms. The phrase "upon terms not accorded to all purchasers on proportionally equal terms" contemplates the proportionalization of the terms, and this necessarily includes the proportionalization of the service or facility as well. The statute does not permit a seller to so tailor his terms as to favor a particular customer or group of customers and automatically exclude all the rest of his customers. This is what respondents have done.

PAR. 9. (c) Respondents defend their granting of demonstrator services to some customers and not to competing customers upon the ground that their competitors furnished similar services and facilities and it was necessary for them to meet this competition. Respondents contend that they did not furnish demonstrator service until 1930, long after their competitors were engaged in the practice. In support of this contention respondents supplied a list said to show all their accounts where demonstrator service is maintained and the date of the installation of such service in each such account. With the exception of one account showing a date late in 1929, all other installation dates shown of this list are in 1930 or subsequent years. Respondents secured from their principal competitors—Helena Rubinstein, Dorothy Gray, Denny & Denny, Kathleen Mary Quinlan, Richard Hudnut, Harriet Hubbard Ayer, Coty, Charles of the Ritz, and Bourjois—data showing whether these companies installed demonstrators in each of the accounts where respondents furnished demonstrator service, if they did, either before or after the dates named by respondents. A comparison of these lists shows that respondents installed demonstrator service

in 20 accounts prior to any of their said competitors, and, in addition, maintained demonstrator service in 13 other accounts where none of the competitors named has demonstrators.

(b) It is clear from the record that respondents' contention that they did not commence furnishing demonstrators until 1930 is not true. Respondents reported that they first installed a demonstrator in the H. S. Pogue store in Cincinnati, Ohio, on September 1, 1930, but the fact is they commenced supplying demonstrator service to this customer in May or June 1925. Respondents reported that they first installed a demonstrator in Younker Brothers store in Des Moines, Iowa, on January 26, 1931, but the fact is that demonstrator service to this customer was commenced in April or May 1927. Respondents reported that they commenced supplying demonstrator service to L. Bamberger, Newark, N. J., on June 19, 1938, but the fact is they installed a demonstrator in this store in September 1927. In the last instance the service may have been discontinued at some time after 1929 and reinstated in 1938. Respondents reported that they commenced furnishing demonstrator service to Kerr Dry Goods Company of Oklahoma City, Okla., on October 13, 1930, but the fact is that they installed a demonstrator in this account in October or November 1925. Respondents reported that demonstrator service was installed in the J. L. Brandeis store in Omaha, Nebr., on February 2, 1931, but in fact demonstrator service to this customer was commenced in April 1927. Respondents supplied demonstrator service to other of their accounts for varying numbers of years prior to 1930, including Joseph Horne Company, Pittsburgh, Pa.; L. S. Ayres, Indianapolis, Ind.; Neiman-Marcus, Dallas, Tex.; Rike-Kumler, Dayton, Ohio; I. Magnin, San Francisco, Calif.; T. A. Chapman Company, Milwaukee, Wis.; Gimbel Brothers, Milwaukee, Wis.; Carson-Pirie-Scott, Chicago, Ill.; and L. S. Donaldson, Minneapolis, Minn. Had respondents furnished the actual dates on which demonstration services were commenced, the number of accounts in which they antedated their competitors would have been larger than that shown in the preceding subparagraph.

(c) In considering respondents' defense of meeting competition, attention must be given to the history of their use of demonstrators and the purpose and manner in which their policy has been executed. The development of respondents' present demonstrator policy has covered a long period of years. Prior to 1920 respondents furnished a selling service to some of their large customers by sending a representative to the customer's store for a limited period of time, usually not more than two weeks in a year and frequently less. These representatives served as consultants and advisers to members of the public who visited the store, and their business was the promotion of the sale of and, to a limited extent, the actual sale of Elizabeth Arden products for benefit of respondents' customers. Not later than the early 1920's customers in some instances furnished special rooms where respondents' representatives displayed, sold, and promoted the sale of Elizabeth Arden products. Originally these special rooms were staffed by respondents' representatives for only a limited period of time. At some point these services became permanent in the case of some of respondents' customers and changed in form to the usual demonstrator service heretofore described. Permanent demonstrators were furnished by respondents at least as early as 1925, and by the end of 1929 respondents were furnish-

ing demonstrators to a considerable number of their more important customers. Gradually, the permanent demonstrator practice tended to succeed and supplant the other forms of sales services previously furnished by respondents. According to the data furnished by respondents, which is erroneous to the degree already pointed out, they installed demonstrators in the number of accounts shown in each of the years listed below:

<i>Year</i>	<i>Accounts</i>	<i>Year</i>	<i>Accounts</i>
1929	1	1936	18
1930	23	1937	3
1931	37	1938	10
1932	16	1939	8
1933	19	1940	17
1934	18	1941	1
1935	8		

At least five of the demonstrators said to have been installed in 1930 and seven of those said to have been installed in 1931, and probably more in each of these years, were in fact installed in years prior to 1930.

(d) It is plain from the record that respondents have not pursued a "no-demonstrator" policy from which occasional exceptions were made to meet the action of a competitor; but, on the contrary, they have actively pursued a "demonstrator" policy intended to beat competition where possible, and formulated and executed for the broad purpose of promoting their general interests without special reference to specific demonstrator competition in particular accounts. This policy has been aggressive rather than defensive. When subsection (e) of Section 2 was enacted in 1936, respondents made no effort to comply with its provisions by either discontinuing their discriminatory demonstrator services or removing the discrimination by proportionalizing their terms. In view of the circumstances, the Commission concludes that respondents have not shown that the demonstrator services furnished by them were supplied in good faith to meet the actions of a competitor or competitors.

PAR. 10. The Commission concludes, and therefore finds, that respondents have, in the course of commerce, discriminated as among purchasers of their products by furnishing or contributing to the furnishing of services or facilities to some of their customers of material value in the handling, sale, or offering for sale of products purchased from the respondents, and concurrently failed to accord to competing purchasers of their products such services or facilities on proportionally equal terms or upon any terms whatever.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, constitute violations of subsection (e) 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 approved June 19, 1936 (Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission, the answers of respondents, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before an examiner of the Commission theretofore duly designated by it, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of subsection (e) 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 Act approved June 19, 1936 (Robinson-Patman Act).

It is ordered, That respondents, Elizabeth Arden, Inc., a corporation, and Elizabeth Arden Sales Corporation, a corporation, their respective officers, representatives, agents, and employees, and respondent, Florence N. Lewis, an individual, her representatives, agents, and employees, either jointly or severally, directly or through any corporate or other device, in or in connection with the sale of cosmetics, perfumes, toilet preparations, or accessories in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, among competing purchasers of such products:

1. By furnishing or contributing to the furnishing of demonstrator services to any retailer purchasing their products when such services are not accorded on proportionally equal terms to other retailer purchasers located in the same city, or other retailer purchasers who in fact resell such products in competition with retailers who receive such services.

2. By furnishing or contributing to the furnishing of any services or facilities connected with the handling, sale, or offering for sale of products purchased from respondents to any retailer upon terms not accorded to competing retailers on proportionally equal terms.

It is further ordered, That the charge of unlawful discrimination in price contained in Count I of the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should future facts so warrant.¹

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

¹ Charge of violation of Section 5 of the Federal Trade Commission Act, as alleged in Count III of the complaint was dismissed by order dated June 5, 1942. See footnote to complaint on p. 290.

Order

39 F. T. C.

IN THE MATTER OF
AVERBACH COMPANY, INC. ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 3342. Order, October 4, 1944

Modified order in proceeding in question, in which original order issued on September 11, 1939, 29 F. T. C. 879, requiring respondents, their officers, etc., in connection with the offering for sale, etc., of flavoring compounds, foodstuffs, toilet articles and novelties in interstate commerce or in the District of Columbia, to cease and desist from misrepresenting their business status, methods, operation and size, prices, special offers, terms and conditions, agents' opportunities or earnings, value of their products, free goods, and composition and nature of their said products, as in said order in detail below set out.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of respondents in which answers respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having duly made and issued its findings as to the facts, conclusion and order to cease and desist dated September 11, 1939; and the Commission having further considered said order to cease and desist and having given due notice to the respondents to show cause why the proceeding should not be reopened for the purpose of modifying said order in the respects and to the extent set out in said notice, and no appearance having been entered by any of the respondents; and the Commission having considered the matter and the record herein, and having concluded that the public interest requires the modification of said order in the respects and to the extent set out in said notice.

It is ordered, That the respondents, Averbach Co., Inc., a corporation, and Maid-O-Best, Inc., a corporation, their officers, agents, servants and employees, G. M. Moses, individually, and his agents, servants and employees, and Esther Averbach, Morris Averbach, and Jerome Averbach, individually, and trading variously under the names The Muriel Co. and American Chemical Co., and their agents, servants and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of flavoring compounds, foodstuffs, toilet articles and novelties in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing by photographs or in any other way that J. M. Gebhart, a fictitious person, or any other fictitious person, is a Director of Sales of Maid-O-Best, Inc.

2. Representing that Maid-O-Best, Inc., has a national sales organization until and unless said Maid-O-Best, Inc., actually has and maintains a

selling organization through and by which sales are made by said Maid-O-Best, Inc., generally throughout the United States.

3. Representing, through the use of the words "Manufactured only by Maid-O-Best, Inc., St. Paul, Minn. U.S.A.," or through the use of any words or terms of similar import and meaning, or through any other means or device or in any manner, that said respondents or any of them are the manufacturers of the products sold by them, unless and until such respondents actually own and operate, or directly and absolutely control, a manufacturing plant wherein said products are manufactured by them.

4. Representing as the customary or regular prices or values for respondents' products prices and values which are in fact fictitious and greatly in excess of the prices at which such products are customarily offered for sale and sold in the normal course of business.

5. Representing through fictitious prices marked or stamped on or affixed to food flavoring or other products, sold in combination deals or otherwise, or on the containers thereof, or through any other means or device or in any manner, that said prices so marked, stamped or affixed are the regular or customary retail prices of such products.

6. Using the term "vanilla extract" to describe a flavoring product, unless prepared with a vehicle of ethyl alcohol and containing a flavoring content at least fifty percent of which shall consist of true vanilla made from the vanilla bean.

7. Representing that respondents' so-called vanilla extract has no equal for quality, or that it is the finest available at any price, or that it is composed of vanillin, coumarin, caramel color, and a liberal quantity of pure vanilla made from the choicest vanilla beans, unless and until a liberal quantity of pure vanilla, made from vanilla beans, is actually used in the preparation of said alleged extract, the whole suspended or carried in a vehicle of ethyl alcohol.

8. Using the words "orange," "lemon," "maple," and "almond" in combination or connection with the word "extract" until and unless the product is composed of genuine ingredients, as distinguished from synthetic chemical substitutes, and such ingredients are suspended in ethyl alcohol.

9. Representing that a special account of \$3,000 or any other amount represented to be used to cover refunds for returned Maid-O-Best products is deposited in the Western State Bank of St. Paul, Minn., or in any other financial institution, until and unless said sum be actually deposited and maintained on deposit in such bank or other financial institution and there kept available in liquid form for the said purpose.

10. Representing that it is easy for agents or representatives to earn up to \$15 or any other sum of money per day in selling respondents' products, unless and until the sum named is a true representation of the average net earnings or profits consistently made by respondent's agents or representatives in the ordinary course of business under normal conditions and circumstances.

11. Designating any so-called food flavors as extracts until and unless they are genuine extracts dissolved and carried in alcoholic solution.

12. Representing that cheap, inferior ingredients contained in flavoring preparations are of "high quality" or "purest and finest."

13. Representing that respondents buy their raw materials in "tremendous quantities," and from representing that greater savings are thereby passed on to the housewives of America, until and unless said statements are true in fact.

14. Representing that the product "Choc-O-Toddy" or any other product is manufactured by the respondents unless and until such respondents actually own or operate, or directly and absolutely control, a manufacturing plant wherein said product is manufactured by them.

15. Representing, designating, or describing articles of merchandise regularly included in a combination offer with other identical, similar, or other articles of merchandise as "free," "included free," or any other term of similar import or meaning.

16. Representing, designating or describing goods, wares or merchandise delivered only upon the condition that some other article or merchandise be purchased and paid for as "free" or in any other manner indicating that said goods, wares or merchandise are gifts or gratuities.

17. Representing that so-called "special offers" or "special deals" are limited to a given period of time or to a given number of persons, if in truth and in fact the prices stated in such offers and deals are the regular, usual, and customary prices at which the products therein mentioned are offered for sale.

18. Using the term "free" or any other term of similar import and meaning to describe, designate or refer to any merchandise which is not a gift or gratuity and delivered to the recipient thereof without cost and unconditionally.

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

Syllabus

IN THE MATTER OF

J. P. RAINEY TRADING AS J. P. RAINEY & COMPANY¹

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

Docket 4800. Complaint, Aug. 6, 1942—Decision, Oct. 9, 1944

Where an individual engaged in city concerned in the electrical contracting business and in purchasing in said capacity and as agent of a general contractor below referred to, electrical equipment and supplies, including electric cable, wire, switches, conduits, fittings, condulets, potheads, cable heads, transformers, insulators, lighting fixtures, lamps and accessories, from three certain concerns and others, and in competition in making and seeking to make purchases and sales in commerce, with sellers of such products, except insofar as said competition had been restricted or forestalled as below set forth;

Following arrangements by the Navy with a shipbuilding company under which latter was to undertake construction of naval vessels and pursuant to which (1) the Navy agreed to arrange for the advancing of the necessary funds to rehabilitate the latter's shipyards in the city concerned, including office buildings and shipways, to be expended under the general supervision of the Navy and subject to its approval, and (2) said shipbuilding company contracted with the aforesaid general contractor for the reconstruction by him of said office buildings and shipways on a cost-plus-a-fixed-fee basis, with the understanding that, in securing materials or services he would obtain competitive offers from as many as practicable but not less than two—or three where specified—reputable firms and award a contract to the firm quoting the minimum price; bids to be opened by or in the presence of the Supervisor of Shipbuilding of the Navy or his representative, and to be subject to his approval before award of the sub-contract—

Engaged in the general practice of preparing and submitting different and purportedly competitive, but in fact non-competitive, bids and price quotations in the purchase and sale of said products in commerce; and as a part of said practice, in addition to his bid, submitted over his own signature as his proposal to furnish several items of electric wire and cable to said general contractor for aforesaid use, prepared and submitted two additional bids, on stationery bearing the letterheads, and over names of two of aforesaid three certain concerns, respectively proposing to furnish the same items but at total amounts which exceeded by some \$400 the amount quoted by him in his own bid, and through thus quoting the minimum price received the contract;

With intent and result of deceiving and misleading officials of said shipbuilding company and representatives of the Navy Supervisor of Ships, into believing, considering and approving the aforesaid bids purportedly made by said individual, and aforesaid two concerns, as independent, genuine and competitive bids; and with the effect of depriving buyers and prospective buyers, including contractors and subcontractors with the United States Government, of the benefit of competition in commerce between said individual, the three concerns aforesaid, and others:

¹ The instant case is one of a group of eight having to do with the preparation and submission of sham, false, fictitious, fraudulent and non-competitive bids in connection with the Navy's arrangement for the construction of ships by the Cramp Shipbuilding Co., at its shipyards in Philadelphia. For list of these cases, see footnote to the case of the Grater-Bodey Co., et al., Docket 4799, p. 113.

Held, That such acts, practices and methods, under the circumstances set forth, were all to the prejudice of the public; had a dangerous tendency to and did actually restrain and eliminate competition in the sale of electrical supplies and equipment in commerce; had the tendency and capacity to and did unreasonably restrain commerce in said products; and constituted 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.

Mr. Everette MacIntyre and *Mr. V. W. Summers* for the Commission.
Mr. James F. Masterson, of Philadelphia, Pa., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that J. P. Rainey, an individual, trading as J. P. Rainey & Co., named in the caption hereof and more particularly hereinafter described and referred to as respondent, has violated the provisions of Section 5 of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, J. P. Rainey, is an individual, engaged in the electrical contracting business and trading as J. P. Rainey & Company, 511 North Broad Street, Philadelphia, Pa. Said respondent, during the period covered by the activities involved in the charges in this complaint, also served as an employee, agent, and sub-contractor of one Charles F. Rohleder more particularly and fully hereinafter described.

PAR. 2. Charles F. Rohleder is an individual, engaged in general contracting and construction work, with office and principal place of business located at Philadelphia, Pa.

Allen McLaine Ward, and J. R. Baldrige, Jr., during the period covered by the activities involved in the charges of this complaint served as employees and agents of Charles F. Rohleder.

PAR. 3. At all times hereinafter mentioned, Charles F. Rohleder, directly and through his agents, Allen McLaine Ward, J. R. Baldrige, Jr., and respondent, J. P. Rainey, has been engaged in negotiating with and buying from Westinghouse Electric Supply Co., 1101 Race Street, Philadelphia, Pa., Anaconda Wire and Cable Co., 1301 Architects Building, Philadelphia, Pa., and General Cable Corporation, 123 South Broad Street, Philadelphia, Pa., directly and through their agents, "electrical equipment and supplies" which were shipped from many points located in States other than the State of Pennsylvania by the sellers or their suppliers to Charles F. Rohleder or his said agents at Cramp Shipbuilding Co. shipyards, Richmond and Norris Streets, Philadelphia, Pa.

At all times hereinafter mentioned, respondent, J. P. Rainey, doing business as J. P. Rainey & Co., has been engaged in the electrical contracting business and in that capacity, and also as an agent of Charles F. Rohleder, has purchased electrical supplies and equipment from Westinghouse Electric Supply Co., Anaconda Wire and Cable Co., and General Cable Corporation and others, and has sold and caused such electrical supplies

and equipment to be shipped from locations in States other than the State of Pennsylvania to him in Philadelphia, Pa.

PAR. 4. Respondent J. P. Rainey, an individual trading as J. P. Rainey & Co., at times within the period named in paragraph 7 hereof, engaged in competition with sellers of "electrical equipment and supplies" in making and seeking to make purchases and sales in "commerce" (as "commerce" is defined in the Federal Trade Commission Act), between and among the various States of the United States, except insofar as the said competition has been hindered, lessened, restricted or forestalled by the acts, things, practices, policies and methods done and carried on as hereinafter set forth.

PAR. 5. The term "electrical equipment and supplies" as used herein includes, but is not limited to, such items as electric cable, electric wire, electric switches, electric conduit, fittings, condulets, potheads, cableheads, transformers, insulators, lighting fixtures, lamps and accessories.

PAR. 6. During 1940, as a part of its work in the Defense Program of the United States of America, the Navy Department arranged with Cramp Shipbuilding Co., whose shipyards are located at Richmond and Norris streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities at the said shipyard, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon, the said Cramp Shipbuilding Co. contracted with said Charles F. Rohleder for the latter to reconstruct certain office buildings and shipways on a cost plus a fixed fee basis, with the understanding that the said Rohleder in securing materials and services would obtain competitive offers from as many as practicable, but not less than two (and not less than three where specified) reputable firms in a position to provide the material, equipment, services, etc., as required at a reasonable cost, and to award contract to that firm quoting the minimum price; and with the further understanding that the said offers, proposals or bids were to be opened by or in the presence of the Supervisor of Shipbuilding, U. S. Navy, or his representative, and subject to his approval before award of the subcontract for materials, equipment or services.

In connection with his aforesaid contract with Cramp Shipbuilding Co., said Charles F. Rohleder negotiated with and made awards of contracts for the purchase, directly and through agents, of "electrical equipment and supplies" from respondent, J. P. Rainey, Westinghouse Electric Supply Co., Anaconda Wire and Cable Co., General Cable Corporation and others.

PAR. 7. Respondent, J. P. Rainey, has engaged in the practice of preparing and submitting different and purportedly competitive but in fact non-competitive bids and price quotations in the purchase and sale of "electrical equipment and supplies" in commerce and as a part of that practice, on or about March 18, 1941, said respondent prepared a bid and price quotation over his signature as and for his proposal to furnish several items of electric wire and cable to Charles F. Rohleder for use in rehabilitating the facilities of Cramp Shipbuilding Co. shipyards, Norris and Richmond Streets, Philadelphia, Pa., at the stated price of \$29,280.12. On or

about the same date said respondent also submitted two additional bids, one each on stationery bearing the letterheads, and over the respective names of General Cable Corporation, and Anaconda Wire & Cable Co., proposing to furnish to said Charles F. Rohleder the same items specified in the said bid he submitted over his name. However, before said respondent submitted the said bids over the names of the said General Cable Corporation and said Anaconda Wire Co., he so fixed the amount quoted in the Anaconda Wire & Cable Co. bid that it amounted to \$29,673.40, or 1¢ higher than the amount quoted in the General Cable Corporation bid and approximately \$400.00 higher than the amount quoted in the bid said respondent submitted over his own name. As a result of such action, said Rainey, in so quoting the minimum price received a contract to furnish the above described "electrical equipment and supplies" and caused the same to be shipped across State lines into Philadelphia, Pa.

Said J. P. Rainey, submitted the aforesaid bids, for the purpose and with the result of deceiving and misleading purchasing officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, U. S. Navy, into believing, considering and approving the aforesaid bids and price quotations purporting to have been made by J. P. Rainey, Anaconda Wire & Cable Co., and General Cable Corporation as independent, genuine and competitive bids.

PAR. 8. The doing and performing of the aforesaid acts, things, and the use of the methods set forth in the immediately preceding paragraph hereof, tend to have and do have the effect of depriving buyers and prospective buyers including contractors and sub-contractors with the United States Government of the benefit of competition in commerce between and among the said J. P. Rainey, Westinghouse Electric Supply Co., Anaconda Wire & Cable Co., General Cable Corporation, and between them and others.

PAR. 9. The acts, practices and methods, as hereinbefore alleged, are all to the prejudice of the public; have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained and eliminated competition in the sale of electrical supplies and equipment in commerce within the intent and meaning of the Federal Trade Commission Act; have the tendency and capacity to restrain unreasonably and have restrained unreasonably such commerce in such 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 August 6, 1942, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act. After the issuance of the said complaint and filing of the respondent's answer, the Commission, by order entered herein, granted the request of respondent for permission to

withdraw his answer and to substitute therefor an answer admitting all of the material allegations set forth in the said complaint and waiving all intervening procedure and hearings, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint and the said substitute answer; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, J. P. Rainey, is an individual, engaged in the electrical contracting business and trades as J. P. Rainey & Co., 511 North Broad Street, Philadelphia, Pa. Said respondent, during the period covered by the activities hereinafter specified, also served as an employee, agent, and subcontractor of one Charles F. Rohleder, more particularly and fully hereinafter described.

PAR. 2. Charles F. Rohleder is an individual engaged in general contracting and construction work, with his office and principal place of business located at Philadelphia, Pa.

Allen McLaine Ward and J. R. Baldrige, Jr., during the period covered by the activities hereinafter specified, served as employees and agents of Charles F. Rohleder.

PAR. 3. At all times hereinafter mentioned, Charles F. Rohleder, directly and through his agents, Allen McLaine Ward, J. R. Baldrige, Jr., and respondent, J. P. Rainey, has been engaged in negotiating with and buying from Westinghouse Electric Supply Co., 1101 Race Street, Philadelphia, Pa.; Anaconda Wire & Cable Co., 1301 Architects Building, Philadelphia, Pa.; and General Cable Corporation, 123 South Broad Street, Philadelphia, Pa., directly and through their agents, "electrical equipment and supplies" which were shipped from many points located in States other than the State of Pennsylvania by the sellers or their suppliers to Charles F. Rohleder or his said agents at Cramp Shipbuilding Co. shipyards, Richmond and Norris Streets, Philadelphia, Pa.

At all times hereinafter mentioned, respondent, J. P. Rainey, doing business as J. P. Rainey & Co., has been engaged in the electrical contracting business, and in that capacity and also as an agent of Charles F. Rohleder has purchased electrical supplies and equipment from Westinghouse Electric Supply Co., Anaconda Wire & Cable Co., and General Cable Corporation, and others, and has sold and caused such electrical supplies and equipment to be shipped from locations in States other than the State of Pennsylvania to him in Philadelphia, Pa.

PAR. 4. Respondent, J. P. Rainey, trading as J. P. Rainey & Co., at times within the period named in paragraph 7 hereof engaged in competition with sellers of "electrical equipment and supplies" in making and seeking to make purchases and sales in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States; except insofar as the said competition has been hindered, lessened, restricted, or forestalled by the acts, things, practices, policies, and methods done and carried on, as hereinafter set forth.

PAR. 5. The term "electrical equipment and supplies" as used herein includes, but is not limited to, such items as electric cable, electric wire, electric switches, electric conduit, fittings, condulets, potheads, cable-heads, transformers, insulators, lighting fixtures, lamps, and accessories.

PAR. 6. During 1940, as a part of its work in the defense program of the United States of America, the Navy Department arranged with Cramp Shipbuilding Co., whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities at the said shipyard, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon, the said Cramp Shipbuilding Co. contracted with said Charles F. Rohleder for the latter to reconstruct certain office buildings and shipways on a cost-plus-a-fixed-fee basis, with the understanding that the said Rohleder in securing materials and services would obtain competitive offers from as many as practicable but not less than two (and not less than three where specified) reputable firms in a position to provide the material, equipment, services, etc., as required, at a reasonable cost, and to award contract to that firm quoting the minimum price; and with the further understanding that the said offers, proposals, or bids were to be opened by or in the presence of the Supervisor of Shipbuilding, U. S. Navy, or his representative, and subject to his approval before award of the subcontract for materials, equipment, or services.

In connection with his aforesaid contract with Cramp Shipbuilding Co., said Charles F. Rohleder negotiated with and made awards of contracts for the purchase, directly and through agents, of "electrical equipment and supplies" from respondent, J. P. Rainey, Westinghouse Electric Supply Co., Anaconda Wire & Cable Co., General Cable Corporation, and others.

PAR. 7. Respondent, J. P. Rainey, has engaged in the practice of preparing and submitting different and purportedly competitive but in fact noncompetitive bids and price quotations in the purchase and sale of "electric equipment and supplies" in commerce, and as a part of that practice, on or about March 18, 1941, said respondent, prepared a bid and price quotation over his signature as and for his proposal to furnish several items of electric wire and cable to Charles F. Rohleder for use in rehabilitating the facilities at Cramp Shipbuilding Co. shipyards, Norris and Richmond Streets, Philadelphia, Pa., at the stated price of \$29,280.12. On or about the same date said respondent also submitted two additional bids, one each on stationery bearing the letterheads and over the respective names of General Cable Corporation and Anaconda Wire & Cable Co., proposing to furnish to said Charles F. Rohleder the same items specified in the said bid he submitted over his name. However, before said respondent submitted the said bids over the names of the said General Cable Corporation and said Anaconda Wire Co., he so fixed the amount quoted in the Anaconda Wire & Cable Co. bid that it amounted to \$29,673.40, or 1¢ higher than the amount quoted in the General Cable Corporation bid and approximately \$400 higher than the amount quoted in the bid said respondent submitted over his own name. As a result of such action, said Rainey, in so quoting the minimum price, received a contract to furnish

the above-described "electrical equipment and supplies" and caused the same to be shipped across State lines in Philadelphia, Pa.

Said J. P. Rainey, submitted the aforesaid bids, for the purpose and with the result of deceiving and misleading purchasing officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, U. S. Navy, into believing, considering, and approving the aforesaid bids and price quotations purporting to have been made by J. P. Rainey, Anaconda Wire & Cable Co., and General Cable Corporation as independent, genuine, and competitive bids.

PAR. 8. The doing and performing of the aforesaid acts and things, and the use of the methods set forth in the immediately preceding paragraph hereof, tend to have, and do have, the effect of depriving buyers and prospective buyers, including contractors and subcontractors with the United States Government, of the benefit of competition in commerce between and among the said J. P. Rainey, Westinghouse Electric Supply Co., Anaconda Wire & Cable Co., and General Cable Corporation, and between them and others.

CONCLUSION

The acts, practices, and methods, as hereinbefore found, are all to the prejudice of the public; have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the sale of electrical supplies and equipment in commerce within the intent and meaning of the Federal Trade Commission Act; have the tendency and capacity to restrain unreasonably, and have restrained unreasonably, such commerce in such 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 answer of the respondent, in which answer respondent admits all of the material allegations set forth in said complaint and waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of Section 5 of the Federal Trade Commission Act.

It is ordered, That the respondent, J. P. Rainey, individually, and trading as J. P. Rainey & 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of electric cable, electric wire, electric switches, electric conduit, fittings, condulets, potheads, cableheads, transformers, insulators, lighting fixtures, lamps, accessories, or other electrical equipment or supplies, do forthwith cease and desist from doing or performing any of the following acts, things, or practices:

1. Submitting or procuring, assisting, or cooperating in the submission to any buyer of multiple bids or price quotations for the same materials for use on the same project but in the names of different or apparently different prospective sellers.

2. Aiding, assisting, or cooperating in any manner in the submission of any sham, fictitious, fraudulent, or noncompetitive bids or price quotations to any buyer or prospective buyer, or to any official or awarding authority of any Federal agency or to any one acting for or on its behalf, or for or on behalf of any contractor with such agency.

3. Interfering with or assisting in interfering with the procurement or consideration of genuinely competitive bids or price quotations by any Federal agency or any official or awarding authority of such agency, or by any buyer or prospective buyer.

4. Promoting, establishing, carrying out, or continuing any act or practice for the purpose or with the effect of maintaining or presenting a false appearance of competition between or among sellers in the submission of price quotations or bids to buyers or prospective buyers.

5. Arranging or attempting to arrange for the filing of any bid in the name of one ostensibly competent bidder when the prices and terms are in fact determined by some other bidder or when in fact the bid is not a bona fide bid.

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

DELMAR M. RANDALL, DOING BUSINESS AS THE COLRAN
INSTITUTE, AND MERVYON E. RANDALL

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

Docket 4886. Complaint, Jan. 14, 1943—Decision, Oct. 9, 1944

As respects the remedying of wrinkles and lines in the face and neck, it has been established that these are not due to any condition of the muscles but are due to the fact that as one grows older the skin tends to lose its elasticity, with the result that it sags, causing wrinkles and lines to develop, the only recognized or effective treatment for which is through a "face lifting" operation, whereby a portion of the skin is removed and the remainder drawn together, there being no way known to science aside from surgery whereby the skin can be caused to shrink.

Where a husband and wife engaged in the interstate sale and distribution of their "Colran Method" of face lifting without surgery or "Colran Method of nonsurgical rejuvenation," consisting of (1) an electrical device which they designated as "The Electrical Face Rejuvenator," and (2) a small machine with two electrodes attached, designated "The Colran Electro-Lifter," and (3) cosmetic preparations designated as "Cleansing Oil," "Contact Solution," "Special Cleansing Solution" and "Conditioning Oil," function of which was to cleanse the skin and facilitate contact between it and the electrodes; through statements in their advertisements in newspapers and periodicals, circulars, leaflets and other advertising media (in which they also included depictions purporting to illustrate the benefits resulting from the use of their said method), directly or by implication—

(a) Represented that through use thereof face lifting could be accomplished without resort to surgery; that wrinkles, lines, and sagging skin in the face and neck could be eliminated and replaced with revitalized, youthful skin; that it would restore to user's face the contour of youth and eliminate the signs of age; and would rejuvenate the skin of the face and neck through rebuilding and strengthening the muscles underlying the skin, assertedly attached thereto, and, through a natural form of exercise automatically tighten and fill out the same;

The facts being that face lifting can be accomplished only through a surgical operation; muscles of the face and neck are not attached to the skin, but to underlying tissue and fat; any activation of such muscles which might be caused by their device would be wholly ineffective insofar as contraction of the skin is concerned, and their said method could not bring about the result claimed; and

(b) Falsely represented or implied, through use of the words "rejuvenator" and "lifter" in their trade names, that their said "method" would rejuvenate the skin and accomplish the result known as face lifting;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature, properties, and efficacy of their products, and thereby 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 constituted unfair and deceptive acts and practices in commerce.

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

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 Delmar M. Randall, an individual, trading as The Colran Institute and Mervyon E. Randall, 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 setting forth its charges in that respect as follows:

PARAGRAPH 1. Respondent, Delmar M. Randall, is an individual, trading as The Colran Institute, with his principal place of business located at 3809 Main Street in the city of Houston, State of Texas. Respondent Mervyon E. Randall, is an individual, with her principal place of business located at 3809 Main Street in the city of Houston, State of Texas. Said last named respondent is actively engaged, together with the respondent, Delmar M. Randall, in the operation of the business of The Colran Institute and the dissemination of the advertising matter hereinafter set forth.

PAR. 2. Said respondents are now, and for several years last past have been, engaged in the sale of an electrical device variously designated as "The Electric Facial Rejuvenator," "The Colran Electro-Lifter" and "The Electro-Lifter," together with certain preparations in the nature of cosmetics designated as "Cleansing Oil," "Contact Solution," "Special Cleansing Solution" and "Conditioning Oil," advertised as the "Colran Method of Face Lifting without Surgery."

In the course and conduct of their business respondents cause their said electrical device and preparations, hereafter referred to as method, when sold, to be transported from their 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. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said Method in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their method by United States mails, and by various other means in commerce as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said Method, by various means for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said Method 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, pictures and other advertising, are the following:

Surgery Eliminated!

Face lifting can now be accomplished without surgery. The pain, discomfort, and possibility of ugly scars that have caused so many women to decide to grow old gracefully is no longer necessary. Sagging faces and necks, loose wrinkled skin can be replaced with a revitalized, youthful, glowing face . . . with firm muscles and the soft rounded contours of youth and health.

THE ELECTRIC Facial Rejuvenator Non-Surgical FACE LIFTING METHOD

The Colran Method of Non-Surgical Facial Rejuvenation is the answer to wrinkles and loss of contour and signs of age.

You must not allow tell-tale wrinkles, drooping mouth lines, sagging chins and signs of old age—replace the loveliness of glowing youth! You have no excuse for NOW you know the answer to this aging problem!

. . . it is building new contour every treatment you have!

The skin is attached to the muscles. Sags and wrinkles and bagginess of the skin are due to relaxation and weakened condition of the underlying muscles to which it is attached. The Electro-Lifter rebuilds and strengthens these muscles through a natural form of exercise that automatically tightens and fills out the skin which is attached to these muscles, thus removing wrinkles and hollows and restoring firmness and natural contour to the face.

. . . the exercise of the muscles causes a greatly increased blood supply to both the muscles and the skin, and helps in this way to eliminate many superficial conditions. The muscle contractions also cause drainage of the glands that lay between the skin and muscle which helps to clean the pores and soften the skin with natural oils.

The results obtained by The Colran Method should last from three to five years.

Such advertising literature also includes a pictorial representation purporting to illustrate the benefits resulting from treatment by respondents' method. Such depiction is in a folder bearing on one side the words "Young and Happy" and on the other side the words "OLD and SAD," and containing the representation "Face lifting can now be accomplished without Surgery." When the half of the folder bearing the words "Young and Happy" is turned back it discloses a picture of half of a woman's face which appears youthful in appearance and unmarred by wrinkles and blemishes. When the side of the folder bearing the words "OLD and SAD" is turned back it discloses the other half of the face which appears aged and marred by wrinkles.

The respondents also disseminate among their dealers and distributors various types of literature containing representations similar or identical to those set out herein above which are designed for the use of such dealers and distributors in soliciting the sale of their said Method among the purchasing public.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others of similar import not specifically mentioned herein the respondents represent that face lifting can be accomplished without surgery; that sagging faces, chins and necks, loose wrinkled skin, drooping mouth lines and signs of age on the face and neck can be eliminated by the use of said method and that such conditions will be replaced with a revitalized, youthful and glowing appearance with firm muscles and the soft rounded contours of youth and health; that the use of said method rejuvenates the skin of the face and neck; that said method will build a new contour of the face and neck; that the skin of the face and neck is attached to the muscles and sags, wrinkles and bagginess are due to relaxation and a

weakened condition of the underlying muscles to which it is attached; that respondents' method rebuilds and strengthens the muscles resulting in an automatic tightening and filling out of the skin which removes wrinkles and hollows and restores firmness and the natural contour of the face; that the exercises of the muscles provided by the use of said method greatly increases the blood supply to both the muscles and the skin thereby aiding in the elimination of superficial skin conditions generally; that the muscle contractions resulting from the use of said method cause drainage of the glands lying between the skin and muscles which is helpful in cleansing the pores and results in the softening of the skin through the secretion of natural oils and that the results obtained through the use of respondents' method will last from three to five years. Through the use of the pictorial representations above referred to respondents represent that the use of their said method has brought about the improved conditions as disclosed therein.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, face lifting can not be accomplished without surgery. The expression "Face Lifting," as understood both by the medical profession and the laity, applies to a surgical procedure in which some of the surplus skin of the neck and face is removed by means of incisions at the hairline, behind the ears or at the corners of the eyes. The results accomplished by such procedure can not be duplicated or approached by a mechanical manipulation of the face, neck and underlying muscles as provided by the electrical current produced by respondents' device. Sagging faces, chins and necks, loose wrinkled skin, drooping mouth lines, signs of old age on the face and neck can not be eliminated or removed by the use of said Method nor will such conditions be replaced with a revitalized skin, firm muscles, and soft rounded contours of youth and health. Said method will not rejuvenate the skin of the face and neck nor will it build a new contour of the face and neck. The skin of the face and neck is not attached to muscles and sags, wrinkles and bagginess of the face and neck are not due primarily to the weakened and relaxed condition of muscles. Respondents' method can not rebuild muscles and any strengthening of muscles brought about by its use will not result in tightening and filling out of the skin nor will its use restore firmness or the natural contour of the face. While the stimulation to muscles resulting from the use of said method may provide some aids to the circulation of blood at the site of application, this stimulation and increased circulation is only temporary and will exert no significant effect upon the structure or appearance of the skin and will have no material effect upon superficial skin conditions generally. Said method will be of no assistance in cleansing the pores of the skin except superficially and will have no significant effect upon the secretion of natural oils by the skin. Any possible benefits which may result from the use of said method will be temporary and it can not be stated that they will last from three to five years or for any other period of time. The pictorial representation purporting to represent and illustrate the results achieved through the use of respondents' method does not truthfully depict the actual appearance of the subject and said method does not and can not cause or result in the apparent benefits represented by the use of such depiction.

While some of the cosmetic preparations sold and distributed by respondents as a part of their method have certain cleansing and emollient properties and their Contact Oil tends to provide a suitable contact for the device with the skin, the said device and cosmetic preparations used separately, or in connection with each other will not and can not provide the results claimed by respondents in their advertising matter hereinabove set forth.

PAR. 6. The use by the respondents of their trade name "The Electric Facial Rejuvenator" for their device, and the use of the trade names "The Colran Electro-Lifter" and "The Electro-Lifter," when used in connection with statements with respect to face lifting are in themselves misleading and deceptive in that they serve as representations that said device will rejuvenate the skin and will lift the face, both of which representations are false.

PAR. 7. The respondents' said acts and practices, as hereinabove set forth, serve also to place in the hands of unscrupulous or uninformed dealers and distributors a means and instrumentality whereby, in the sale and distribution of respondents' method, such parties may mislead and deceive the purchasing public in the manner and method as herein described.

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

PAR. 9. The acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 14, 1943, issued and subsequently served its complaint in this proceeding upon the respondents, Delmar M. Randall, an individual, doing business as The Colran Institute, and Mervyon E. Randall, an individual, 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 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 the exceptions to such report, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested); and the Commission, hav-

ing duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Delmar M. Randall, is an individual, who for some three years immediately preceding April, 1942, was engaged in business under the name of The Colran Institute, with his principal office and place of business located at 3904 Main Street, Houston, Tex. Respondent, Mervyon E. Randall, is the wife of respondent, Delmar M. Randall, and participated actively with him in the operation of the business known as The Colran Institute and in the dissemination of the advertising matter thereafter described. Both of the respondents now reside in Sanderson, Tex.

During the period of time in question respondents were engaged in the sale of an electrical device designated by them as "The Electric Facial Rejuvenator" and as "The Colran Electro-Lifter," together with certain cosmetic preparations designated by them as "Cleansing Oil," "Contact Solution," "Special Cleansing Solution," and "Conditioning Oil." The electrical device and the several cosmetic preparations were advertised together by respondents as "The Colran Method of Face Lifting Without Surgery" and as "The Colran Method of Non-Surgical Facial Rejuvenation."

PAR. 2. Respondents caused their device and preparations, when sold, to be transported from their 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. Respondents maintained a course of trade in their products in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their products, respondents disseminated and caused the dissemination of numerous advertisements concerning their products by means of the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents also disseminated and caused the dissemination of advertisements concerning their products by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among the typical of the various statements contained in such advertisements, disseminated by means of the United States mails, by insertion in newspapers and periodicals, and by means of circulars, leaflets and other advertising media, were the following:

THE ELECTRIC Facial Rejuvenator Non-Surgical FACE LIFTING METHOD.
(Comm. Ex. 6-B)

Surgery Eliminated!

Face lifting can now be accomplished without surgery.

The pain, discomfort, and possibility of ugly scars that have caused so many women to decide to grow old gracefully is no longer necessary.

Sagging faces and necks, loose wrinkled skin can be replaced with a revitalized, youthful, glowing face . . . with firm muscles and the soft rounded contours of youth and health. (Comm. Ex. 6-A)

The Colran Method of Non-surgical Facial Rejuvenation is the answer to wrinkles and loss of contour and signs of age. * * * You must not allow tell-tale wrinkles, drooping mouth lines, sagging chins and signs of old age—replace the loveliness of glowing youth! You have no excuse for NOW you know the answer to this aging problem! (Comm. Ex. 6-B)

* * * it is building new contour every treatment you have! (Comm. Ex. 6-B)

In addition to these and other verbal representations, respondents also used in their advertisements pictorial representations purporting to illustrate the benefits resulting from the use of respondents' method.

PAR. 4. Through the use of these statements and representations and others of similar import, respondents represented, directly or by implication, that through the use of their method face lifting could be accomplished without resort to surgery; that through the use of such method wrinkles, lines, and sagging skin in the face and neck could be eliminated and such conditions replaced with revitalized, youthful skin; that such method would restore to the user's face the contour of youth and eliminate the signs of age; and that such method would rejuvenate the skin of the face and neck.

PAR. 5. Respondents' device is a small electrical machine to which are attached two electrodes. When the machine is in use these electrodes are applied to various places on the face and neck. The machine is equipped with a switch for regulating the electric current. The various cosmetic preparations supplied by respondents with the machine were merely for the purpose of cleansing the skin and facilitating the contact between the electrodes and the skin. The theory upon which respondents based their claims for the device was summarized in their printed instructions as follows:

The skin is attached to the muscles. Sags and wrinkles and bagginess of the skin are due to relaxation and weakened condition of the underlying muscles to which it is attached. The Electro-Lifter rebuilds and strengthens these muscles through a natural form of exercise that automatically tightens and fills out the skin which is attached to these muscles, thus removing wrinkles and hollows and restoring firmness and natural contour to the face. (Comm. Ex. 5, p. 3)

PAR. 6. The record establishes that wrinkles and lines in the face and neck are not due to any condition of the muscles but are due to the fact that as one grows older the skin tends more and more to lose its elasticity, with the result that it sags, causing wrinkles and lines to develop. In such cases the only recognized or effective treatment is through the surgical operation commonly known as "face lifting," an operation whereby a portion of the skin is removed and the remaining parts drawn together. Aside from surgery there is no way known to science whereby the skin can be caused to shrink or contract.

The muscles of the face and neck are not attached to the skin but are attached to underlying tissue and fat, and any activation of the muscles which might be caused by respondents' device would be wholly ineffectual insofar as the contraction of the skin is concerned. While the movement of certain muscles of the face and neck results in the movement of the skin,

such result is due to the relation between the muscles and the tissue or fat underlying the skin and not to any attachment between the muscles and the skin itself.

Respondents' method is therefore incapable of removing wrinkles, lines, and sagging skin from the face and neck or replacing such conditions with revitalized, youthful skin. Nor can the use of such method restore to the user's face the contour of youth, eliminate the signs of age, or rejuvenate the skin of the face and neck. Respondents' method is likewise wholly incapable of bringing about the result known as face lifting. As pointed out above, face lifting can be accomplished only through a surgical operation.

PAR. 7. The Commission therefore finds that the representations made by respondents with respect to their device and cosmetic preparations, as set forth in paragraphs 3 and 4 hereof, were erroneous and misleading and constituted false advertisements.

PAR. 8. The Commission finds further that the trade names "The Electric Facial Rejuvenator" and "The Colran Electro-Lifter," used by respondents to designate and describe their device, constituted false advertisements in that such names represented or implied through the use of the words "Rejuvenator" and "Lifter" that respondents' device would rejuvenate the skin and would accomplish the result known as face lifting.

PAR. 9. The use by respondents of these false advertisements, had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature, properties, and efficacy of respondents' products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Delmar M. Randall, individually, and trading as The Colran Institute, or trading under any other name, and Mervyon E. Randall, 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' electrical device designated "The Electric Facial Rejuvenator" and "The Colran Electro-Lifter," and respondents' cosmetic preparations designated "Cleansing Oil," "Contact Solution," "Special Cleansing Solution," and "Conditioning Oil," or any other products of a substantially similar nature or possessing substantially similar properties, whether sold under the same names or any other names, do forthwith cease and desist from directly or indirectly:

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

(a) That face lifting can be accomplished without surgery.

(b) That the use of respondents' products, or any of them, will lift the face.

(c) That the use of respondents' products, or any of them, will remove wrinkles, lines, or sagging skin from the face or neck, or replace such conditions with revitalized, youthful skin.

(d) That the use of respondents' products, or any of them, will restore to the user's face the contour of youth, or eliminate the signs of age.

(e) That the use of respondents' products, or any of them, will rejuvenate the skin.

or which advertisement:

(f) Uses the word "Rejuvenator," or any word of similar import, alone or in connection with any other word or words, to designate, describe, or refer to respondents' device.

(g) Uses the word "Lifter," or any word of similar import, alone or in connection with any other word or words, to designate, describe, or refer to respondents' device.

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

39 F. T. C.

IN THE MATTER OF
HOWARD CLOCK CORPORATION

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

Docket 5119. Complaint, Jan. 24, 1944—Decision, Oct. 9, 1944

Where the name "Howard," developed and used since 1842 by the original founders of the E. Howard Watch Clock Co. and its successors to identify the watches and clocks sold by them, had become widely and favorably known to the purchasing public for the high standards of workmanship and quality of the products sold under that name, whereby manufacturers of said products had come to enjoy a profitable business and substantial good-will; and thereafter a corporation engaged in the manufacture, sale and distribution of an electric clock—

Represented, directly and by implication, through the use of the word "Howard" in its corporate name, in such statements in its advertising matter as "The famous HOWARD," "The dependable Howard," "This new Howard model," "Howard precision-built," "This Howard creation," and "A Howard clock should last a lifetime," and on its said clocks and in other ways, that said products were produced by the makers of the Howard watches and clocks long familiar to the public as the product of the original E. Howard Watch and Clock Co. and its successors; The facts being its business was organized in 1940, no person by the name of Howard had ever been associated with its corporate organization, it had never had any connection with either the original E. Howard Watch & Clock Co. or its successors in interest, and its said clocks were not made by or purchased from the makers of the well-known Howard watches and clocks;

With the result of causing many members of the purchasing public to believe that its said business was connected with and that its said clocks were made by or purchased from the makers of the well-known watches and clocks, and of causing them to purchase its products in substantial number in reliance upon the truth of the aforesaid representation and designations:

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.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Howard Clock 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, Howard Clock Corporation, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 1718-20 N. Damen Avenue, Chicago, Ill.

PAR. 2. The respondent is now, and has been for more than three years last past, engaged in the manufacture, sale and distribution of electric clocks. In the course and conduct of its business, respondent sells its said clocks to the wholesale and jobber trade for resale to the purchasing public. The respondent causes its said merchandise, when sold to be transported from its place of business in the State of Illinois to purchasers thereof located in the various States of the United States other than the State of Illinois and in the District of Columbia.

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

PAR. 3. In the year 1842 there was incorporated the E. Howard Watch & Clock Co., which began the manufacture and sale of watches and clocks under the name "Howard." Throughout the many years since its establishment the business has been conducted by its original founders and successors in title. During the intervening years the name "Howard" has been used in the trade or corporate name of the original founders or its successors. The name "Howard," developed and used by the original founders and by its successors to enable the purchasing public to identify the brand and quality of the watches and clocks sold by them, has been widely and favorably known to the purchasing public for high standards, workmanship and quality and by reason thereof its manufacturers have enjoyed a profitable business and the good will of a substantial part of the purchasing public.

PAR. 4. In the course and conduct of its business aforesaid, the respondent adopted the word "Howard" under which to carry on its business, which said name respondent at all times mentioned herein has used continuously, and now uses as a trade designation to identify its products, in soliciting the sale of and selling its clocks described herein. Typical of the manner and use of the word "Howard" in its advertising disseminated among purchasers and prospective purchasers are the following:

Clocks of Distinction

H O W A R D

Clocks of Quality

H O W A R D

Commercial Clocks

The famous HOWARD

The dependable Howard

This new Howard model

Howard precision-built

This Howard creation

The many qualities of the dependable Howard

A Howard clock should last a lifetime

Like all Howard clocks it comes with

Underwriters' Approved Cord.

PAR. 5. Through the use of the word "Howard" in its corporate name and in its advertising and on its clocks, and through other representations not specifically set out herein, the respondent has represented, and now represents, directly and by implication, that its said clocks are produced by the makers of "Howard" watches and clocks, long familiar to the public as the product of the original E. Howard Watch & Clock Company, and its successors.

PAR. 6. The use by respondent of the word "Howard" in its corporate name and as a mark or brand for its said products is confusing, misleading and deceptive and causes many members of the purchasing public to believe that respondent's said business is connected with, and that said clocks are manufactured by or purchased from, the makers of the famous Howard watches and clocks and causes them to purchase said clocks as a result of such mistaken belief. In truth and in fact respondent's business was organized in 1940 and no person by the name of Howard was or is associated with its corporate organization and it has not had, nor does it now have, any connection with either the original E. Howard Watch & Clock Company or its successors in interest, and its said clocks are not made by or purchased from the makers of the Howard watches and clocks, which products have been long and favorably known to the purchasing public.

The use of the word "Howard" in its corporate name and as a mark or brand on said clocks, and otherwise by respondent, has placed in the hands of dealers and jobbers a means and instrumentality whereby such dealers are enabled to mislead and deceive members of the purchasing public.

PAR. 7. The use by respondent of said corporate name and the designations and representations, as set forth herein, in connection with the offering for sale and selling of their said clocks has had, and now has, the tendency and capacity to, and does mislead purchasers and prospective purchasers into the erroneous and mistaken belief that such representations and designations are true, and to induce the purchase in said commerce of said clocks on account thereof.

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 meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 24th day of January, 1944, issued and thereafter served its complaint in this proceeding upon the respondent, Howard Clock Corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Subsequently, 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 hearings as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Howard Clock Corporation, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 1718-20 N. Damen Avenue, Chicago, Ill.

PAR. 2. The respondent is now, and has been for more than three years last past, engaged in the manufacture, sale and distribution of electric clocks. In the course and conduct of its business, respondent sells its said clocks to the wholesale and jobber trade for resale to the purchasing public. The respondent causes its said merchandise, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in the various States of the United States other than the State of Illinois and in the District of Columbia.

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

PAR. 3. In the year 1842 there was incorporated the E. Howard Watch & Clock Co., which began the manufacture and sale of watches and clocks under the name "Howard." Throughout the many years since its establishment the business has been conducted by its original founders and successors in title. During the intervening years the name "Howard" has been used in the trade or corporate name of the original founders or its successors. The name "Howard," developed and used by the original founders of said E. Howard Watch & Clock Co., and by its successors to enable the purchasing public to identify as to brand and quality the watches and clocks sold by them, has been widely and favorably known to the purchasing public for the high standards of workmanship and the quality of the products sold under that name and by reason thereof manufacturers of said products have enjoyed a profitable business and the good will of a substantial part of the purchasing public.

PAR. 4. In the course and conduct of its business aforesaid, the respondent adopted the word "Howard" under which to carry on its business, which said name respondent, at all times mentioned herein, has used continuously, and now uses as a trade designation to identify its products, in soliciting the sale of and in selling its clocks described herein. Typical of the manner and use of the word "Howard" in its advertising matter disseminated among purchasers and prospective purchasers are the following:

Clocks of Distinction

H O W A R D

Clocks of Quality

H O W A R D

Commercial Clocks

The famous H O W A R D

The dependable H o w a r d

This new H o w a r d model

H o w a r d precision-built

This H o w a r d creation

The many qualities of the dependable Howard

A Howard clock should last a lifetime

Like all Howard clocks it comes with Underwriters' Approved Cord.

PAR. 5. Through the use of the word "Howard" in its corporate name and in its advertising matter and on its clocks, and through other representations not set out herein, the respondent has represented, and now represents, directly and by implication, that its said clocks are produced by the makers of the "Howard" watches and clocks, long familiar to the public as the product of the original E. Howard Watch & Clock Co., and its successors.

PAR. 6. The use by respondent of the word "Howard" in its corporate name and as a mark or brand for its said products is confusing, misleading and deceptive and causes many members of the purchasing public to believe that respondent's said business is connected with, and that said clocks are manufactured by or purchased from, the makers of the well-known Howard watches and clocks, and causes them to purchase said clocks as a result of such mistaken belief.

In truth and in fact respondent's business was organized in 1940 and no person by the name of Howard was or is associated with its corporate organization and it has not had, nor does it now have, any connection with either the original E. Howard Watch & Clock Co., or its successors in interest, and its said clocks are not made by or purchased from the makers of the well-known Howard watches and clocks.

The use of the word "Howard" in its corporate name and as a mark or brand on said clocks, and otherwise by respondent, has placed in the hands of dealers and jobbers a means and instrumentality whereby such dealers are enabled to mislead and deceive members of the purchasing public.

PAR. 7. The use by respondent of said corporate name and the designations and representations, set forth herein, in connection with the offering for sale and selling of their said clocks, has had, and now has, the tendency and capacity to, and does, mislead purchasers and prospective purchasers into the erroneous and mistaken belief that such representations and designations are true. As a result of said erroneous and mistaken belief a substantial number of members of the public have purchased respondent's clocks in commerce between and among the several States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the meaning of the Federal 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 hearings as to said facts, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act,

It is ordered, That respondent, Howard Clock 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 clocks or watches in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Howard," or any simulation thereof, in its corporate or trade name.

2. Using the word "Howard," or any simulation thereof, in any way to designate, describe, or refer to clocks or watches not the product of E. Howard Watch & Clock Company or its successors.

3. Representing in any manner that clocks or watches not the product of E. Howard Watch & Clock Company or its successors are the product of said company or its successors.

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 F. ROHLER, ET AL.¹

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

Docket 4806. Complaint, Aug. 6, 1942—Decision, Oct. 10, 1944

Where (1) a general contractor and two individuals, his employees and agents; (2) D, employee and agent, in city concerned, of W (company engaged in interstate purchase and sale of electrical equipment and supplies) and instrumental in effecting the interstate purchase and sale of such products; (3) R, electrical contractor in said city, and also, during period concerned, employee and agent of aforesaid general contractor and purchaser in interstate commerce in said capacity of such products from concerns W, W.B., and others; (4) C, vice president and agent of said W. B. (corporation engaged in manufacture and in interstate purchase and sale of such products) and instrumental in effecting the purchase and sale of such products; (5) L, secretary and agent of A (a corporation also so engaged); and (6) the three electrical concerns above referred to, namely, W, W.B., and A, in competition among themselves and with other purchasers and sellers of such products except insofar as said competition had been restricted or forestalled by the concerted course of action below set forth;

Following arrangements by the Navy with a shipbuilding company under which said company was to undertake construction of naval vessels, and pursuant to which (1) the Navy agreed to arrange for the advancing of the necessary funds to rehabilitate the latter's shipyards in said city, to be expended under the general supervision of the Navy and subject to its approval, and (2) said shipbuilding company contracted with aforesaid general contractor for the reconstruction by him of certain office buildings and shipways on a cost-plus-a-fixed-fee basis, with the understanding that in securing materials or services he would obtain competitive offers from as many as practicable, but not less than two—or three where specified—reputable firms and award a contract to the concern quoting the minimum price; bids to be opened by or in the presence of the Navy Supervisor of Shipbuilding, or his representative, and to be subject to his approval before award of the subcontract—

Cooperated, combined, agreed, and conspired, through understanding among themselves, during a period of some fifteen months or more, to, and did restrain and suppress competition in the purchase and sale in commerce of said products, including such items as electric cable, wire, switches, conduit, fittings, condulets, potheads, cable heads, transformers, insulators, lighting fixtures, lamps, and accessories; and pursuant to and as a part of aforesaid understanding, etc.—

- (a) Promoted, established and carried out a practice of maintaining a false appearance of competition between said concerns and other sellers of such products in their submission of bids to buyers and prospective buyers;
- (b) Conveyed to such buyers, including official awarding authorities of the United States Government, and others involved in the purchase of such products, the rep-

¹ The instant case is one of a group of eight having to do with the preparation and submission of sham, false, fictitious, fraudulent and non-competitive bids in connection with the Navy's arrangement for the construction of ships by the Cramp Shipbuilding Co. at its shipyards in Philadelphia. For list of these cases, see footnote to the case of the Grater-Bodey Co., et al., Docket 4799, p. 113.

resentation that aforesaid concerns and other sellers were rival bidders and competitors, when, in reality, they were acting collusively in preparing and submitting bids;

- (c) Avoided and prevented competition and prevented consideration by purchasers of genuinely competitive bids or price quotations; and

Where aforesaid general contractor, acting directly and through his aforesaid two employees and agents, and through said R, electrical contractor and own employee and agent also—

- (d) Cooperated with said D, employee and agent of supply company W, and with R, in the preparation and submission to himself and his said two agents and employees, and to his subcontractor, said R, of fictitious bids for the furnishing of electrical equipment and supplies, for his use in rehabilitating said shipyards, and submitted such bids in turn to purchasing officials of said shipbuilding company and representatives of the Navy Supervisor of Ships as genuinely competitive bids and price quotations; and

Where said agent D, on numerous occasions, with the knowledge and cooperation of said general contractor, and his employees, agents, and subcontractors, including said R—

- (e) In furtherance of the above described deception secured letterhead stationery of said concerns W.B. and A, from said C, and L, their respective officials, and made use thereof in the preparation and submission of fictitious bids for furnishing electrical equipment and supplies to said general contractor and his agents and subcontractors, over the names of the aforesaid two electrical concerns and over the purported but false signatures of their officials, at prices which were higher than, and non-competitive with the bids submitted in each comparable instance by said D as the bid of his company; and

Where said general contractor, his employees, agents, and subcontractors, in each of the number of instances where said D thus submitted to them such bids on stationery of concerns W, W.B., and A.—

- (f) In turn submitted as and for genuine and competitive bids, such false bids to officials of said shipbuilding company and to representatives of the Navy Supervisor of Ships, who were misled and deceived thereby into considering and approving them as genuine and competitive; and

Where said C, vice president of said W.B., and said L, secretary of said A—

- (g) Knowingly cooperated with said D in furnishing him with stationery bearing the letterheads of their respective concerns for his use in the preparation of such fictitious bids;

With the result that said W, as a consequence of the submission of such fictitious bids by its said agent, enjoyed awards of numerous contracts to it by said general contractor, his employees, agents and subcontractors, with the approval of officials of said shipbuilding company and representatives of the Navy Supervisor of Ships, secured through deception as aforesaid; and

Where said R, individually and as employee, agent and subcontractor of said general contractor, in addition to cooperating with said agent D, in the preparation and submission of said fictitious bids;

- (h) Personally also prepared and submitted such bids to and through the office of said general contractor for the purpose and with the result of having them in turn submitted by said general contractor or his said two agents, to officials of said shipbuilding company and representatives of the Navy Supervisor of Ships, whereby such bids were considered and approved as genuine and competitive by said misled officials and representatives, and contracts for furnishing such equipment and

supplies to said general contractor and said shipbuilding company were secured by him:

With the effect of depriving buyers and prospective buyers of electrical equipment and supplies, including contractors and subcontractors with the United States Government, and the public in general, of the benefit of competition in commerce, between said three concerns and others with whom they normally would be in competition in making bids and price quotations; and with tendency so to do:

Held, That such acts, practices, agreements and conspiracy, under the circumstances set forth, were all to the prejudice of the public, had a dangerous tendency to and did restrain and eliminate competition in the purchase and sale of electrical equipment and supplies in commerce; had the capacity and tendency to, and did, unreasonably restrain such commerce in said products; had a dangerous tendency to create in aforesaid individuals and concerns a monopoly in the purchase, sale and distribution of said products; and constituted 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.

Mr. Everett MacIntyre and Mr. V. W. Summers for the Commission.

Mr. James F. Masterson, of Philadelphia, Pa., for Charles F. Rohleder, Allen McLaine Ward, J. R. Baldrige, Jr. and J. P. Rainey.

Saul, Ewing, Remick & Harrison, of Philadelphia, Pa., for Westinghouse Electric Supply Co.

Rawle & Henderson, of Philadelphia, Pa., for R. R. Dewees.

Montgomery, McCracken, Walker & Rhoads, of Philadelphia, Pa., for Walker Brothers and Anthony M. Callanan.

Mr. William J. Wilson, of Philadelphia, Pa., for Adelphia Electric Co. and Norman T. Leithold.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that the persons, partnerships and corporations named or included by reference in the caption hereof, and more particularly hereinafter described and referred to as respondents, have violated the provisions of Section 5 of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint against each of the said parties, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Charles F. Rohleder, is an individual, engaged in general contracting and construction work, with office and principal place of business located at 2134 Cherry Street, Philadelphia, Pa.

Respondent, Allen McLaine Ward, whose residence address is 7415 Bingham Street, Philadelphia, Pa., is an individual, who during the period covered by the activities involved in the charges of this complaint served as an employee and agent of respondent, Charles F. Rohleder.

Respondent, J. R. Baldrige, Jr., whose residence address is 111 East Cliveden Avenue, Philadelphia, Pa., is an individual, who during the period covered by the activities involved in the charges of this complaint served as an employee and agent of respondent, Charles F. Rohleder.

Respondent, J. P. Rainey, is an individual, engaged in the electrical contracting business and trading as J. P. Rainey & Co., 511 North Broad Street, Philadelphia, Pa. He, during the period covered by the activities involved in the charges in the complaint, also served as an employee and agent of respondent, Charles F. Rohleder.

Respondent, Westinghouse Electric Supply Co., is a corporation, organized and existing under the laws of the State of Delaware, with an office and principal place of business located at 150 Varick Street, New York, N. Y., and with a branch or district office located at 1101 Race Street, Philadelphia, Pa.

Respondent, R. R. Dewees, is an individual, who has served as an employee and agent of respondent, Westinghouse Electric Supply Co., 1101 Race Street, Philadelphia, Pa., during the period covered by the activities involved in the charges in this complaint.

Respondent, Walker Brothers, is a Pennsylvania corporation with office and principal place of business located at Conshohocken, Pa.

Respondent, Anthony M. Callanan, is an individual, who during the period covered by the activities involved in the charges of this complaint served as a vice president and agent of respondent, Walker Brothers, Conshohocken, Pa.

Respondent, Adelpia Electric Co., is a Pennsylvania corporation, with principal place of business located at 125 North 10th Street, Philadelphia, Pa.

Respondent, Norman T. Leithold, is an individual, who during the period covered by the activities involved in the charges of this complaint served as secretary and agent of respondent Adelpia Electric Co., 125 North 10th Street, Philadelphia, Pa.

PAR. 2. At all times hereinafter mentioned respondent, Charles F. Rohleder, directly and through his agents, respondents, Allen McLaine Ward, J. R. Baldridge, Jr., and J. P. Rainey, has been engaged in negotiating with and buying from respondents, Westinghouse Electric Supply Co., J. P. Rainey & Co., and Walker Brothers, directly and through their agents, including R. R. Dewees, J. P. Rainey and Anthony M. Callanan, "electrical equipment and supplies" which were shipped from many points located in States other than the State of Pennsylvania by the sellers or their suppliers to Charles F. Rohleder or his agents at Cramp Shipbuilding Co. shipyard, Richmond and Norris Streets, Philadelphia, Pa.

At all times hereinafter mentioned, respondent, J. P. Rainey, doing business as J. P. Rainey & Company, has been engaged in Philadelphia, Pa., in the electrical contracting business and in that capacity, and also as an agent of respondent, Charles F. Rohleder, has purchased "electrical equipment and supplies" from respondents, Westinghouse Electric Supply Co., Walker Brothers, and others, and caused such electrical supplies and equipment to be shipped from locations in States other than the State of Pennsylvania to him in Philadelphia, Pa.

At all times hereinafter mentioned, purchase respondent, Westinghouse Electric Supply Co., has been engaged in the purchase and sale of "electrical equipment and supplies" and causing the same to be shipped from points of manufacture in various States through and to locations in other States, including Philadelphia, Pa., where such electrical supplies and equipment were used by the buyers.

At all times hereinafter mentioned, respondent, Walker Brothers, has been engaged in the manufacture, purchase and sale of "electrical equipment and supplies" and causing the same to be shipped from points of manufacture in various States through and to locations in other States, including Philadelphia, Pa., where such electrical supplies and equipment were used by the buyers.

At all times hereinafter mentioned, respondent, Adelpia Electric Co., has been engaged in the purchase and sale of "electrical equipment and supplies" and causing the same to be shipped from points of manufacture in various States through and to locations in other States, including Philadelphia, Pa., where such electrical supplies and equipment were used by the buyers.

At all times hereinafter mentioned respondents, R. R. Dewees and Anthony M. Callanan, as agents of respondent, Westinghouse Electric Supply Co., and respondent, Walker Brothers, respectively, have been instrumental in effecting purchase and sale of "electrical equipment and supplies" and causing the same to be shipped from points of manufacture in various States through and to locations in other States, including Philadelphia, Pa., where such electrical supplies and equipment were used by the buyers.

PAR. 3. Respondents, Westinghouse Electric Supply Co., Walker Brothers, Adelpia Electric Co., and others not named herein as respondents engaged in the purchase and sale of "electrical equipment and supplies" in Philadelphia, Pa., have been and are in competition between and among themselves and with one or more other purchasers and sellers of electrical supplies in making or seeking to make sales in "commerce" between and among the various States of the United States of "electrical equipment and supplies" except in so far as said competition has been hindered, lessened, restricted or forestalled by the cooperation, concert or common course of action, understanding, confederation, combination, agreement or conspiracy or the acts, things, practices, policies or methods done and carried on in pursuance thereto or in furtherance thereof, as hereinafter set forth.

PAR. 4. The term "electrical equipment and supplies" as used herein includes, but not limited to, such items as electric cable, electric wire, electric switches, electric conduit, fittings, condulets, potheads, cableheads, transformers, insulators, lighting fixtures, lamps and accessories.

PAR. 5. During 1940, as a part of its work in the Defense Program of the United States of America, the Navy Department arranged with Cramp Shipbuilding Co., whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities of the said shipyard, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon, the said Cramp Shipbuilding Co. contracted with respondent, Charles F. Rohleder, for the latter to reconstruct certain office buildings and shipways on a cost plus a fixed fee basis, with the understanding that the said Rohleder in securing materials or services would obtain competitive offers from as many as practicable, but not less

than two (not less than three where specified) reputable firms in a position to provide the material, equipment or services, as required at a reasonable cost, and to award contract to that firm quoting the minimum price; and with the further understanding that the said offers, proposals or bids were to be opened by or in the presence of the Supervisor of Shipbuilding, U. S. Navy, or his representative, and subject to his approval before award of the sub-contract for materials, equipment or services.

In connection with his aforesaid contract with Cramp Shipbuilding Co., respondent, Charles F. Rohleder, negotiated with and made awards of contracts for the purchase, directly and through agents, of "electrical equipment and supplies" from respondents, J. P. Rainey, R. R. Dewees, Westinghouse Electric Supply Co. and others.

PAR. 6. Throughout a period of time beginning on or about the first day of October 1940 and continuing thereafter until subsequent to January 1, 1942, the respondents, Charles F. Rohleder, Allen McLaine Ward, J. R. Baldrige, Jr., R. R. Dewees, J. P. Rainey, Anthony M. Callanan, Norman T. Leithold, Westinghouse Electric Supply Co., Walker Brothers and Adelphia Electric Co., have through understanding together and with each other cooperated, confederated, combined, agreed and conspired to frustrate, hinder, restrain and suppress competition in the purchase and sale of "electrical equipment and supplies" in "commerce" as "commerce" is defined in the Federal Trade Commission Act in which sense it is herein used, and have in fact through such cooperation, confederation, combination, agreements and conspiracy frustrated, hindered, restrained and suppressed competition in the purchase and sale of "electrical equipment and supplies" in commerce.

Pursuant to, in furtherance of, and as a part of the aforesaid understanding, cooperation, confederation, combination, agreement and conspiracy, the aforesaid respondents have done, performed and used among other acts, things, practices, policies and methods the following:

1. Promoted, established, carried out and continued a practice of maintaining a false appearance of competition between and among respondents, Westinghouse Electric Supply Co., Walker Brothers, Adelphia Electric Co. and other sellers of "electrical equipment and supplies" in their submission of price quotations and bids to buyers and prospective buyers.

2. Conveyed to buyers and prospective buyers including official awarding authorities of the United States Government, and others involved in the purchase of "electrical supplies and equipment" the representation that said respondents, Westinghouse Electrical Supply Co., Walker Brothers, Adelphia Electric Co. and other sellers of "electrical equipment and supplies" were rival bidders and competitors when they in reality were acting collusively between and among themselves in preparing and submitting bids.

3. Avoided and prevented competition.

4. Prevented consideration of genuinely competitive bids or price quotations by purchasers.

5. On numerous occasions, the exact numbers and dates of which are unknown to the Commission, respondent, Charles F. Rohleder, acting directly and through his agents, respondents, Allen McLaine Ward, J. R. Baldrige, Jr., and J. P. Rainey, cooperated with respondents, R. R. Dewees, and J. P. Rainey, in the preparation and submission to said re-

spondent, Charles F. Rohleder, agents, and employees respondents Allen McLaine Ward and J. R. Baldrige, Jr., and his sub-contractor respondent, J. P. Rainey, of sham, false, fictitious, fraudulent and non-competitive bids and price quotations for the furnishing of "electrical equipment and supplies" for said Rohleder's use in rehabilitating the facilities of the Cramp Shipbuilding Co. shipyards, Norris and Richmond Streets, Philadelphia, Pa., and submitted such sham, false, fictitious, fraudulent and non-competitive bids and price quotations in turn to purchasing officials of the Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, U. S. Navy Department, for consideration and approval as genuinely competitive bids and price quotations.

6. On numerous occasions, the exact number and dates of which are unknown to the Commission, respondent, R. R. Dewees, acting in his capacity as agent of respondent, Westinghouse Electric Supply Co., with the knowledge and cooperation of respondent, Charles F. Rohleder, his employees, agents and sub-contractors, including respondent, J. P. Rainey, secured printed stationery of respondent, Walker Brothers, and respondent, Adelpia Electric Co., bearing their respective letterheads from their respective officials, respondent, Anthony M. Callanan, and respondent, Norman T. Leithold, respectively, and used the same in the submission of sham, false, fictitious, fraudulent and non-competitive bids and price quotations for furnishing "electrical equipment and supplies" to said respondent, Charles F. Rohleder, and his employees, agents and sub-contractors in furtherance of the deception as hereinbefore described, in preparing bids and price quotations over the names of Walker Brothers and Adelpia Electric Co. and over the purported but false signatures of officials of those firms, the prices specified therein being different from, higher than and non-competitive with the bid and price quotation submitted in each comparable instance by the said R. R. Dewees as the bid or price quotation of the firm he was then known to be representing, namely respondent, Westinghouse Electric Supply Co. Thereupon, in each of the number of instances where said R. R. Dewees thus submitted to respondent, Charles F. Rohleder, his employees, agents and sub-contractors, sham, false, fictitious, fraudulent and non-competitive bids for furnishing "electrical equipment and supplies" on stationery bearing the letterheads of respondents, Westinghouse Electric Supply Co., Walker Brothers and Adelpia Electric Co., such bids were in turn submitted by said Charles F. Rohleder, his employees, agents and sub-contractors as and for genuine and competitive bids to officials of Cramp Shipbuilding Co. and to representatives of the Supervisor of Ships, of the U. S. Navy, who were through the appearance of such bids misled and deceived into considering and approving them as genuine and competitive.

7. Respondent, Anthony M. Callanan, acting in his capacity as vice president of respondent, Walker Brothers, and respondent, Norman T. Leithold, acting in his capacity as secretary of respondent, Adelpia Electric Co., knowingly cooperated with respondent, R. R. Dewees, in his submission of sham, false, fictitious, fraudulent and non-competitive bids as aforesaid in furnishing him with stationery bearing said letterheads of their respective firms for his use in preparation of said bids.

8. Respondent, Westinghouse Electric Supply Co., as a result of the submission of sham, false, fictitious, fraudulent and non-competitive bids by its agent, respondent, R. R. Dewees, as aforesaid, enjoyed awards of

numerous contracts to it by said Charles F. Rohleder, his employees, agents and sub-contractors, with the approval, of officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, U. S. Navy, secured through deception as aforesaid.

9. Respondent, J. P. Rainey, individually, and as an employee, agent and sub-contractor of respondent, Charles F. Rohleder, in addition to aiding, abetting and cooperating with respondent, R. R. Dewees, sales agent of respondent, Westinghouse Electric Supply Co., in the latter's preparation and submission of sham, false, fictitious, fraudulent and non-competitive bids for furnishing "electrical equipment and supplies" to respondent, Charles F. Rohleder, Cramp Shipbuilding Co., and representatives of Supervisor of Ships, U. S. Navy, also personally prepared and submitted such bids to and through the office of said Charles F. Rohleder for the purpose and with the result of having them in turn submitted by respondent, Charles F. Rohleder, or by his agents, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., to officials of Cramp Shipbuilding Co. and representatives of Supervisor of Ships, U. S. Navy thereby misleading said officials and representatives into believing, considering and approving such bids as being genuine and competitive, and as a result thereof respondent, Rainey, secured contracts for furnishing "electrical equipment and supplies" to said respondent Rohleder and Cramp Shipbuilding Co.

PAR. 7. The aforesaid understanding, cooperation, combination and conspiracy and the doing and performing of the acts and things and the use of the methods set forth in the preceding paragraphs hereof tend to have and have had the effect of depriving buyers and prospective buyers of "electrical equipment and supplies" including contractors and sub-contractors with the United States Government and the public in general, of the benefit of competition in commerce between and among respondents, Westinghouse Electric Co., Walker Brothers, Adelphia Electric Co. and others with whom they normally would be in competition in making bids and price quotations.

PAR. 8. The acts, practices, methods, understandings, agreements, combination and conspiracy of the respondents, as hereinbefore alleged, are all to the prejudice of the public, have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained and eliminated competition in the purchase and sale of "electrical equipment and supplies" in commerce within the intent and meaning of the Federal Trade Commission Act; and have the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said products; have a dangerous tendency to create in respondents a monopoly in the purchase, sale and distribution of such 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 August 6, 1942, issued and subsequently

served its complaint in this proceeding upon 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 the Federal Trade Commission Act. After the filing of respondents' answers, the Commission, by orders entered herein, granted respondents' requests for permission to withdraw their answers and to substitute therefor answers admitting all of the material allegations of fact set forth in the complaint, waiving all intervening procedure and hearings, and consenting that the Commission may, without trial and without the taking of evidence, make and enter its findings as to the facts and its conclusion based thereon. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint and the substitute answers; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Charles F. Rohleder, is an individual, engaged in general contracting and construction work, with his office and principal place of business located at 2134 Cherry Street, Philadelphia, Pa.

Respondent, Allen McLaine Ward, whose residence address is 7415 Bingham Street, Philadelphia, Pa., is an individual, who during the period covered by the activities hereinafter specified, served as an employee and agent of respondent, Charles F. Rohleder.

Respondent, J. R. Baldrige, Jr., whose residence address is 111 East Cliveden Avenue, Philadelphia, Pa., is an individual, who during the period covered by the activities hereinafter specified, served as an employee and agent of respondent, Charles F. Rohleder.

Respondent, J. P. Rainey, is an individual, engaged in the electrical contracting business and trading as J. P. Rainey & Company, 511 North Broad Street, Philadelphia, Pa. During the period covered by the activities hereinafter specified he also served as an employee and agent of respondent, Charles F. Rohleder.

Respondent, Westinghouse Electric Supply Co., is a corporation, organized and existing under the laws of the State of Delaware, with an office and principal place of business located at 150 Varick Street, New York, N. Y., and with a branch or district office located at 1101 Race Street, Philadelphia, Pa.

Respondent, R. R. Dewees, was an individual, who served as an employee and agent of respondent, Westinghouse Electric Supply Co., 1101 Race Street, Philadelphia, Pa., during the period covered by the activities hereinafter specified. He died August 10, 1944.

Respondent, Walker Brothers, is a Pennsylvania corporation, with its office and principal place of business located at Conshohocken, Pa.

Respondent, Anthony M. Callanan, is an individual, who during the period covered by the activities hereinafter specified, served as vice president and agent of respondent, Walker Brothers.

Respondent, Adelpia Electric Co., is a Pennsylvania corporation, with its principal place of business located at 125 North Tenth Street, Philadelphia, Pa.

Respondent, Norman T. Leithold, is an individual, who during the period covered by the activities hereinafter specified, served as secretary and agent of respondent, Adelpia Electric Co.

PAR. 2. At all times hereinafter mentioned respondent, Charles F. Rohleder, directly and through his agents, respondents, Allen McLaine Ward, J. R. Baldrige, Jr., and J. P. Rainey, has been engaged in negotiating with and buying from respondents, Westinghouse Electric Supply Co., J. P. Rainey & Co., and Walker Brothers, directly and through their agents, including R. R. Dewees, J. P. Rainey, and Anthony M. Callanan, "electrical equipment and supplies" which were shipped by the sellers or their suppliers from many points located in States other than the State of Pennsylvania to Charles F. Rohleder or his agents at Cramp Shipbuilding Co. shipyard, Richmond and Norris Streets, Philadelphia, Pa.

At all times hereinafter mentioned respondent, J. P. Rainey, doing business as J. P. Rainey & Co., has been engaged in Philadelphia, Pa., in the electrical contracting business, and in that capacity and also as an agent of respondent, Charles F. Rohleder, has purchased "electrical equipment and supplies" from respondents, Westinghouse Electric Supply Co., Walker Brothers, and others, and caused such electrical supplies and equipment to be shipped to him in Philadelphia, Pa., from locations in States other than the State of Pennsylvania.

At all times hereinafter mentioned respondent, Westinghouse Electric Supply Co., has been engaged in the purchase and sale of "electrical equipment and supplies," causing the same to be shipped from points of manufacture in various States to locations in other States, including Philadelphia, Pa., where such electrical supplies and equipment were used by the buyers.

At all times hereinafter mentioned respondent, Walker Brother, has been engaged in the manufacture, purchase, and sale of "electrical equipment and supplies," causing the same to be shipped from points of manufacture in various States to locations in other States, including Philadelphia, Pa., where such electrical supplies and equipment were used by the buyers.

At all times hereinafter mentioned respondent, Adelpia Electric Co., has been engaged in the purchase and sale of "electrical equipment and supplies," causing the same to be shipped from points of manufacture in various States to locations in other States, including Philadelphia, Pa., where such electrical supplies and equipment were used by the buyers.

At all times hereinafter mentioned respondents, R. R. Dewees and Anthony M. Callanan, as agents of respondent, Westinghouse Electric Supply Co., and respondent, Walker Brothers, respectively, have been instrumental in effecting the purchase and sale of "electrical equipment and supplies," causing the same to be shipped from points of manufacture in various States to locations in other States, including Philadelphia, Pa., where such electrical supplies and equipment were used by the buyers.

PAR. 3. Respondents, Westinghouse Electric Supply Co., Walker Brothers, Adelpia Electric Co., and others not named herein as respondents, engaged in the purchase and sale of "electrical equipment and sup-

plies" in Philadelphia, Pa., have been, and are, in competition between and among themselves and with one or more other purchasers and sellers of electrical supplies in making or seeking to make sales of "electrical equipment and supplies" in commerce between and among the various States of the United States, except insofar as said competition has been hindered, lessened, restricted, or forestalled by the cooperation, concert or common course of action, understanding, confederation, combination, agreement, or conspiracy, or the acts, things, practices, policies, or methods done and carried on in pursuance thereto or in furtherance thereof, as hereinafter set forth.

PAR. 4. The term "electrical equipment and supplies" as used herein includes, but is not limited to, such items as electric cable, electric wire, electric switches, electric conduit, fittings, condulets, potheads, cable-heads, transformers, insulators, lighting fixtures, lamps, and accessories.

PAR. 5. During 1940, as a part of its work in the defense program of the United States of America, the Navy Department arranged with Cramp Shipbuilding Co., whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels, and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities of the said shipyard, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon, the said Cramp Shipbuilding Co. contracted with respondent, Charles F. Rohleder, for the latter to reconstruct certain office buildings and shipways on a cost-plus-a-fixed-fee basis, with the understanding that the said Rohleder, in securing materials or services, would obtain competitive offers from as many as practicable but not less than two (not less than three where specified) reputable firms in a position to provide the material, equipment, or services as required, at a reasonable cost, and to award contract to that firm quoting the minimum price; and with the further understanding that the said offers, proposals, or bids were to be opened by or in the presence of the Supervisor of Shipbuilding, U. S. Navy, or his representative, and were to be subject to his approval before award of the subcontract for materials, equipment, or services.

In connection with his aforesaid contract with Cramp Shipbuilding Company, respondent, Charles F. Rohleder, negotiated with and made awards of contracts for the purchase, directly and through agents, of "electrical equipment and supplies" from respondents, J. P. Rainey, R. R. Dewees, Westinghouse Electric Supply Co., and others.

PAR. 6. Throughout a period of time beginning on or about the first day of October 1940 and continuing thereafter until subsequent to January 1, 1942, respondents, Charles F. Rohleder, Allen McLaine Ward, J. R. Bldridge, Jr., R. R. Dewees, J. P. Rainey, Anthony M. Callanan, Norman T. Leithold, Westinghouse Electric Supply Co., Walker Brothers, and Adelphia Electric Co. have, through understanding together and with each other, cooperated, confederated, combined, agreed, and conspired to frustrate, hinder, restrain, and suppress competition in the purchase and sale of "electrical equipment and supplies" in commerce, as "commerce" is defined in the Federal Trade Commission Act, in which sense it is herein used, and have in fact through such cooperation, confederation, combina-

tion, agreements, and conspiracy frustrated, hindered, restrained, and suppressed competition in the purchase and sale of "electrical equipment and supplies" in commerce.

Pursuant to, in furtherance of, and as a part of the aforesaid understanding, cooperation, confederation, combination, agreement, and conspiracy, the aforesaid respondents have done, performed, and used, among other acts, things, practices, policies, and methods, the following:

(a) Promoted, established, carried out, and continued a practice of maintaining a false appearance of competition between and among respondents, Westinghouse Electric Supply Co., Walker Brothers, Adelpia Electric Co., and other sellers of "electrical equipment and supplies" in their submission of price quotations and bids to buyers and prospective buyers.

(b) Conveyed to buyers and prospective buyers, including official awarding authorities of the United States Government and others involved in the purchase of "electrical equipment and supplies," the representation that said respondents, Westinghouse Electric Supply Co., Walker Brothers, Adelpia Electric Co., and other sellers of "electrical equipment and supplies" were rival bidders and competitors when, in reality, they were acting collusively between and among themselves in preparing and submitting bids.

(c) Avoided and prevented competition.

(d) Prevented consideration by purchasers of genuinely competitive bids or price quotations.

(e) On numerous occasions respondent, Charles F. Rohleder, acting directly and through his agents, respondents, Allen McLaine Ward, J. R. Baldrige, Jr., and J. P. Rainey, cooperated with respondents, R. R. Dewees and J. P. Rainey, in the preparation and submission to said respondent, Charles F. Rohleder, and his agents and employees, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., and his subcontractor, respondent, J. P. Rainey, of sham, false, fictitious, fraudulent, and non-competitive bids and price quotations for the furnishing of "electrical equipment and supplies" for said Rohleder's use in rehabilitating the facilities of the Cramp Shipbuilding Co. shipyards, Norris and Richmond Streets, Philadelphia, Pa., and submitted such sham, false, fictitious, fraudulent, and non-competitive bids and price quotations in turn to purchasing officials of the Cramp Shipbuilding Co., and representatives of the Supervisor of Ships, U. S. Navy Department, for consideration and approval as genuinely competitive bids and price quotations.

(f) On numerous occasions respondent, R. R. Dewees, acting in his capacity as agent of respondent, Westinghouse Electric Supply Co., with the knowledge and cooperation of respondent, Charles F. Rohleder, his employees, agents, and subcontractors, including respondent, J. P. Rainey, secured printed stationery of respondent, Walker Brothers, and respondent, Adelpia Electric Co., bearing their respective letterheads, from their respective officials, respondent, Anthony M. Callanan, and respondent Norman T. Leithold, and used the same in the submission of sham, false, fictitious, fraudulent, and non-competitive bids and price quotations for furnishing "electrical equipment and supplies" to said respondent, Charles F. Rohleder, and his employees, agents, and subcontractors in furtherance of the deception, as hereinbefore described, in preparing bids

and price quotations over the names of Walker Brothers and Adelpia Electric Co. and over the purported but false signatures of officials of those firms, the prices specified therein being different from, higher than, and non-competitive with the bid and price quotation submitted in each comparable instance by the said R. R. Dewees as the bid or price quotation of the firm he was then known to be representing; namely, respondent, Westinghouse Electric Supply Co. Thereupon, in each of the number of instances where said R. R. Dewees thus submitted to respondent, Charles F. Rohleder, his employees, agents, and subcontractors, sham, false, fictitious, fraudulent, and non-competitive bids for furnishing "electrical equipment and supplies" on stationery bearing the letterheads of respondents, Westinghouse Electric Supply Co., Walker Brothers and Adelpia Electric Co., such bids were in turn submitted as and for genuine and competitive bids by said Charles F. Rohleder, his employees, agents, and subcontractors to officials of Cramp Shipbuilding Co. and to representatives of the Supervisor of Ships, U. S. Navy, who, through the appearance of such bids, were misled and deceived into considering and approving them as genuine and competitive.

(g) Respondent, Anthony M. Callanan, acting in his capacity as vice president of respondent, Walker Brothers, and respondent, Norman T. Leithold, acting in his capacity as secretary of respondent, Adelpia Electric Co., knowingly cooperated with respondent, R. R. Dewees, in his submission of sham, false, fictitious, fraudulent, and non-competitive bids as aforesaid in furnishing him with stationery bearing said letterheads of their respective firms for his use in preparation of said bids.

(h) Respondent, Westinghouse Electric Supply Co., as a result of the submission of sham, false, fictitious, fraudulent, and non-competitive bids by its agent, respondent R. R. Dewees, as aforesaid, enjoyed awards of numerous contracts to it by said Charles F. Rohleder, his employees, agents, and subcontractors, with the approval of officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, U. S. Navy, secured through deception as aforesaid.

(i) Respondent, J. P. Rainey, individually, and as an employee, agent, and subcontractor of respondent, Charles F. Rohleder, in addition to aiding, abetting and cooperating with respondent, R. R. Dewees, sales agent of respondent, Westinghouse Electric Supply Co., in the latter's preparation and submission of sham, false, fictitious, fraudulent, and non-competitive bids for furnishing "electrical equipment and supplies" to respondent, Charles F. Rohleder, Cramp Shipbuilding Co., and representatives of the Supervisor of Ships, U. S. Navy, also personally prepared and submitted such bids to and through the office of said Charles F. Rohleder for the purpose and with the result of having them in turn submitted by respondent, Charles F. Rohleder, or by his agents, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., to officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, U. S. Navy, thereby misleading said officials and representatives into believing, considering, and approving such bids as being genuine and competitive, and as a result thereof respondent Rainey secured contracts for furnishing "electrical equipment and supplies" to said respondent Rohleder and Cramp Shipbuilding Co.

PAR. 7. The aforesaid understanding, cooperation, combination, and conspiracy, and the doing and performing of the acts and things, and the use of the methods set forth in the preceding paragraphs hereof tend to have, and have had, the effect of depriving buyers and prospective buyers of "electrical equipment and supplies," including contractors and subcontractors with the United States Government and the public in general, of the benefit of competition in commerce between and among respondents, Westinghouse Electric Supply Co., Walker Brothers, Adelpia Electric Co., and others with whom they normally would be in competition, in making bids and price quotations.

CONCLUSION

The acts, practices, methods, understandings, agreements, combination, and conspiracy of the respondents, as hereinbefore found, are all to the prejudice of the public, have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the purchase and sale of "electrical equipment and supplies" in commerce within the intent and meaning of the Federal Trade Commission Act; and have the capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said products; have a dangerous tendency to create in respondents a monopoly in the purchase, sale, and distribution of such 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 substitute answers of the respondents, in which answers respondents admit all of the material allegations set forth in the complaint and waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of Section 5 of the Federal Trade Commission Act.

It is ordered, That respondents, Charles F. Rohleder; Allen McLaine Ward, individually, and as an agent of respondent, Charles F. Rohleder; J. R. Baldrige, Jr., individually, and as an agent of respondent, Charles F. Rohleder; J. P. Rainey, an individual, trading as J. P. Rainey & Co., individually, and as an agent of Charles F. Rohleder; Westinghouse Electric Supply Co., a corporation; Walker Brothers, a corporation; Anthony M. Callanan, individually, and as vice president of respondent, Walker Brothers; Adelpia Electric Co., a corporation; and Norman T. Leithold, individually, and as secretary of respondent, Adelpia Electric Co., their respective representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of electric cable, electric wire, electric switches, electric conduit, fittings, condulets, potheads

cableheads, transformers, insulators, lighting fixtures, lamps, and accessories, or other electrical equipment or supplies, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between and among any two or more of the said respondents, or between any one or more of said respondents and any other person, partnership, or corporation not a party hereto, to do or perform any of the following acts, things, or practices:

1. Conveying or assisting in conveying to buyers or prospective buyers, or to any official or awarding authority of any Federal agency, or to any one contracting with such agency, or to any one acting for or on behalf of such agency or for or on behalf of any contractor with such agency, any representation that any two or more apparent sellers are rival bidders or competitors, when in reality they are acting collusively in preparing and submitting bids.

2. Aiding, assisting, or cooperating in any manner in the submission of any sham, fictitious, fraudulent, or non-competitive bids or price quotations to any buyer or prospective buyer, or to any Federal agency or any one acting for or on its behalf, or for or on behalf of any party purchasing material or equipment in fulfillment of a contract with such agency.

3. Interfering with or assisting in interfering with the procurement or consideration of genuinely competitive bids or price quotations by any Federal agency or any official or awarding authority of such agency, or any buyer or prospective buyer.

4. Promoting, establishing, carrying out, or continuing any act or practice for the purpose or with the effect of maintaining or presenting a false appearance of competition between or among any of the respondents or other sellers in the submission of price quotations or bids to buyers or prospective buyers.

5. Arranging or attempting to arrange for the filing of any bid in the name of one ostensibly competing bidder when the prices and terms are in fact determined by some other bidder, or when in fact the bid is not a bona fide bid.

Provided, however, That nothing contained in this order shall be deemed to prohibit any lawful action under any lawful license agreement under any patent.

It is further ordered, For the reason appearing in paragraph 1 of the findings as to the facts herein, that the complaint herein be, and the same hereby is, dismissed as to respondent, R. R. Dewees.

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

Order

IN THE MATTER OF

NATIONAL PUBLICITY BUREAU, INC., ET AL.

MODIFIED ORDER TO CEASE AND DESIST

Docket 2908. Order, October 13, 1944

Modified order in proceeding in question—in which original order issued on March 1, 1939, 28 F. T. C. 857—requiring respondent, in connection with the offer, etc., in commerce, of silverware or sales promotional plans including premium certificates, gift cards or coupons redeemable in silverware or other articles of merchandise, to cease and desist from misrepresenting his connections and arrangements with others, business identity, goods as free, and terms and conditions, as in said order below specified.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and other evidence taken before John W. Addison, an examiner of the Commission duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein by counsel for the Commission, and the Commission having duly made and issued its findings as to the facts, conclusion, and order to cease and desist dated March 1, 1939; and the Commission having further considered said order to cease and desist heretofore issued, and being of the opinion that the public interest requires that a modified order to cease and desist should be issued in said cause; and the Commission having given due notice to the respondent to show cause on July 24, 1944, why this case should not be reopened for the purpose of modifying said order to cease and desist; and the Commission having considered the matter and the record herein, and having issued its order modifying said order in certain respects, issues this its modified order to cease and desist.

It is ordered, That the respondent, Hugh J. Wanke, individually, and trading as National Publicity Bureau and Rogers Silverware Distributors, or under any other name or names, 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 by the Federal Trade Commission Act, of silverware or sales promotional plans including premium certificates, gift cards or coupons redeemable in silverware or other articles of merchandise, do forthwith cease and desist from:

1. Representing, by use of the words "Rogers Silverware" in a corporate or trade name, or by statements or representations in advertising or in any other way, that the respondent has an interest in, forms a part of, or has any connection with the manufacturer of William A. Rogers Silverware; *provided, however*, that this order shall not be construed to in any way prohibit the respondent from dealing in William A. Rogers Silverware or other products.

2. Representing merchandise delivered in redeeming certificates, coupons or trading cards as "free" or as a gift or gratuity or as delivered without cost to the holders of said certificates, coupons or trading cards when said merchandise is not in fact delivered to the holders of said certificates, coupons or trading cards without cost and unconditionally.

3. Representing that the respondent will give a set of silverware or other merchandise free or will refund the sum of \$4.50, or any other sum, to the purchaser of said premium certificates, gift cards, coupons or other and similar devices on the redemption of a specified number of cards, certificates or coupons, unless such merchandise is delivered to said purchaser without cost and unconditionally and said premium certificates, gift cards, coupons or other and similar devices are redeemed without cost to the holders thereof and unconditionally, and said refund is made to said purchaser upon the redemption of the specified number of premium certificates, gift cards, coupons or other and similar devices.

4. Representing that the respondent is conducting any special campaign or advertising campaign to introduce or advertise any article or articles of merchandise on behalf of the manufacturer of William A. Rogers Silverware or any other manufacturer or concern unless such a campaign is in fact being conducted at the instance of and on behalf of such manufacturer.

5. Representing that certificates, coupons or trading cards will be redeemed with certain articles of merchandise, unless the merchandise described is delivered to the holders of such certificates, coupons or trading cards without cost or condition.

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

ULRICI MEDICINE 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 4853. Complaint, Oct. 16, 1942—Decision, Oct. 18, 1944

Where two corporations, engaged in the manufacture and interstate sale and distribution of their medicinal preparation designated "Ceregen"; through advertisements in newspapers and by radio, circulars and other advertising media, directly or by implication—

- (a) Represented that their said preparation was a concentrated food, which would strengthen or fortify the system, restore and calm the nerves, renew energy, restore the vivacity of youth, and result in complete physical well-being; that it made one strong, mentally and physically, had substantial value in the treatment of anemia and would protect one's health; and
- (b) Represented that it was of substantial value during convalescence and would restore lost vigor resulting from illness; would aid in the recovery of lost energy and vigor resulting from mental and physical fatigue; would produce healthy nerves and a strong and healthy system; guarded and protected the health of expectant mothers; and was effective in relieving neurasthenia and nervous ailments generally;

The facts being that it was not a food; while it contained ingredients used by medical science in the treatment of certain ailments, the amounts thereof present were negligible, and it was wholly without therapeutic value except that, as a mild bitter stomachic it might stimulate the appetite;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the properties and therapeutic value of their preparation, and thereby to cause its purchase of substantial quantities thereof:

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

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

Mr. William L. Taggart for the Commission.

Viault & Viault, 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 Ulrici Medicine Co., Inc., a corporation, and Trans-Pac Services, 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, Ulrici Medicine Co., Inc., is a corporation, organized and existing under the laws of the State of New York, with its principal place of business located at 233 West 14th Street, New York, N. Y. Respondent, Trans-Pac Services, Inc., is a corporation, organized and existing under the laws of the State of New York, with its principal place of business located at 4-20 47th Avenue, Long Island City, N. Y. Prior to late in 1941 or early in 1942 the respondent, Trans-Pac Services, Inc., was known as the Oca-Antilles Company, Inc., the corporate name having been changed at said time to Trans-Pac Services, Inc.

PAR. 2. Prior to January, 1940, the respondent, Ulrici Medicine Co., manufactured, sold and distributed a medicinal preparation designated as "Ceregen," but since that date the manufacture, sale and distribution thereof has been carried on first by Oca-Antilles Co., Inc., and later and now by respondent, Trans-Pac Services, Inc.; the respondent, Ulrici Medicine Co., Inc., however, retained the ownership of the formula and trade name of said preparation. Since January, 1940, while the manufacture, sale and distribution of said preparation is carried on by the respondent, Trans-Pac Services, Inc., the respondent, Ulrici Medicine Co., Inc., is interested in said sale and distribution and cooperates with Trans-Pac Services, Inc., in the sale and distribution of said product.

Respondents cause said preparation, when sold, to be transported from the State of New York to purchasers thereof located in various other States of the United States, to purchasers in foreign nations 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 as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of the aforesaid business, respondents, acting in conjunction and cooperation, have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning said preparation by United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements of said preparation 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 by the Federal Trade Commission Act. Among and typical of the false and misleading 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, by radio continuities, and by circulars and other advertising material all in the Spanish language, the English translation of which is as follows:

Ceregen is the improved formula of Cerebrina Ulrici, a concentrated food recommended for strengthening the organic system.

Do you feel nervous, out of sorts, restless and do not know why? It is almost certain that you need to feed your nerves and blood. Smile at life. Be glad, calm yourself—take Ceregen.

To men prematurely old, exhausted by excess of work and to nervous, anemic women, burdened by worry, we recommend the taking of CEREGEN, the improved formula of Cerebrina Ulrici which helps to fortify tired systems and to restore excited nerves.

Ceregen is the improved formula of Cerebrina Ulrici, a powerful tonic recommended for renewing energy, restoring nerves and fortifying the system.

Young lady * * * Ceregen will help you recover the vivacity which accompanies youth and complete physical wellbeing at all times.

Enjoy life. Be strong physically and mentally. The tonic properties of Ceregen * * * are very rapidly noticed.

Ceregen * * * is recommended for weak men and all persons subject to anemia * * * Protect your health. Begin this very day to take Ceregen.

After an illness, take Ceregen. Ceregen will help you hasten your convalescence and recover lost vigor.

Young people! Mental and physical fatigue is the forerunner of premature old age. Ceregen will help you recover energy and vigor.

Life is a war of nerves. Those with stronger and calmer nerves win. Face life with healthy nerves and a strong and healthy system. Take Ceregen! Remember, old is he who wants to be, not he who takes Ceregen.

Future mothers. Take care of your system. Guard zealously your health and that of your future children. Take Ceregen.

Against neurasthenia and all nervous ailments. Ceregen * * * is successfully recommended.

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, respondents represent, directly and by implication, that said preparation is a concentrated food for the nerves and blood; that its use will strengthen the organic system, help fortify tired systems, and restore and calm the nerves; that its use will renew energy, restore the vivacity of youth and result in complete physical wellbeing; that it makes one strong, mentally and physically; that it has substantial value in the treatment of anemia; that it will protect one's health; that it is of substantial value during convalescence and will restore lost vigor resulting from illness; that it will help one to recover lost energy and vigor resulting from mental and physical fatigue; that it will produce healthy nerves and a strong and healthy system; that it guards and protects the health of expectant mothers and that it is effective in relieving neurasthenia and all nervous ailments.

PAR. 5. The foregoing representations are false, misleading and deceptive. In truth and in fact said preparation is not a food in any sense of the word and particularly is not a concentrated food for the nerves and blood. It will have no significant effect in strengthening the organic system. Its use will not serve to fortify tired systems and restore and calm the nerves nor will its use renew energy, restore the vivacity of youth or bring about physical wellbeing. It will not make one strong, either mentally or physically. It has no substantial value in the treatment of anemia. It will not protect one's health. It has no substantial value when used during convalescence and will not restore lost vigor resulting from illness nor will it help one to recover lost energy and vigor resulting from mental and physical fatigue. It will not produce healthy nerves and a strong and healthy system. It has no significant value in protecting the health of expectant mothers and is not effective in relieving neurasthenia and nervous ailments.

PAR. 6. The use by the respondents of the foregoing false, misleading and deceptive statements and representations with respect to said prepa-

ration has the tendency and capacity to, and does, mislead 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 said preparation as a result of such erroneous and mistaken belief so engendered.

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 October 16, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Ulrici Medicine Co., Inc., and Trans-Pac Services, Inc., corporations, 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 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 answers 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, Ulrici Medicine Co., Inc., is a corporation, organized and existing under the laws of the State of New York, with its principal place of business located at 233 West 14th Street, New York, N. Y. Respondent, Trans-Pac Services, Inc., is a corporation, organized and existing under the laws of the State of New York, with its principal place of business located at 602 West 52d Street, New York, N. Y. Prior to January, 1942, respondent, Trans-Pac Services, Inc., was known as The Oca-Antilles Company, Inc., the corporate name having been changed in January, 1942, to Trans-Pac Services, Inc.

For some time prior to January, 1940, respondent, Ulrici Medicine Company, Inc., was engaged in the manufacture, sale, and distribution of a medicinal preparation designated as "Ceregen." Since January, 1940, the manufacture, sale, and distribution of the preparation has been carried on primarily by the respondent corporation formerly known as Oca-Antilles Co., Inc., and now known as Trans-Pac Services, Inc. Respondent, Ulrici Medicine Co., Inc., has, however, retained the ownership of the trade name

and formula for the preparation, and cooperates with respondent, Trans-Pac Services, Inc., in the sale and distribution thereof.

PAR. 2. Respondents cause and have caused their preparation, when sold, to be transported from the State of New York to purchasers thereof located in various other States of the United States and in foreign nations. Respondents maintain and have maintained a course of trade in their preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, respondents have disseminated and have caused the dissemination of advertisements concerning their preparation by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and have caused the dissemination of advertisements concerning their preparation by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act. The advertisements were in the Spanish language.

Among and typical of the various statements and representations contained in the advertisements disseminated and caused to be disseminated, as set forth above, by the United States mails, by insertion in newspapers, by radio continuities, and by circulars and other advertising media, are the following (English translation):

Young lady: * * * Ceregen will help you to regain the proper vivacity of youth and complete physical well-being at all times. Ceregen is the improved formula of Cerebrina Ulrici, a concentrated food recommended to strengthen the system. * * * (Tr. p. 72, Comm. Ex. 26-P(3))

Do you feel nervous, out of sorts, restless, and you don't know why? It is almost certain that you need to feed your nerves and blood. Stimulate your life. Be glad and be calm! Take CEREGEN! * * * (Tr. p. 70, Comm. Ex. 26-M(8))

Men prematurely old, exhausted by work, excesses, nervous and anemic women burdened by worries, take CEREGEN, the improved formula of Cerebrina Ulrici. CEREGEN helps to fortify the tired system and to make excited or jangled nerves normal. * * * (Tr. p. 67, Comm. Ex. 26-G)

Young people! Mental and physical fatigue is a forerunner to premature old age. CEREGEN will help you to recover the vivacity which belongs to youth. CEREGEN is the improved formula of Cerebrina Ulrici, a powerful tonic recommended for renewing energy, making nerves normal, and fortifying the tired system. (Tr. p. 66, Comm. Ex. 26-C)

Enjoy life. Be strong physically and mentally. The tonic properties of CEREGEN * * * are noted very rapidly. * * * (Tr. p. 71, Comm. Ex. 26-N(11))

* * * CEREGEN * * * is recommended for weak men and for all persons susceptible to anemia. * * * Protect your health! Begin this very day to take CEREGEN! (Tr. p. 67, Comm. Ex. 26-F)

After an illness, take CEREGEN! CEREGEN will help you accelerate your convalescence and recover your lost vigor. * * * (Tr. p. 68, Comm. Ex. 26-H)

Life is a war of nerves. Those with stronger and more tempered nerves win. Face life with healthy nerves and with a healthy and strong system. Take Ceregen! Remember, he who wishes to be so is old but not he who takes Ceregen. * * * (Tr. p. 69, Comm. Ex. 26-M(7))

Future mothers! Take care of your system! Care zealously for your health and that of your future child! Take CEREGEN! * * * (Tr. p. 71, Comm. Ex. 26-N(12))
 * * * Against neurasthenia and all nervous ailments, Ceregen * * * is highly recommended. (Comm. Ex. 10-A)

PAR. 4. Through the use of these statements and representations, and others of similar import, respondents have represented, directly or by implication, that their preparation is a concentrated food; that it will strengthen or fortify the system and restore and calm the nerves; that its use will renew energy, restore the vivacity of youth, and result in complete physical well-being; that it makes one strong, mentally and physically; that it has substantial value in the treatment of anemia; that it will protect one's health; that it is of substantial value during convalescence and will restore lost vigor resulting from illness; that it will aid in the recovery of lost energy and vigor resulting from mental and physical fatigue; that it will produce healthy nerves and a strong and healthy system; that it guards and protects the health of expectant mothers; and that it is effective in relieving neurasthenia and nervous ailments generally.

PAR. 5. The evidence establishes that, except for such value as it may possess as a mild, bitter stomachic, respondents' preparation is wholly without therapeutic value. While the preparation contains ingredients which are used by medical science in the treatment of certain ailments, the amounts of such ingredients present in the preparation are so small as to be negligible and wholly ineffectual from a therapeutic viewpoint. For example, the preparation contains certain quinine derivatives (cinchonine, cinchonidine, and quinine sulfate), but the total quantity of these derivatives present in the daily dosage of the preparation as prescribed by respondents (one tablespoonful three times per day) is only about $\frac{1}{100}$ of the recognized therapeutic dose of quinine. The preparation also contains caffeine, but the amount thereof is negligible. The daily dosage of the preparation would afford only about one-half as much caffeine as is contained in an ordinary cup of coffee. Again, the preparation contains iron phosphate; however, the amount of iron supplied by the daily dosage of the preparation would be only about $\frac{1}{100}$ to $\frac{1}{200}$ of the recognized therapeutic dose for anemia.

The only ingredient present in the preparation in sufficient quantity to afford any therapeutic benefit is fluid extract of nux vomica. Nux vomica is known in medical science as a bitter stomachic, its function being to give medicine a bitter taste for the purpose of stimulating the appetite. The amount of nux vomica present in the daily dosage of respondents' preparation (about one-half the dose usually prescribed by physicians) is probably sufficient to qualify the preparation as a mild, bitter stomachic, and in consequence, to afford some stimulus to the appetite. Aside from this, the preparation is incapable of affording any therapeutic benefit. Nor is the preparation a food.

The preparation will not strengthen or fortify the system, nor restore or calm the nerves. Its use will not renew energy, restore the vivacity of youth, nor result in physical well-being. The preparation is incapable of making one strong, either mentally or physically. It is without therapeutic value in the treatment of anemia. It is incapable of protecting one's health. It is of no therapeutic value during convalescence or in the resto-

ration of lost vigor resulting from illness, except insofar as its properties as a mild, bitter stomachic may stimulate the appetite. It is incapable of aiding in the recovery of lost energy or vigor resulting from mental or physical fatigue. The use of the preparation will not result in healthy nerves or a strong or healthy system. The preparation is likewise incapable of guarding or protecting the health of expectant mothers. It is without therapeutic value in the treatment of neurasthenia and other nervous ailments.

PAR. 6. The Commission, therefore finds, that the representations made by respondents with respect to their preparation, as set forth in paragraphs 3 and 4 hereof, are erroneous and misleading and constitute false advertisements.

PAR. 7. 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 properties and therapeutic value of respondents' preparation, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of the preparation 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 answers of respondents, 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 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, Ulrici Medicine Co., Inc., and Trans-Pac Services, Inc., corporations, 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' medicinal preparation designated by them as "Ceregen," 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 represents, directly or by implication,

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- (a) That said preparation is a food.
- (b) That said preparation will strengthen or fortify the system, or cause the system to be healthy.
- (c) That said preparation will restore or calm the nerves, or cause the nerves to be healthy.
- (d) That the use of said preparation will renew energy, restore the vivacity of youth, or result in physical well-being.
- (e) That said preparation will make one strong, either mentally or physically.
- (f) That said preparation has any substantial value in the treatment of anemia.
- (g) That said preparation will protect one's health.
- (h) That said preparation is of any therapeutic value during convalescence, or in the restoration of lost vigor resulting from illness, except insofar as it may stimulate the appetite.
- (i) That said preparation will aid in the recovery of lost energy or vigor resulting from mental or physical fatigue.
- (j) That said preparation has any significant value in guarding or protecting the health of expectant mothers.
- (k) That said preparation will relieve neurasthenia or other nervous ailments.

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

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

Syllabus

IN THE MATTER OF
THE CARLAY COMPANY AND CARL A. FUTTER

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

Docket 4898. Complaint, Jan. 29, 1943—Decision, Oct. 18, 1944

Where a corporation and an individual, officer and principal stockholder thereof, engaged in the interstate sale and distribution of caramel candy enriched or fortified with certain vitamins and minerals, which they designated "Ayds," intended for use in the removal of excess weight, and sold in 1½ pound boxes, together with printed directions prescribing the observance of one of three restricted diets; through statements in advertisements of their product in newspapers and periodicals, and in circulars, leaflets, display cards and other advertising media—

- (a) Represented, directly or by implication, that the use of their candy and "plan" provided an easy way or method whereby excess weight might be removed from the body, and that such reduction in weight was effected without the necessity of restricting the diet, through such statements as "Many overweights praise the AYDS Candy reducing plan. It is easy. It is pleasant. No drugs. No exercising. It is usually effective where overweight is caused by over-nutrition." "One or two delicious pieces eaten just before each meal . . . and AYDS Candy curbs the craving for rich fattening foods. AYDS contain vitamins A, B1 and D and other essential nutrients. The diet is reduced automatically without the usual effort . . . without weakening effects . . . without hunger pangs." "AYDS Candy helps supply Vitamins A, B1, and D to prevent deficiencies that might occur due to lessened appetite. * * *" and others of similar nature, along with such matter as "WOULD YOU LIKE TO LOSE UP TO 10 LBS. IN 5 DAYS? TRY THIS NEW HOME LEMON JUICE RECIPE WAY TO LOSE UGLY FAT!" "Here's marvelous news for women who are overweight! Now you can make a reducing supplement right in your own kitchen, to help you lose those ugly, unwanted pounds! It's so simple—so easy—and so effective! Some lose as much as 10 pounds in their first 5 days using this Plan!" "You never starve yourself. You use no drugs. You take no laxatives. You take no more exercise than you are accustomed to take. You eat plenty of healthful, satisfying foods. Yet you lose weight!"

The facts being that removal of excess weight cannot be accomplished through the use of their said candy and "plan," without dieting; except in the comparatively rare cases in which excess weight is due to some physical disorder it is almost invariably due to overeating, the only effective treatment for which is reduction of the food intake, particularly as to those foods having a high caloric value, and hence observance of a restricted diet; and while, as in the case of any sweet, the eating of said candy immediately preceding a meal may to some extent curb or dull the appetite and make it somewhat easier to refrain from overeating at that particular meal, such effect is only temporary; the desire for food will soon return, and, unless restrained and the diet adhered to, effort to reduce weight will result in failure; and use of their plan is not, as claimed by them, "easy," adherence to restricted diets such as prescribed by them being usually a difficult matter, particularly for overweight individuals, and requiring the exercise of an unusual amount of will power and self-restraint; and

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(b) Failed in their said advertisements, except in rare instances, to reveal facts material in the light of representations contained therein in that they failed to reveal that said plan for the use of their candy included adherence to a restricted diet, and that adherence to such diet was essential to the removal of excess weight by the purchaser, who was not informed until after purchase of the candy and the opening of the box that restricted diet in addition to the use of the candy must be observed; With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature of their weight reducing plan and the nature, properties, and effectiveness of their candy, and thereby 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 constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Arthur F. Thomas* and *Mr. J. Earl Cox*, trial examiners.

Mr. Merle P. Lyon and *Mr. Clark Nichols* for the Commission.

Mr. Henry Junge, *Mr. Bernard W. Vinissky*, *Mr. Frank E. Gettleman* and *Mr. Arthur Gettleman*, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that The Carlay Co., a corporation, and Carl A. Futter, individually, and as president and treasurer of The Carlay Co., hereinabove 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, The Carlay Co., is a corporation, organized, existing and doing business under the laws of the State of Illinois, with its principal office and place of business located at 160 East Illinois Street, Chicago, Ill.

The respondent, Carl A. Futter, an individual, is the principal stockholder and president and treasurer of The Carlay Co., and likewise has his office and principal place of business located at 160 East Illinois Street, Chicago, Ill. He directs the policies of and is responsible for the operation and management of The Carlay Co.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the sale and distribution of a candy product known as "Ayd's" sold in conjunction with so-called weight-reducing plans and recommended as a treatment or cure of obesity. In the course and conduct of their business, the respondents cause said candy product, when sold, to be transported from their place of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said candy 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 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 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 advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, and by circulars, leaflets, pamphlets and other advertising literature, are the following:

Many overweights praise the Ayds Candy reducing plan. It is easy. It is pleasant. No drugs. No exercising. It is usually effective where overweight is caused by over-nutrition. One or two delicious pieces eaten just before each meal * * * and Ayds Candy curbs the craving for rich, fattening foods. Ayds contain vitamins A, B, and D and other essential nutrients. The diet is reduced automatically without the usual effort * * * without weakening effects * * * without hunger pangs.

Many lose weight by "Eat Candy" plan. Delicious Ayds Candy, eaten as directed by Ayds plan, curbs appetite for fattening foods.

Ayds plan calls for no exercising. Many simply eat this delicious candy to curb their appetites for rich, fattening foods. Ayds plan is effective only in cases of overweight due to over-indulgence in eating which includes most overweight people. Ayds Candy helps supply Vitamins A, B, and D to prevent deficiencies that might occur due to lessened appetite.

Would you like to lose up to 10 lbs. in 5 days? Try this New Home Lemon Juice Recipe Way to lose ugly fat! Here's marvelous news for women who are overweight! Now you can make a reducing supplement right in your own kitchen, to help you lose those ugly, unwanted pounds! It's so simple—so easy—and so effective! Some lose as much as 10 pounds in their first 5 days using this Plan! You never starve yourself. You use no drugs. You take no laxatives. You take no more exercise than you are accustomed to take. You eat plenty of healthful, satisfying foods. Yet you lose weight.

Why be fat? Here's an Amazing, Easy Way to Lose Weight. No starvation diet. No strenuous exercises. Everywhere in America women are praising this simple, new way to lose ugly, unwanted pounds. By this easy plan many an overweight has been able to regain a more slender, more graceful figure. Many Now Eat Candy While They Grow Thin. It's so easy, you just eat one or two delicious pieces of Ayds Candy, with a glass of water before meals. This encourages you not to eat the rich, fattening foods, high in calories. You eat plenty—never go hungry! You don't cut out sweets and starchy foods. You just cut them down. You really enjoy reducing by this plan.

The Eat Candy plan * * * now eat candy and grow thin—new, easy plan.

You never starve yourself. You eat plenty of healthful, satisfying foods.

I lost 42 pounds in 60 days.

You can lose ugly pounds and have a slender, graceful figure. No dangerous dieting. No drugs. No exercising. You simply eat this pure delicious food candy as directed and grow thin.

Don't worry about those extra pounds. Many lose weight by new plan—eat candy every day.

At last I wear size 16 again! Lost 36 pounds without exercising—using Ayds plan and candy.

PAR. 4. Through the use of the statements hereinabove set forth and others similar thereto not specifically set out, all of which purport to be descriptive of the weight reducing properties of respondents' product, respondents have represented, and do now represent, directly and indirectly, that the use of "Ayds" and respondents' "plans" present a new, easy way to reduce excess weight without dieting or exercise; that the use of Ayds Candy plays a significant and important part in the reducing plan offered by respondents; that the use of Ayds Candy will curb or dull the appetite for fattening foods and that respondents' plans for reducing will result in the loss of excess weight in an easy, pleasant way without the necessity of strict dieting.

PAR. 5. The "plans" mentioned in paragraph 2 herein are designated by respondents as "No. 1 Reducing Plan (For quick results), No. 2 Reducing Plan (The easier plan) and The Lemon Juice Recipe Plan." These so-called plans are outlined in printed circulars enclosed in the package in which the Ayds are sold and are not revealed or brought to the attention of the purchaser in respondents' advertising or otherwise before the purchase of respondents' product but, on the contrary, the purchaser is led to believe through the use of the aforesaid statements and by the concealment of the actual facts that the only essential requirement, in order to obtain a reduction in weight, is the eating of a few pieces of the Ayds Candy before meals. On the contrary, the so-called plans provide and require a severely restricted low calorie diet in addition to the use of respondents' product. Said product is essentially caramel candy, fortified with Vitamins A, B, and D and minerals, designed to supply deficiency in vitamins and minerals when a restricted diet is adhered to.

PAR. 6. The aforesaid statements and representations and the failure of respondents to fully disclose the nature of the said "plans" are false, misleading and deceptive. In truth and in fact, the Ayds play no significant role in the reducing program, their only function being to furnish some degree of vitamin and mineral supplementation for a reducing diet. The use of Ayds is not a new, easy way to reduce excess weight, but on the contrary it is necessary for the individual to follow a rigidly restricted dietary program. There is nothing easy about either the selection of, or adherence to, such a diet, particularly in the case of an individual whose obesity is due to overeating. The effect of Ayds upon the appetite is only temporary, and does not curb or dull the appetite or mitigate the pangs of hunger between meals. In order to be successful in reducing weight it is still necessary for the user to follow a rigidly restricted low calorie diet, with all the discomforts and annoyances which are inherent in such diets. Moreover, such low calorie diets ordinarily supply sufficient quantities of essential nutritive elements, including proteins, vitamins and minerals, without the necessity of supplementing them by Ayds or other vitamin-enriched products.

Any loss of weight that may be experienced by a person following the regimen advocated by respondents is due primarily to the restricted

diet and not to the Ayds. Furthermore, respondents' representations as to the loss of weight that may be expected by the use of their reducing methods are grossly exaggerated. While such a dietary regimen may result in weight loss in many cases, there are relatively few persons who would lose 10 pounds in five days, 42 pounds in sixty days, or comparable losses in any other specified period of time, without serious impairment of health and bodily vigor.

PAR. 7. The use by the respondents of the foregoing false, deceptive and misleading statements, representations and advertisements, disseminated as aforesaid, with respect to their product "Ayds" has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said product.

PAR. 8. The aforesaid acts and practices of the respondents are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on January 29, 1943, issued and subsequently served its complaint in this proceeding upon the respondents, The Carlay Co., a corporation, and Carl A. Futter, individually, and as president and treasurer of The Carlay 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 and in opposition to the allegations of the complaint were introduced 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, 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, The Carlay Co., is a corporation, organized, existing, and doing business under the laws of the State of Illinois, with its principal office and place of business located at 160 East Illinois Street, Chicago, Ill. The corporation was organized in 1940.

Respondent, Carl A. Futter, an individual, is the principal stockholder in the respondent corporation, and from the time of the organization of the corporation in 1940 until July, 1943, was the president and treasurer of

the corporation and was in active charge and control of all of its business policies and practices. In July, 1943, another individual became president, but respondent, Futter, continued as treasurer and was also designated sales manager of the company. There has been no change in stock ownership and respondent, Futter, is still the principal stockholder in the corporation. He still participates actively in the formulation of the policies and the direction of the operation and practices of the corporation.

PAR. 2. The respondents are and since some time in 1940 have been engaged in the sale and distribution of a candy product designated by them as "Ayds," intended for use in the removal of excess weight from the human body. Respondents cause and have caused their product, 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 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 their business respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning their product by means of the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning their product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among the typical of the various statements contained in such advertisements disseminated and caused to be disseminated, as set forth above, by the United States mails, by insertion in newspapers and periodicals, and by circulars, leaflets, display cards and other advertising media, are the following:

Many overweights praise the AYDS Candy reducing plan. It is easy. It is pleasant. No drugs. No exercising. It is usually effective where overweight is caused by over-nutrition.

One or two delicious pieces eaten just before each meal . . . and AYDS Candy curbs the craving for rich fattening foods. AYDS contain vitamins A, B1 and D and other essential nutrients. The diet is reduced automatically without the usual effort . . . without weakening effects . . . without hunger pangs. (Comm. Ex. No. 44)

Many LOSE WEIGHT by "EAT CANDY" PLAN

Delicious AYDS Candy, eaten as directed by AYDS Plan, curbs appetite for fattening foods. (Comm. Ex. No. 68)

* * * AYDS plan calls for no exercising. Many simply eat this delicious candy to curb their appetites for rich, fattening foods. AYDS plan is effective only in cases of overweight due to overindulgence in eating, which includes most overweight people. AYDS CANDY helps supply Vitamins A, B1, and D to prevent deficiencies that might occur due to lessened appetite. * * * (Comm. Ex. No. 67)

WOULD YOU LIKE TO LOSE UP TO 10 LBS. IN 5 DAYS?
 TRY THIS NEW HOME LEMON JUICE RECIPE WAY
 TO LOSE UGLY FAT!

Here's marvelous news for women who are overweight! Now you can make a reducing supplement right in your own kitchen, to help you lose those ugly, unwanted pounds! It's so simple—so easy—and so effective! Some lose as much as 10 pounds in their first 5 days using this Plan!

You never starve yourself. You use no drugs. You take no laxatives. You take no more exercise than you are accustomed to take. You eat plenty of healthful, satisfying foods. Yet you lose weight! (Comm. Ex. No. 42)

WHY BE FAT?

HERE'S AN AMAZING, EASY WAY TO LOSE WEIGHT
 NO STARVATION DIET NO STRENUOUS EXERCISES

EVERYWHERE in America, women are praising this simple, new way to lose ugly, unwanted pounds. By this easy plan many an overweight has been able to regain a more slender, more graceful figure.

MANY NOW EAT CANDY WHILE THEY GROW THIN

It's so easy, you just eat one or two delicious pieces of AYDS Candy, with a glass of water before meals.

This encourages you not to overeat the rich, fattening foods, high in calories. You eat plenty—never go hungry! You don't cut out sweets and starchy foods. You just cut them down. You really *enjoy* reducing by this plan! (Comm. Ex. No. 41)

I LOST 42 POUNDS IN 60 DAYS
 NOW EAT CANDY AND GROW THIN NEW, EASY PLAN

You can lose ugly pounds and have a slender graceful figure. No dangerous dieting. No drugs. No exercising. * * * You simply eat this pure delicious food candy as directed and grow thin. * * * (Comm. Ex. No. 71, p. 48)

DON'T WORRY ABOUT THOSE EXTRA POUNDS
 MANY LOSE WEIGHT BY NEW PLAN—EAT CANDY EVERY DAY

(Comm. Ex. No. 32, Ad No. C-48)

"At Last I wear SIZE 16 again! LOST 36 LBS. without exercising—using *Ayds* Plan and Candy." (Comm. Ex. No. 57)

PAR. 4. Through the use of these statements and others of a similar nature, respondents have represented, directly or by implication, that the use of their candy and "plan" provides an easy way or method whereby excess weight may be removed from the body, and that such reduction in weight is effected without the necessity of restricting the diet.

PAR. 5. Respondents' product is in fact nothing more than caramel candy, enriched or fortified with certain vitamins and minerals. It is sold to the public through department stores, drug stores and other retail outlets. The candy is packed and sold to the public in boxes, each box containing 104 pieces (1½ pounds) of candy. Respondents' "plan" for the removal of excess weight calls for the eating of one or two pieces of the candy before each meal and the observance of one of three restricted diets prescribed by respondents in the printed directions enclosed in each box

of candy. Respondents' theory as to the part played by the candy in the weight reducing program is that the eating of the candy curbs the appetite, with the result that less food is eaten. The only virtue claimed by respondents for the vitamins and minerals in the candy is that they afford some protection against any nutritional deficiency which might result from the purported decrease in the food intake.

The record establishes that, except in those comparatively rare cases in which there is some physical disorder, excess weight is almost invariably due to overeating. In such cases, the only effective treatment is the reduction of the food intake, particularly as to those foods having a high caloric value, and this in turn requires the observance of a restricted diet. As in the case of any sweet, the eating of respondents' candy immediately preceding a meal may to some extent curb or dull the appetite and make it somewhat easier to refrain from overeating at that particular meal. This effect, however, is only temporary; the desire for food will soon return, and unless such desire is restrained and the diet adhered to, the effort to reduce weight will result in failure.

In short, any reduction in weight following the use of respondents' plan results from the adherence to the diet prescribed by respondents and not from the use of the candy. One following the diet would lose weight regardless of whether the candy is used or not, and the use of the candy without adherence to the diet would prove ineffectual.

The removal of excess weight from the body, therefore, cannot be accomplished through the use of respondents' candy and "plan" without the necessity of dieting. On the contrary, respondents' plan contemplates the adherence to a low caloric diet, and such adherence is in fact essential. Nor is the use of the plan "easy," as claimed by respondents. The adherence to restricted diets such as are prescribed by respondents is usually a difficult matter, particularly for individuals who are overweight, and requires the exercise of an unusual amount of will power and self-restraint.

PAR. 6. The Commission therefore finds that the representations made by respondents with respect to their candy and to their plan for the removal of excess weight, as set forth in paragraphs 3 and 4 hereof, are erroneous and misleading and constitute false advertisements.

PAR. 7. The Commission finds also that respondents' advertisements are false for the further reason that, except in rare instances, they fail to reveal facts, material in the light of representations, contained therein, in that the advertisements fail to reveal that respondents' plan for the use of their candy includes the adherence to a restricted diet, and that adherence to such diet is essential to the removal of excess weight. Except in rare instances, it is not until after the candy has been purchased and the box opened that the purchaser is informed by respondents (through the printed directions in the box) that, in addition to the use of the candy, a restricted diet must be observed.

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 nature of respondents' weight reducing plan and the nature, properties, and effectiveness of respondents' candy, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' candy as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, report of the trial examiners upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, The Carlay Co., a corporation, its officers, and Carl A. Futter, individually, and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondents' candy product designated "Ayd," or any other product containing substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

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

(a) That excess weight may be removed from the body through the use of respondents' product and weight reducing plan without the necessity of restricting the diet.

(b) That the removal of excess weight from the body through the use of respondents' product and weight reducing plan is easy.

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 represents, directly or by implication, that the use of respondents' product and weight reducing plan removes or aids in the removal of excess weight from the body, unless such advertisement discloses clearly and conspicuously that said plan includes the adherence to a restricted diet and that adherence to such a diet is essential to weight reduction.

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 of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph 1 hereof or which fails to comply with the affirmative requirements set forth in paragraph 2 hereof.

It is further ordered, That the 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
RUSSELL M. BRADDOCK

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

Docket 5056. Complaint, Oct. 1, 1943—Decision, Oct. 20, 1944

Where an individual engaged, under the names "Ancestral Survey," and "Professional Collection Association," in the collection of delinquent accounts, upon a commission and contingent basis, for clients within and without the State of Michigan, and in employing in said connection, to secure names and addresses of the employers of persons from whom he was endeavoring to collect money due to his clients, and of the former's banks, certain forms, which—captioned "Ancestral Survey," and bearing such matter as "Missing relatives located," "Estate Counselor," "Service to executors in locating heirs under a will" and "Service to administrators in notifying heirs of estates"—advised the recipient that "The services of this firm have been retained to locate a person" by his or her name "regarding a very important and confidential matter, affecting, and to the interest of the above named person," and that "before divulging the information" they were "compelled to obtain positive identification" and called upon such person, for said purpose to fill in the blanks calling for information as to his full name and residence, and those of his spouse, parents, employer, and bank;

Making use of a plan pursuant to which said forms, after having inserted the names of persons concerning whom information was sought, were enclosed in stamped envelopes addressed to them at their last known addresses, together with unstamped reply envelopes addressed to "Post Office Box 30, St. Helen, Michigan," said filled envelopes were caused by him to be transported to his agent at said point who there mailed them, and in due course returned to him such of the questionnaires as were filled out and returned, and he made use of the information thus obtained in collecting and attempting to collect amounts due from such persons to his clients, who were not advised as to the means thus employed by him in obtaining such information—

Represented through use as aforesaid of said caption "Ancestral Survey" and through such statements as "Missing relatives located," "Service to executors in locating heirs under a will" and "Service to administrators in notifying heirs of estates" that his business had some relation to genealogical research, that "Ancestral Survey" undertook to locate missing relatives and missing heirs to decedents' estates; and, through other words employed as above set forth, that the information sought was "to the interest" of the person concerning whom it was desired; when in fact said representations were false and misleading, and said questionnaire was merely a disguise for the true nature of his business and a scheme to obtain information by subterfuge in order to facilitate the collection of accounts;

With the tendency and capacity to mislead and deceive many persons to whom said questionnaires were sent into the erroneous belief that said representations were true, and that the name "Ancestral Survey" truthfully described and indicated the character of the concern requesting the information, and of inducing such persons thereby to give information which they might not otherwise supply:

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. Randolph W. Branch for the Commission.
Mr. Henry W. Harmon, of Detroit, 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 Russell M. Braddock, 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, Russell M. Braddock, is an individual, doing business under the names Ancestral Survey and Professional Collection Association, with an office and principal place of business at 333 State Street, Detroit, Mich.

PAR. 2. Respondent is now, and has been for more than five years last past, engaged under the name Professional Collection Association, in the collection of delinquent accounts owed to others upon a commission basis and contingent upon collection. Clients for whom he undertakes the collection of accounts are located both within and without the State of Michigan. Many of his said clients cause goods and other property to be transported from their respective places of business to purchasers thereof in other States of the United States, and maintain, and at all times mentioned herein have maintained, a course of trade in such goods and property in commerce between and among the various States of the United States. The course and conduct of his said business by respondent involves communication and intercourse of a commercial and business nature between him and his clients who are located in States other than the State of Michigan.

PAR. 3. In the course and conduct of respondent's collection business, he frequently desires to ascertain the current addresses of persons from whom he is endeavoring to collect money due to his clients, the names and addresses of the employers of such persons and of the banks in which such persons have money on deposit, and other information.

For this purpose respondent uses, and has used, a questionnaire or form substantially in the form exemplified by photostatic copy thereof, marked Exhibit A, attached hereto and by this reference incorporated herein and made a part hereof.

PAR. 4. Respondent places the names of the persons concerning whom information is sought on the lines provided therefor in said forms, and encloses the forms in stamped envelopes addressed to such persons at their last known addresses, together with unstamped reply envelopes addressed to "Post Office Box 30, St. Helen, Mich."

Respondent causes the said filled envelopes to be transported to his agent at St. Helen, Mich., who receives them and thereafter causes them to be placed in the United States mail. The said filled envelopes bear addresses of places located in the State of Michigan and in other States of the United States, and many of those addressed to places in Michigan are for-

warded by the United States Postal authorities to places in States other than Michigan.

Such of the questionnaires as are filled out and mailed by the recipients thereof, are received by respondent's agent at St. Helen, Mich., who thereafter causes them to be transported to respondent at his place of business in Detroit, Mich. Respondent uses the information so obtained in collecting, and attempting to collect, the amounts due from such persons to the persons for whom he is acting.

If respondent, having obtained such information, later decides that he cannot effect collection of an account, he transmits the information so obtained to his client without charge. His clients are never advised of the means used by respondent in obtaining this information.

PAR. 5. By means of the aforesaid questionnaires respondent has represented, directly and by implication, to the persons to whom they were sent, that "Ancestral Survey" is engaged in the business of locating missing relatives, and missing heirs to decedents estates or interests therein, and that the persons concerning whom information was sought have, or may have interests in such estates which will be of financial benefit to them.

The said representations are false and misleading. In truth and in fact, respondent in conducting the business called Ancestral Survey, is not engaged in the business of locating missing relatives or missing heirs to decedents estates or interests therein, and respondent has no knowledge of any interests in estates to which persons concerning whom information is sought may be entitled. The whole scheme is merely an attempt to obtain information by subterfuge, and the sole purpose of the said questionnaires is to secure information in order to facilitate the collection of accounts.

PAR. 6. Through the use of the name "Ancestral Survey" respondent has represented, directly and by implication, that his said business bears some relation to genealogical research.

Said representation was false and misleading. In truth and in fact respondent's said business has nothing to do with genealogical research, 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 designation has had the tendency and capacity to, and has, misled and deceived many persons to whom the said questionnaires were sent into the erroneous and mistaken belief that said statements, representations and designation were true and correct, and by reason thereof to give information which they would not otherwise supply and to incur expense for postage in connection with the return of the questionnaires.

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.

Exhibit A

MISSING RELATIVES LOCATED

ANCESTRAL SURVEY

SERVICE TO EXECUTORS
IN LOCATING HEIRS
UNDER A WILL

ESTATE COUNSELLORS

SERVICE TO ADMINISTRATORS
IN NOTIFYING HEIRS
OF ESTATES

Refer to File No.
20259

The Services of this firm have been retained to locate a person by the name of

regarding a very important and confidential matter, effecting, and to the interest of the above named person. However before divulging the information we are compelled to obtain positive identification that you are this person. For this reason we are required by our correspondents to obtain the following information.

Please type or print answers to questions 1 to 9 inclusive and sign in your own handwriting.

=====

FOR THE PURPOSE OF ESTABLISHING MY IDENTITY WITH YOUR FIRM, I SUBMIT
THE FOLLOWING INFORMATION:

1. FULL NAME -----
 First Name Middle Name Last Name
2. MY PRESENT RESIDENCE IS -----
 No. Street City State
3. MY FORMER RESIDENCE WAS -----
 No. Street City State
4. SINGLE ----- WIDOW ----- MARRIED ----- MATE'S GIVEN NAME -----
5. PARENTS -----
 Father's Name Mother's Maiden Name
6. I AM EMPLOYED BY -----
 Name of Employer Occupation
7. ADDRESS OF EMPLOYER -----
 Street City State
8. I BANK AT -----
 Name of Bank Branch City State
9. PERSONAL REFERENCE -----
 Name Street Address City State

SIGNED -----

=====

Upon return of this letter and upon verification of the information by us, we or our client will communicate with you further. We must hear from you within ten days from date of this letter or other disposition will be made of this matter and we will be forced to close our files.

Yours very truly,

ANCESTRAL SURVEY,
E. E. EVANS.



REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 1, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Russell M. Braddock, an individual, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony was introduced before an examiner of the Commission theretofore duly designated by it, and said testimony was duly recorded and filed in the office of the Commission. At the said hearing respondent waived the filing of a report upon the evidence by the examiner, and thereafter waived all intervening procedure and further hearing as to the facts. Thereafter, the proceeding regularly came on for final hearing upon the said complaint, answer, and said testimony; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Russell M. Braddock, is an individual, doing business under the names "Ancestral Survey" and "Professional Collection Association," with his office and principal place of business at 333 State Street, Detroit, Mich.

PAR. 2. Respondent is now, and has been for more than five years last past, engaged under the name "Professional Collection Association" in the collection of delinquent accounts owed to others upon a commission basis and contingent upon collection. Clients for whom he undertakes the collection of accounts are located both within and without the State of Michigan. Many of his said clients cause goods and other property to be transported from their respective places of business to purchasers thereof in other States of the United States, and maintain, and at all times mentioned herein have maintained, a course of trade in such goods and property in commerce between and among the various States of the United States. The course and conduct of his said business by respondent involves communication and intercourse of a commercial and business nature between him and his clients who are located in States other than the State of Michigan.

PAR. 3. In the course and conduct of respondent's collection business he frequently desires to ascertain the current addresses of persons from whom he is endeavoring to collect money due to his clients, the names and addresses of the employers of such persons and of the banks in which such persons have money on deposit, and other information. For this purpose respondent uses, and has used, a questionnaire or form substantially as follows:

Findings

MISSING RELATIVES LOCATED

ANCESTRAL SURVEY

SERVICE TO EXECUTORS
IN LOCATING HEIRS
UNDER A WILL

ESTATE COUNSELLORS

SERVICE TO ADMINISTRATORS
IN NOTIFYING HEIRS
OF ESTATES

Refer to File No.
20259

The Services of this firm have been retained to locate a person by the name of

regarding a very important and confidential matter, effecting, and to the interest of the above named person. However before divulging the information we are compelled to obtain positive identification that you are this person. For this reason we are required by our correspondents to obtain the following information.

Please type or print answers to questions 1 to 9 inclusive and sign in your own handwriting.

=====

FOR THE PURPOSE OF ESTABLISHING MY IDENTITY WITH YOUR FIRM, I SUBMIT
THE FOLLOWING INFORMATION:

1. FULL NAME -----

First Name	Middle Name	Last Name
------------	-------------	-----------
2. MY PRESENT RESIDENCE IS -----

No. Street	City	State
------------	------	-------
3. MY FORMER RESIDENCE WAS -----

No. Street	City	State
------------	------	-------
4. SINGLE ----- WIDOW ----- MARRIED ----- MATE'S GIVEN NAME -----
5. PARENTS -----

Father's Name	Mother's Maiden Name
---------------	----------------------
6. I AM EMPLOYED BY -----

Name of Employer	Occupation
------------------	------------
7. ADDRESS OF EMPLOYER -----

Street	City	State
--------	------	-------
8. I BANK AT -----

Name of Bank	Branch	City	State
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9. PERSONAL REFERENCE -----

Name	Street Address	City	State
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SIGNED -----

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Upon return of this letter and upon verification of the information by us, we or our client will communicate with you further. We must hear from you within ten days from date of this letter or other disposition will be made of this matter and we will be forced to close our files.

Yours very truly,

ANCESTRAL SURVEY,
E. E. EVANS.

PAR. 4. Respondent places the names of the persons concerning whom information is sought on the lines provided therefor in said forms, and encloses the forms in stamped envelopes addressed to such persons at their last known addresses, together with unstamped reply envelopes addressed to "Post Office Box 30, St. Helen, Mich." He then causes the said filled envelopes to be transported to his agent at St. Helen, Mich., who receives them and thereafter causes them to be placed in the United States mail. The said filled envelopes bear addresses of places located in the State of Michigan and in other States of the United States, and many of those addressed to places in Michigan are forwarded by the United States postal authorities to places in States other than Michigan. Such of the questionnaires as are filled out and mailed by the recipients thereof are received by respondent's agent at St. Helen, Mich., who thereafter causes them to be transported to respondent at his place of business in Detroit, Mich. Respondent uses the information so obtained in collecting, and attempting to collect, the amounts due from such persons to the persons for whom he is acting. If respondent, having obtained such information, later decides that he cannot effect collection of an account, he transmits the information so obtained to his client without charge. His clients are never advised of the means used by respondent in obtaining this information.

PAR. 5. By the use of the aforesaid questionnaires, respondent makes, directly and by implication, various representations to the persons to whom such questionnaires are sent. By the designation "Ancestral Survey" respondent represents that his business has some relation to genealogical research; by the statement "Missing Relatives Located" respondent represents that Ancestral Survey undertakes to locate missing relatives; by the statements "Service to Executors in Locating Heirs under a Will" and "Service to Administrators in Notifying Heirs of Estates" respondent represents that Ancestral Survey undertakes to locate the missing heirs to decedents' estates; and he directly represents that the information sought is "to the interest" of the person concerning whom information is desired. In truth and in fact, respondent uses the aforesaid questionnaires in securing information which will assist him in his business of seeking to collect alleged debts. When so used, the aforesaid representations made through the use of said questionnaires are false and misleading and said questionnaire is merely a disguise for the true nature of respondent's business and constitutes a scheme to obtain information by subterfuge in order to facilitate the collection of accounts.

PAR. 6. The use, as hereinabove set forth, of the foregoing false and misleading statements and representations, including the use of the name "Ancestral Survey," has had, and has, the tendency and capacity to mislead and deceive many persons to whom the said questionnaires are sent into the erroneous and mistaken belief that said statements and representations are true, and that the said name truthfully describes and indicates the character of the concern making the inquiry and requesting the information, and by reason thereof to induce such persons to give information which they might not otherwise supply.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and testimony taken before an examiner of the Commission theretofore duly designated by it (respondent having waived 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Russell M. Braddock, an individual, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the use of form letters or other written or printed material in carrying on the business of collecting or aiding in the collection of debts in commerce, as "commerce" is defined in the Federal Trade Commerce Act, do forthwith cease and desist from:

1. Using the words "Ancestral Survey," 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 said business bears any relation to genealogical research.

2. Representing, directly or by implication, that respondent's said business is that of locating missing relatives or heirs to decedent's estates or interests therein.

3. Representing, that respondent's said business is other than that of collecting debts, or that the information sought by means of such devices is for any purpose other than for use in the collection of debts.

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

IN THE MATTER OF

JAMES A. CLANCY, ET AL¹

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

Docket 4801. Complaint, Aug. 6, 1942—Decision, Oct. 21, 1944

Where (1) three individuals, namely, C, W, and D, severally engaged in the city herein concerned in the sale and distribution of building material (including metal partitions and doors, toilet partitions, elevator entrances and fire doors) and in competition between and among themselves and others except in so far as said competition had been restricted or forestalled by the common course of action below set forth; and (2) a general contractor engaged in said city in general contracting and construction work and in buying building materials, and his two employees and agents;

Following arrangements by the Navy with a shipbuilding company under which said company was to undertake construction of naval vessels, and pursuant to which (1) the Navy agreed to arrange for the advancing of the necessary funds to rehabilitate the facilities at the latter's shipyards, to be expended under the general supervision of the Navy and subject to its approval, and (2) said shipbuilding company contracted with aforesaid general contractor for the reconstruction by him of certain office buildings and shipways on a cost-plus-a-fixed-fee basis with the understanding that in securing materials or services he would obtain competitive offers from as many as practicable but not less than two—or three where specified—reputable firms and award a contract to concern quoting the minimum price; bids to be opened by or in the presence of the Navy Supervisor of Shipbuilding or his representative and to be subject to his approval before award of the subcontract—Cooperated, combined, agreed and conspired through understandings together and with each other, during a period of some 15 months or more, to, and did, restrain and suppress competition in the purchase and sale of said building materials in commerce; and pursuant to and as a part of the said understanding, etc.—

- (a) Promoted, established and carried out a practice of maintaining a false appearance of competition between and among said C, W, D and other sellers of building materials in their submission of price quotations and bids to buyers and prospective buyers;
- (b) Conveyed to such buyers, including official awarding authorities of the United States Government, and others involved in the purchase of such products, the representation that said C, W, D, and others were rival bidders and competitors, when in reality they were acting collusively between and among themselves;
- (c) Avoided and prevented competition in the purchase and sale of building materials, and prevented consideration of genuinely competitive bids or price quotations by purchasers thereof; and

Where aforesaid general contractor, acting directly and through his aforesaid two employees and agents—

¹ The instant case is one of a group of eight having to do with the preparation and submission of sham, false, fictitious, fraudulent and non-competitive bids in connection with the Navy's arrangement for the construction of ships by the Cramp Shipbuilding Co. at its shipyards in Philadelphia. For list of these cases, see footnote to the case of the Grater-Bodey Co., et al., Docket 4799, p. 113.

(d) Cooperated with C in the preparation and submission to him and to his said agents and employees of fictitious bids, for the furnishing of building material for his use in rehabilitating the aforesaid shipyards, and submitted such bids in turn to purchasing officials of said shipbuilding company and representatives of the Navy, Supervisor of Ships as genuinely competitive bids and price quotations; and

Where said C, on numerous occasions, with the knowledge and cooperation of said general contractor and his said employees and agents—

(e) Secured printed stationery bearing the letterheads of the aforesaid W and D and other sellers of building materials and used them in the submission of fictitious bids to said general contractor and his said two agents, over the purported but false signatures of said W and said D and others, as written thereon by himself, specifying therein higher prices than those he submitted in each comparable instance over his own name in offering to furnish to said general contractor the same building materials specified in said fraudulent bids; and

Where said general contractor and his said agents and employees, in each of the number of instances where said C thus submitted to them different bids on stationery bearing the letterheads of said W, D, and others—

(f) In turn submitted such false bids as and for genuine and competitive bids to officials of said shipbuilding company, and to representatives of the Navy Supervisor of Ships, who were misled and deceived into approving them as genuine and competitive; and—

Where said W and D—

(g) Knowingly cooperated with C in his preparation and submission of fraudulent bids as aforesaid by furnishing him with stationery bearing their respective letterheads for his use in the preparation and submission of aforesaid bids;

With the result that said C enjoyed awards of numerous contracts for building materials by said general contractor, his employees and agents, with the approval of officials of said shipbuilding company and representatives of the Navy Supervisor of Ships, secured through deception as aforesaid; and with the effect of depriving buyers and prospective buyers of building materials, including contractors and subcontractors of the United States Government, and the public in general, of the benefit of competition in commerce between and among said C, W, D, and others with whom they normally would be in competition in making bids and price quotations, and with tendency so to do:

Held, That such acts, practices, understandings and conspiracies, under the circumstances set forth, were all to the prejudice of the public; had a dangerous tendency to and did actually restrain and eliminate competition in the purchase and sale of building materials in commerce; had the capacity and tendency to and did unreasonably restrain such commerce in said products; had a dangerous tendency to create a monopoly in the purchase, sale and distribution of said products; and constituted 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.

Mr. Everett MacIntyre and Mr. V. W. Summers for the Commission.
McDevitt, Philips & Watters, of Philadelphia, Pa., for James A. Clancy.
Mr. James F. Masterson, of Philadelphia, Pa., for Charles F. Rohleder,
 Allen McLaine Ward and J. R. Baldrige, Jr.

Complaint

39 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 the persons, partnerships and corporations named or included by reference in the caption hereof, and more particularly hereinafter described and referred to as respondents, have violated the provisions of Section 5 of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, James A. Clancy, with office and principal place of business located in the Harrison Building, Philadelphia, Pa., is an individual, engaged in the sale and distribution of building materials, which term, whenever used in this complaint includes but is not limited to metal partitions and doors, toilet partitions, elevator entrances and fire doors; and in carrying on such business said respondent ships and causes to be shipped said products from locations in States other than the State of Pennsylvania to locations in Pennsylvania including the city of Philadelphia, and to other points in other States

Respondent, M. A. Webster, is an individual, whose office and principal place of business is at his residence at 3827 Oak Road, Philadelphia, Pa. At all times hereinafter mentioned said respondent has been engaged in the sale and distribution of building materials and in carrying on such business he ships and causes to be shipped said products from locations in States other than the State of Pennsylvania to locations in Pennsylvania, including the city of Philadelphia, and to other points in other States.

Respondent, Joseph R. Duffy, is an individual, trading as J. R. Duffy Manufacturing Company, with office and principal place of business at 201 Architects Building, Philadelphia, Pa., engaged in the sale and distribution of building materials, and in carrying on such business he ships and causes to be shipped said products from locations in States other than the State of Pennsylvania to locations in Pennsylvania, including the city of Philadelphia, and to other points in other States.

Respondent, Charles F. Rohleder, is an individual, with office and principal place of business located at 2134 Cherry Street, Philadelphia, Pa., engaged in general contracting and construction work and in buying building materials and in so doing he ships and causes said products to be shipped from locations in States other than the State of Pennsylvania to locations in Pennsylvania, including Philadelphia, Pa., and to other points in other States.

Respondent, Allen McLaine Ward, whose residence address is 7415 Bingham Street, Philadelphia, Pa., and respondent, J. R. Baldrige, Jr., whose residence address is 111 East Cliveden Avenue, Philadelphia, Pa., are individuals, who during the period covered by the activities involved in the charges in this complaint, served as employees and agents of respondent, Charles F. Rohleder, and in such capacities they shipped, caused to be shipped, or were instrumental in others shipping, building materials from locations in States other than the State of Pennsylvania to locations in Pennsylvania, including the city of Philadelphia, and to other points in other States.

PAR. 2. Respondents, James A. Clancy, M. A. Webster, Joseph R. Duffy, and others not named herein as respondents, engaged in the purchase and sale of building materials in Pennsylvania and adjoining States, have been and are in competition between and among themselves and with one or more other purchasers and sellers of said products in making or seeking to make sales of such products in "commerce" (as "commerce" is defined in the Federal Trade Commission Act) between and among the various States of the United States, except insofar as said competition has been hindered, lessened, restricted, or forestalled by the cooperation, concert or common course of action, understanding, confederation, combination, agreement, or conspiracy, or the acts, things, practices, policies, or methods done in carrying on in pursuance thereto or in furtherance thereof as hereinafter set forth.

PAR. 3. During 1940, as a part of its work in the Defense Program of the United States of America, the Navy Department arranged with Cramp Shipbuilding Co., whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels, and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities at the said shipyard, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon the said Cramp Shipbuilding Co. contracted with respondent, Charles F. Rohleder, for the latter to reconstruct certain office buildings and shipways on a cost plus a fixed fee basis with the understanding that the said Rohleder in securing materials or services would obtain competitive offers from as many as practicable but not less than two (not less than three were specified) reputable firms in a position to provide the material, equipment, or services as required at a reasonable cost, and to award a contract to that firm quoting the minimum price, and with the further understanding that the said offers, proposals, or bids were to be opened by, or in the presence of, the Supervisor of Shipbuilding, U. S. Navy, or his representative, and subject to his approval before award of the subcontract for materials or services.

In connection with his aforesaid contract with the Cramp Shipbuilding Co., respondent, Charles F. Rohleder, negotiated with and made awards of contracts directly and through agents to respondent, James A. Clancy, for the purpose of building materials.

PAR. 4. Throughout a period of time beginning on or about the first day of October, 1940, and continuing thereafter until subsequent to January 1, 1942, the respondents have, through understandings together and with each other, cooperated, confederated, combined, agreed, and conspired to frustrate, hinder, restrain and suppress competition in the purchase and sale of building materials in "commerce" (as "Commerce" is defined in the Federal Trade Commission Act and in which sense it is used herein) and have in fact through such cooperation, confederation, combination, agreement, and conspiracy, frustrated, restrained, and suppressed competition in the purchase and sale of building materials.

Pursuant to, in furtherance of, and as a part of the aforesaid understanding, cooperation, confederation, combination, agreement, and conspiracy, the aforesaid respondents have done, performed, and used, among other things, acts, practices, policies, and methods, the following:

1. Promoted, established, carried out and continued a practice of maintaining a false appearance of competition between and among respondents, James A. Clancy, M. A. Webster, Joseph R. Duffy, and other sellers of building materials in their submission of price quotations and bids to buyers and prospective buyers.

2. Conveyed to buyers and prospective buyers, including official awarding authorities of the United States Government, and others involved in the purchase of building materials, the representation that said respondents, James A. Clancy, M. A. Webster, Joseph R. Duffy, and others were rival bidders and competitors when they in reality were acting collusively between and among themselves in preparing and submitting bids.

3. Avoided and prevented competition in the purchase and sale of building materials.

4. Prevented consideration of genuinely competitive bids or price quotations by purchasers of said products.

5. On numerous occasions, the exact number and dates of which are unknown to the Commission, respondent, Charles F. Rohleder, acting directly and through his agents, respondent, Allen McLaine Ward and J. R. Baldrige, Jr., cooperated with respondent, James A. Clancy, in the preparation and submission to said respondent, Charles F. Rohleder, his agents and employees, respondent, Allen McLaine Ward and J. R. Baldrige, Jr., sham, false, fictitious, fraudulent and noncompetitive bids and price quotations for the furnishing of building materials for the said Rohleder's use in rehabilitating the facilities of the Cramp Shipbuilding Co.'s shipyards, Norris and Richmond Streets, Philadelphia, Pa., and said Rohleder submitted such sham, false, fictitious, fraudulent, and noncompetitive bids and price quotations in turn to purchasing officials of the Cramp Shipbuilding Co., and representatives of the Supervisor of Ships, United States Navy Department, for consideration and approval as genuinely competitive bids and price quotations.

6. On numerous occasions, the exact number and dates of which are unknown to the Commission, respondent, James A. Clancy, with the knowledge and cooperation of respondent, Charles F. Rohleder, his employees and agents, including respondents, Allen McLaine Ward and J. R. Baldrige, Jr., secured printed stationery bearing the letterheads of respondent, M. A. Webster, and respondent, Joseph R. Duffy, trading as J. R. Duffy Manufacturing Co., and of other sellers of building materials, and used the same in the submission of sham, false, fictitious, fraudulent and noncompetitive bids and price quotations to said respondent, Charles F. Rohleder, and his agents and employees, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., over the purported but false signatures of respondent, M. A. Webster, and respondent, Joseph R. Duffy, and others as written thereon by respondent, James A. Clancy. The prices specified in such bids were different from, higher than and noncompetitive with the bid and price quotation submitted in each comparable instance by respondent, James A. Clancy, over his own name, offering to furnish to said respondent, Charles F. Rohleder, the same building materials as specified in the said sham, false, fictitious, fraudulent and noncompetitive bids. Thereupon, in each of the number of instances where respondent, James A. Clancy, thus submitted to respondent, Charles F. Rohleder, his agents and employees, including respondents, Allen McLaine Ward and J. R. Bald-

ridge, Jr., different bids on stationery bearing the letterheads of respondent, M. A. Webster, respondent, Joseph R. Duffy, trading as J. R. Duffy Manufacturing Co., and others, such bids, although known to be false, were in turn submitted by respondent, Charles F. Rohleder, his agents and employees, including respondents, Allen McLaine Ward and J. R. Baldridge, Jr., as and for genuine and competitive bids on such building materials to officials of Cramp Shipbuilding Co. and to representatives of the Supervisor of Ships, who were through the appearance of such bids misled and deceived into considering and approving them as genuine and competitive.

7. Respondents, M. A. Webster and Joseph R. Duffy, have knowingly cooperated with respondent, James A. Clancy, in his preparation and submission of sham, false, fictitious, fraudulent and noncompetitive bids and price quotations on building materials as aforesaid in furnishing him with stationery bearing their respective letterheads for his use in the preparation and submission of such sham, false, fictitious, fraudulent and noncompetitive bids.

8. Respondent, James A. Clancy, as a result of the submission of the aforesaid sham, false, fictitious, fraudulent and noncompetitive bids enjoyed awards of numerous contracts for building materials to him by said Charles F. Rohleder, his employees and agents, with the approval of officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, United States Navy, secured through deception as aforesaid.

PAR. 5. The aforesaid understandings, agreements, combination, and conspiracy, and the doing and performing of the acts and things and the use of the methods set forth in the preceding paragraphs hereof tend to have, and have had, the effect of depriving buyers and prospective buyers of building materials including contractors and subcontractors of the United States Government, and the public in general, of the benefit of competition in commerce between and among respondents, James A. Clancy, M. A. Webster, Joseph R. Duffy, and others with whom they normally would be in competition in making bids and price quotations.

PAR. 6. The acts, practices, methods, understandings, agreements, combination, and conspiracy of the respondents as hereinbefore alleged are all to the prejudice of the public, have a dangerous tendency to, and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the purchase and sale of building materials which includes but is not limited to metal partitions and doors, toilet partitions, elevator entrances and fire doors, in commerce within the intent and meaning of the Federal Trade Commission Act and have the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said products, have a dangerous tendency to create a monopoly in the purchase, sale, and distribution of such 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 August 6, 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 and unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act. After the issuance of said complaint and the filing of respondents' answers, the Commission, by order entered herein, granted the requests of respondents for permission to withdraw their answers and to substitute therefor answers admitting all of the material allegations of fact set forth in the said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute admission answers were duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answers; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (a) Respondent, James A. Clancy, is an individual, with his office and principal place of business located in the Harrison Building, Philadelphia, Pa. He is engaged in the sale and distribution of building materials, which term, whenever used hereinafter, includes but is not limited to metal partitions and doors, toilet partitions, elevator entrances, and fire doors. In the conduct of said business respondent ships said products and causes them to be shipped from locations in States other than the State of Pennsylvania to locations in Pennsylvania, including the city of Philadelphia, and to other points in other States.

(b) Respondent, Maurice A. Webster, (referred to in the complaint as M. A. Webster), is an individual, whose office and principal place of business is at his residence at 3827 Oak Road, Philadelphia, Pa. At all times hereinafter mentioned said respondent has been engaged in the sale and distribution of building materials and in the conduct of said business he ships said products and causes them to be shipped from locations in States other than the State of Pennsylvania to locations in Pennsylvania, including the city of Philadelphia, and to other points in other States.

(c) Respondent, Joseph R. Duffy, is an individual, trading as J. R. Duffy Manufacturing Co., with his office and principal place of business at 201 Architects Building, Philadelphia, Pa. He is engaged in the sale and distribution of building materials, and in the conduct of said business he ships said products and causes them to be shipped from locations in States other than the State of Pennsylvania to locations in Pennsylvania, including the city of Philadelphia, and to other points in other States.

(d) Respondent, Charles F. Rohleder, is an individual, with his office and principal place of business located at 2134 Cherry Street, Philadelphia, Pa. He is engaged in general contracting and construction work and in buying building materials, and in the course of said business he ships said products and causes them to be shipped from locations in States other than the State of Pennsylvania to locations in Pennsylvania, including the city of Philadelphia, and to other points in other States.

(e) Respondent, Allen McLaine Ward, whose residence address is 7415 Bingham Street, Philadelphia, Pa., and respondent, J. R. Baldrige, Jr., whose residence address is 111 East Cliveden Avenue, Philadelphia, Pa., are individuals who, during the period covered by the activities hereinafter specified, served as employees and agents of respondent, Charles F. Rohleder. Acting in said capacities, they shipped, caused to be shipped, or were instrumental in having others ship building materials from locations in States other than the State of Pennsylvania to locations in Pennsylvania, including the city of Philadelphia, and to other points in other States.

PAR. 2. Respondents, James A. Clancy, Maurice A. Webster, Joseph R. Duffy, and others not named herein as respondents, are engaged in the purchase and sale of building materials in Pennsylvania and adjoining States. They have been, and are, in competition between and among themselves and with one or more other purchasers and sellers of said products in making or seeking to make sales of such products in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States, except insofar as said competition has been hindered, lessened, restricted, or forestalled by the cooperation, concert or common course of action, understanding, confederation, combination, agreement, or conspiracy hereinafter set forth, or the acts or things done or practices, policies, or methods followed pursuant thereto or in furtherance thereof as hereinafter set forth.

PAR. 3. During 1940, as a part of its work in the defense program of the United States of America, the Navy Department arranged with Cramp Shipbuilding Company, whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels, and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities at the said shipyards, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon, the said Cramp Shipbuilding Co. contracted with respondent, Charles F. Rohleder, for the latter to reconstruct certain office buildings and shipways on a cost-plus-a-fixed-fee basis, with the understanding that the said Rohleder, in securing materials or services, would obtain competitive offers from as many as practicable but not less than two (not less than three where specified) reputable firms in a position to provide the materials, equipment, or services as required, at a reasonable cost, and to award a contract to that firm quoting the minimum price, and with the further understanding that the said offers, proposals, or bids were to be opened by, or in the presence of, the Supervisor of Shipbuilding, United States Navy, or his representative, and were to be subject to his approval before award of the subcontract for materials or services.

In connection with his aforesaid contract with the Cramp Shipbuilding Co., respondent, Charles F. Rohleder, directly and through agents, negotiated with and made awards of contracts to respondent, James A. Clancy, for the purchase of building materials.

PAR. 4. Throughout a period of time beginning on or about the first day of October 1940 and continuing thereafter until subsequent to January 1, 1942, the respondents have, through understandings, together and with

each other, cooperated, confederated, combined, agreed, and conspired to frustrate, hinder, restrain, and suppress competition in the purchase and sale of building materials in commerce, as "commerce" is defined in the Federal Trade Commission Act (in which sense the term is used herein), and have in fact, through such cooperation, confederation, combination, agreement, and conspiracy, frustrated, restrained, and suppressed competition in the purchase and sale of building materials.

Pursuant to, in furtherance of, and as a part of the aforesaid understanding, cooperation, confederation, combination, agreement, and conspiracy, the aforesaid respondents have done, performed, and used, among other things, the following acts, practices, policies, and methods:

(a) Promoted, established, carried out, and continued a practice of maintaining a false appearance of competition between and among respondents, James A. Clancy, Maurice A. Webster, Joseph R. Duffy, and other sellers of building materials in their submission of price quotations and bids to buyers and prospective buyers.

(b) Conveyed to buyers and prospective buyers, including official awarding authorities of the United States Government and others involved in the purchase of building materials, the representation that said respondents, James A. Clancy, Maurice A. Webster, Joseph R. Duffy, and others, were rival bidders and competitors, when in reality they were acting collusively between and among themselves in preparing and submitting bids.

(c) Avoided and prevented competition in the purchase and sale of building materials.

(d) Prevented consideration of genuinely competitive bids or price quotations by purchasers of said products.

(e) On numerous occasions respondent, Charles F. Rohleder, acting directly and through his agents, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., cooperated with respondent, James A. Clancy, in the preparation and submission to said Charles F. Rohleder, his agents and employees, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., sham, false, fictitious, fraudulent, and noncompetitive bids and price quotations for the furnishing of building materials for the said Rohleder's use in rehabilitating the facilities of the Cramp Shipbuilding Co.'s shipyards in Philadelphia, Pa., and said Rohleder submitted such sham, false, fictitious, fraudulent, and noncompetitive bids and price quotations, in turn, to purchasing officials of the Cramp Shipbuilding Co., and representatives of the Supervisor of Ships, United States Navy Department, for consideration and approval as genuinely competitive bids and price quotations.

(f) On numerous occasions respondent, James A. Clancy, with the knowledge and cooperation of respondent, Charles F. Rohleder, his employees and agents, including respondents, Allen McLaine Ward and J. R. Baldrige, Jr., secured printed stationery bearing the letterheads of respondent, Maurice A. Webster, and respondent, Joseph R. Duffy, trading as J. R. Duffy Manufacturing Co., and of other sellers of building materials, and used the same in the submission of sham, false, fictitious, fraudulent, and noncompetitive bids and price quotations to said Charles F. Rohleder, and his agents and employees, Allen McLaine Ward and J. R. Baldrige, Jr., over the purported but false signatures of Maurice A. Webster and Joseph R. Duffy, and others, as written thereon by respondent, James A. Clancy. The prices specified in such bids were different

from, higher than, and noncompetitive with the bid and price quotation submitted in each comparable instance by respondent, James A. Clancy, over his own name in offering to furnish to said Charles F. Rohleder, the same building materials as specified in the said sham, false, fictitious, fraudulent, and noncompetitive bids. Thereupon, in each of the number of instances where James A. Clancy thus submitted to Charles F. Rohleder, his agents and employees, including Allen McLaine Ward and J. R. Baldrige, Jr., different bids on stationery bearing the letterheads of Maurice A. Webster, Joseph R. Duffy, trading as J. R. Duffy manufacturing Co., and others, such bids, although known to be false, were in turn submitted as and for genuine and competitive bids on such building materials by Charles F. Rohleder, his agents and employees, including Allen McLaine Ward and J. R. Baldrige, Jr., to officials of Cramp Shipbuilding Co. and to representatives of the Supervisor of Ships, U. S. Navy, who, through the appearance of such bids, were misled and deceived into considering and approving them as genuine and competitive.

(g) Respondents, Maurice A. Webster and Joseph R. Duffy, have knowingly cooperated with respondent, James A. Clancy, in his preparation and submission of sham, false, fictitious, fraudulent, and noncompetitive bids and price quotations on building materials, as aforesaid, by furnishing him with stationery bearing their respective letterheads for his use in the preparation and submission of such sham, false, fictitious, fraudulent, and noncompetitive bids.

(h) Respondent, James A. Clancy, as a result of the submission of the aforesaid sham, false, fictitious, fraudulent, and noncompetitive bids, enjoyed awards of numerous contracts for building materials by said Charles F. Rohleder, his employees and agents, with the approval of officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, United States Navy, secured through deception as aforesaid.

PAR. 5. The aforesaid understandings, agreements, combination, and conspiracy, and the doing and performing of the acts and things and the use of the methods set forth in the preceding paragraphs hereof tend to have, and have had, the effect of depriving buyers and prospective buyers of building materials, including contractors and subcontractors of the United States Government, and the public in general, of the benefit of competition in commerce between and among respondents, James A. Clancy, Maurice A. Webster, Joseph R. Duffy, and others with whom they normally would be in competition in making bids and price quotations.

CONCLUSION

The acts, practices, methods, understandings, agreements, combination, and conspiracy of the respondents, as hereinbefore found, are all to the prejudice of the public; have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the purchase and sale of building materials, which includes but is not limited to metal partitions and doors, toilet partitions, elevator entrances, and fire doors, in commerce within the intent and meaning of the Federal Trade Commission Act; and have the capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce

in said products; have a dangerous tendency to create a monopoly in the purchase, sale, and distribution of such 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 substitute answers of the respondents, in which answers respondents admit all of the material allegations set forth in said complaint and waive all intervening procedure and further hearings as to the facts, and the Commission having made its findings as to the facts and its conclusion that the said respondents have violated the provisions of Section 5 of the Federal Trade Commission Act.

It is ordered, That respondents, James A. Clancy, Maurice A. Webster, Joseph R. Duffy, Charles F. Rohleder, Allen McLaine Ward, individually, and as an agent of Charles F. Rohleder, and J. R. Baldrige, Jr., individually, and as an agent of Charles F. Rohleder, their respective representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of building materials, including metal partitions and doors, toilet partitions, elevator entrances, and fire doors, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between and among any two or more of the said respondents or between any one or more of the said respondents and any other person, partnership, or corporation not a party hereto, to do or perform any of the following acts, things, or practices:

1. Conveying or assisting in conveying to buyers or prospective buyers, or to any official or awarding authority of any Federal agency, or to any one contracting with such agency, or to any one acting for or on behalf of such agency or for or on behalf of any contractor with such agency, any representation that any two or more apparent sellers are rival bidders or competitors, when in reality they are acting collusively in preparing and submitting bids.

2. Aiding, assisting, or cooperating in any manner in the submission of any sham, fictitious, fraudulent, or noncompetitive bids or price quotations to any buyer or prospective buyer, or to any Federal agency or any one acting for or on its behalf, or for or on behalf of any party purchasing material or equipment in fulfillment of a contract with such agency.

3. Interfering with or assisting in interfering with the procurement or consideration of genuinely competitive bids or price quotations by any Federal agency or any official or awarding authority of such agency, or by any buyers or prospective buyer.

4. Promoting, establishing, carrying out or continuing any act or practice for the purpose or with the effect of maintaining or presenting a false appearance of competition between or among any of the respondents or other sellers in the submission of price quotations or bids to buyers or prospective buyers.

Order

5. Arranging or attempting to arrange for the filing of any bid in the name of one ostensibly competing bidder when the prices and terms are in fact determined by some other bidder or when in fact the bid is not a bona fide bid.

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

IN THE MATTER OF

RUCKER'S IMPERIAL BREEDING FARM, INC., FAMOUS
POULTRY FARMS, INC., HILLVIEW POULTRY FARMS,
INC., AND ROSS R. SALMONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 5117. Complaint, Jan. 12, 1944—Decision, Oct. 21, 1944*¹

"United States Record of Performance" poultry improvement plan embraces records of egg production, body weight made on the breeder's premises under official supervision, and similar records made at officially conducted egg-laying contests when such records are passed upon by the official state inspector or official state supervisor and when the individual birds meet other United States Record of Performance requirements, and a United States Record of Performance breeder is understood by members of the poultry industry to be one operating a poultry-breeding plant under the official state agency cooperating with the Bureau of Animal Industry, United States Department of Agriculture—

Where a corporation engaged in the interstate sale and distribution of baby chicks, and an individual, who controlled its acts and practices—along with those, in whole or in part, of two other similarly engaged corporations, prior to their dissolution; and the aforesaid two corporations; acting in conjunction and cooperation, each with the other, in carrying out the acts and practices below set forth; through statements in advertisements in newspapers and trade journals, and folders, pamphlets, circulars and other advertising matter, directly and by implication—

- (a) Represented that 100 baby chicks would be given free to certain prospective customers chosen by them as persons with whom they desired to place a flock of chickens for advertising or display purposes and that said offer of free chicks was limited to one person in each neighborhood; and
 - (b) Represented that the chicks supplied to the purchasing public were hatched from eggs produced at hatcheries operated by them, and that they were United States Record of Performance poultry breeders and operated poultry plants under the supervision of the United States Record of Performance agency in Iowa and Missouri;
- The facts being said chicks were not given free as represented, but delivery thereof was contingent upon a purchase of other chicks by the recipient, and in certain cases their customers received a lesser number of so-called free chicks than ordered, with the explanation that the lesser number of chicks delivered was of a better grade or quality than ordered; offer of so-called free chicks was not limited to certain prospective customers chosen by them as persons with whom they desired to place a flock of chicks for advertising or display purposes and was not limited to one person in each neighborhood, or otherwise limited; a large majority of the chicks supplied to the purchasing public were hatched from eggs produced on farms on which they supplied the breeding stock from their own trapnest breeding farms; and they were not United States Record of Performance poultry breeders and did not operate poultry-breeding plants under the supervision of an official for the

¹ Order published as modified on Dec. 21, 1944.

Complaint

agency supervising United States Record of Performance work in Iowa and Missouri;

With the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such statements and representations were true and thereby induce its purchase of their said chicks:

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. Jesse D. Kash for the Commission.

Rice, Miller & Hyatt and *Mr. V. E. Phillips*, of Kansas City, Kans., and *Mr. James R. Quinn*, 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 Rucker's Imperial Breeding Farm, Inc., a corporation, Famous Poultry Farms, Inc., a corporation, Hillview Poultry Farms, Inc., a corporation, and Ross R. Salmon, individually, and as an officer of Rucker's Imperial Breeding Farm, Inc., a corporation, Famous Poultry Farms, Inc., a corporation, and Hillview Poultry Farms, 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, Rucker's Imperial Breeding Farm, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 1339 North Elm Street, Ottumwa, Iowa.

Respondent, Famous Poultry Farms, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware with its offices and principal place of business located at Shenandoah, Iowa.

Respondent, Hillview Poultry Farms, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business at Bethany, Mo.

Respondent, Ross R. Salmon, is an individual, and is an official of and owns the greater part of the stock in the aforesaid corporate respondents, and formulates, directs and controls the acts and practices of said corporate respondents, with his principal office at Shenandoah, Iowa.

The respondents, Rucker's Imperial Breeding Farm, Inc., a corporation, Famous Poultry Farms, Inc., a corporation, Hillview Poultry Farms, Inc., a corporation, and Ross R. Salmon, individually, and as an officer of Rucker's Imperial Breeding Farm, Inc., a corporation, Famous Poultry Farms, Inc., a corporation, and Hillview Poultry Farms, Inc., a corporation, have acted in conjunction and cooperation each with the other in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now and for several years last past have engaged in the sale and distribution of baby chicks. Respondents cause their baby chicks, when sold by them, to be transported from their aforesaid places of business in the States of Iowa and Missouri to purchasers thereof located in various other States of the United States other than Iowa and Missouri and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said baby chicks in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their baby chicks, respondents have circulated and are now circulating among prospective purchasers throughout the United States by United States mails, advertisements in newspapers and trade journals, and by advertising folders, pamphlets, circular letters and other advertising matter, many false statements and representations concerning their products. Among and typical of such false statements and representations disseminated as aforesaid are the following:

(Get 100 chicks Free)

You see, I need your help and, of course, don't expect you to do anything without offering to show my appreciation. You are to use the enclosed card (your lucky card) to get 100 or more baby chicks FREE. You simply help me in a very simple manner and I'll return the favor in a way sure to please you.

Here's the way of it—For years I have wanted to place in your community a flock of my best foundation trapnest and Champion egg blood chickens where all the folks there might see for themselves how wonderful they look. You will be proud as a peacock over the blue ribbon quality of these chickens. Then, you will be able to tell folks how many more eggs these hens lay because many are the result of our 300 egg blood breeding program. You can also speak from experience about how much easier these chicks were to raise because they are hatched in the most modern electric controlled incubators, are carefully inspected and all stock is blood tested for B.W.D. and Fowl Typhoid. This system of local advertising by actual poultry raisers is the very best we can get for IMPERIAL CHICKS.

NOW—if you will agree to raise 100 or more of my IMPERIAL H & P or Superior Pen and Group Matings and reap the profits in extra eggs and the pleasure of having about the finest flock in the neighborhood, just let me know that you will consider my get-acquainted FREE chicks offer which you can still get in on by returning the enclosed card right away.

You can select your favorite pure breed or get a start in the new White Vikings or try some IMPERIAL line-bred top cross Hybrids, whatever you feel will bring you the most money, because we've worked steadily for years and years on trapnesting, importing and using the best egg and R.O.P. Blood to give you egg Champion breeding in many breeds.

FOR EXAMPLE, you've undoubtedly heard of the All-Time Official Egg Contest record of 320 eggs average per hen set by a Rucker pen. No other breeder has ever equalled this amazing production. . . .

Needless to say this get-acquainted offer must be limited. I really need only one good flock in each neighborhood so wanted to give you a chance. . . .

PEDIGREE BREEDING AND PROGENY TESTING

World's Undefeated Egg Champions 320 EGGS per Bird Average in One Year Set All-Time World's Record in Official Contest and Has Never Been equalled.

We wish you could come to IMPERIAL Breeding Farm, talk to us, look over the hundreds of Egg contest hens, Trapnest-Pedigree hens, R.O.P. hens and males and the many champions, prize winners and special selected birds in the dozens and dozens of pens on our great breeding farm. This wonderful Trapnest, Pedigree, R.O.P. blood and outstanding prize winners give us the foundation for one of the country's greatest breeding programs. . . .

Mrs. Conner states that her flock average on 50 hens, for one year was 290 eggs, and that she had 32 hens that laid over 300 eggs in a single year. She also says that she believes 300 egg blood pays. . . .

334 to 376 Eggs (H.Y.R.) in Official and Farm Trapnest records prove Hillview Eg^g Blood supreme.

We invite your close attention to this table which gives in a short, concise way of comparison of the excellent performance of our birds in competition with other Iowa R.O.P. Flocks.

LEGHORN PRODUCTION

	...	...	R.O.P. Advanced	...
			Average Lay	
All Flocks	...	...	239	...
Rucker Birds	...	...	271	...

3 OF AMERICA'S FOREMOST BREEDERS OF CHAMPIONS INVITE YOU TO SHARE THEIR SUCCESS IN SHOWING THE WORLD HOW TO LAY

Why have Prof. Rucker, Frank Gloeckl and J. E. Moore been able to reach such an outstanding position in the poultry world?

Mr. Moore has been in the breeding and hatching business since 1926 and has grown from a breeder, with his trapnests in the upstairs loft, to one of the best known heavy-breed chicken men of the country.

Mr. Gloeckl . . . has probably developed or helped develop more prize winners than anyone in the U.S.A. . . . Mr. Gloeckl is an outstanding specialist.

The World's All-Time official egg laying record was set by a Rucker pen in the middle-west. Other records have been made in the southern states; others in the east; still other records in the northwest. This proves that the Rucker Blood lines do well in most any section of the country. . . .

PAR. 4. Through the use of the statements and representations, hereinabove set forth, and others similar thereto, not specifically set out herein, respondents have represented directly and by implication that 100 baby chicks are given free to certain prospective customers chosen by respondents as persons with whom respondents desire to place a flock of chickens for advertising or display purposes and that said offer of free chicks is limited to one person in each neighborhood; that the chicks supplied to the purchasing public are hatched from eggs produced at hatcheries operated by respondents; that said chicks are predominantly of the strain of a long line of contest winners or championship birds; that the chicks are the offspring of parent flocks having an egg laying average of 300 or more eggs

per year; that they are United States Record of Performance poultry breeders and operate poultry plants under the supervision of an official from the agency supervising United States Record of Performance work in Iowa and Missouri; that all chickens are blood tested for bacillary white diarrhea and that separate blood tests are made upon all chicks for fowl typhoid; that Frank Gloeckl and J. E. Moore are America's foremost breeders of champion chickens; that E. H. Rucker was actively associated with the poultry industry immediately prior to his death; that the chickens supplied to the purchasing public have the blood lines of certain prize-winning birds developed by E. H. Rucker prior to the year 1932.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false and misleading. In truth and in fact 100 chicks are not given free as represented but the delivery of such chicks is contingent upon a purchase of other chicks by the recipient, and in certain cases customers of respondents receive a lesser number of so-called free chicks than ordered with the explanation made by the respondents that the lesser number of chicks delivered was of a better grade or quality than ordered. The offer of so-called free chicks is not limited to certain prospective customers chosen by respondents as persons with whom respondents desire to place a flock of chicks for advertising or display purposes and is not limited to one person in each neighborhood or otherwise limited. Very few, if any, of the chicks supplied to the purchasing public are hatched from eggs produced at the hatcheries operated by respondents but are obtained from other sources. Respondents' chicks are not predominantly of a long line of contest winners or championship chickens and are not the offspring of parent flocks having a laying record of 300 or more eggs per year. Respondents are not United States Record of Performance poultry breeders and do not operate poultry breeding plants under the supervision of an official for the agency supervising United States Record of Performance work in Iowa and Missouri. Separate tests are not made for bacillary white diarrhea and fowl typhoid. Frank Gloeckl and J. E. Moore are not America's foremost breeders of champion chickens and have not made such contribution to the poultry industry as would warrant such a designation. E. H. Rucker was inactive and not associated with the poultry industry for a number of years prior to his death. Respondents' baby chicks do not have the blood lines of prize-winning birds developed by said Rucker prior to the year 1932.

PAR. 6. A United States Record of Performance breeder is understood by members of the poultry industry to be one operating a poultry breeding plant under the official state agency cooperating with the Bureau of Animal Industry, United States Department of Agriculture. United States Record of Performance embraces records of egg production, body weight made on the breeder's premises under official supervision and similar records made at officially conducted egg-laying contests when such records are passed upon by the official State inspector or official State supervisor and when the individual birds meet other United States Record of Performance requirements.

PAR. 7. The use by the respondents of the foregoing false and misleading representations, has the tendency and capacity to, and does mislead and deceive, a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true and induce

the purchasing public to purchase substantial quantities of respondents' chicks as a result of such belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 12, 1944, issued and subsequently served its complaint in this proceeding upon the respondents, Rucker's Imperial Breeding Farm, Inc., a corporation; Famous Poultry Farms, Inc., a corporation; Hillview Poultry Farms, Inc., a corporation; and Ross R. Salmon, individually, and as an officer of Rucker's Imperial Breeding Farm, Inc., a corporation, Famous Poultry Farms, Inc., a corporation, and Hillview Poultry Farms, 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 the form of a stipulation as to the facts entered into upon the record between counsel for the respondents, V. E. Phillips and James R. Quinn, and counsel for the Commission 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. By said stipulation entered into upon the record, the respondents expressly waived the filing of a report upon the evidence by the trial examiner, filing of briefs, and oral argument. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answers thereto, and stipulation of facts entered into upon the record, and the Commission, having approved said stipulation of facts and having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Rucker's Imperial Breeding Farm, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1339 North Elm Street, Ottumwa, Iowa.

Respondent, Famous Poultry Farms, Inc., was a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at Shenandoah, Iowa. Said corporation was properly dissolved according to the laws of the State of Delaware in the month of January 1943.

Respondent, Hillview Poultry Farms, Inc., was a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at Beth-

any, Mo. This corporate respondent was duly dissolved according to the laws of the State of Delaware in the month of January 1943.

Respondent, Ross R. Salmon, is an individual, and treasurer of the corporate respondent, Rucker's Imperial Breeding Farm, Inc., and owns and controls the greater part of the stock in the aforesaid corporate respondent. The said individual respondent, Ross R. Salmon, was president of the corporate respondent, Famous Poultry Farms, Inc., and treasurer of the corporate respondent, Hillview Poultry Farms, Inc., both now dissolved. The said individual respondent, Ross R. Salmon, formulated, directed, and controlled the acts and practices of Famous Poultry Farms, Inc., and, together with others, formulated, directed, and controlled the acts and practices of Hillview Poultry Farms, Inc., and the said individual respondent, Ross R. Salmon, formulates, directs, and controls the acts and practices of the corporate respondent, Rucker's Imperial Breeding Farm, Inc.

The respondents, Rucker's Imperial Breeding Farm, Inc., a corporation, Famous Poultry Farms, Inc., a corporation, and Hillview Poultry Farms, Inc., a corporation, while said last two corporate respondents were in existence, and the individual respondent, Ross R. Salmon, individually, and as an officer of Rucker's Imperial Breeding Farm, Inc., a corporation, Famous Poultry Farms, Inc., a corporation, and Hillview Poultry Farms, Inc., a corporation, acted in conjunction and cooperation, each with the other, in carrying out the acts and practices hereinafter set forth.

PAR. 2. The corporate respondents, Rucker's Imperial Breeding Farm, Inc., a corporation, Famous Poultry Farms, Inc., a corporation, and Hillview Poultry Farms, Inc., a corporation, when the latter two were in existence, and the individual respondent, Ross R. Salmon, acting for the corporate respondents, were and had been for several years last past, and the corporate respondent, Rucker's Imperial Breeding Farm, Inc., is now, engaged in the sale and distribution of baby chicks.

Respondents caused their baby chicks, when sold by them, to be transported from their aforesaid places of business in the States of Iowa and Missouri to purchasers thereof located in various other States of the United States other than Iowa and Missouri and in the District of Columbia.

The corporate respondent, Rucker's Imperial Breeding Farm, Inc., maintains, and at all times mentioned herein has maintained, a course of trade in said baby chicks in commerce between and among the various States of the United States and in the District of Columbia, and the corporate respondents, Famous Poultry Farms, Inc., and Hillview Poultry Farms, Inc., during their existence and prior to their dissolution in 1943, maintained a course of trade in said baby chicks in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their baby chicks, respondents circulated among prospective purchasers throughout the United States by United States mails advertisements in newspapers and trade journals, and by advertising folders, pamphlets, circular letters, and other advertising matter many statements and representations concerning their products. Among and typical of such statements and representations disseminated as aforesaid are the following:

(Get 100 Chicks Free)

You see, I need your help and, of course, don't expect you to do anything without offering to show my appreciation. You are to use the enclosed card (your lucky card) to get 100 or more baby chicks FREE. You simply help me in a very simple manner and I'll return the favor in a way sure to please you.

Here's the way of it—For years I have wanted to place in your community a flock of my best foundation trapnest and Champion egg blood chickens where all the folks there might see for themselves how wonderful they look. You will be proud as a peacock over the blue ribbon quality of these chickens. Then, you will be able to tell folks how many more eggs these hens lay because many are the result of our 300-egg-blood breeding program. You can also speak from experience about how much easier these chicks were to raise because they are hatched in the most modern electric controlled incubators, are carefully inspected and all stock is blood tested for B. W. D. and Fowl Typhoid. This system of local advertising by actual poultry raisers is the very best we can get for IMPERIAL CHICKS.

NOW—if you will agree to raise 100 or more of my IMPERIAL H & P or Superior Pen and Group Matings and reap the profits in extra eggs and the pleasure of having about the finest flock in the neighborhood, just let me know that you will consider my get-acquainted FREE chicks offer which you can still get in on by returning the enclosed card right away.

You can select your favorite pure breed or get a start in the new White Vikings or try some IMPERIAL line-bred top cross Hybrids, whatever you feel will bring you the most money, because we've worked steadily for years and years of trapnesting, importing and using the best egg and R.O.P. Blood to give you egg Champion breeding in many breeds.

* * *

Needless to say this get-acquainted offer must be limited. I really need only one good flock in each neighborhood so wanted to give you a chance . . .

PEDIGREE BREEDING AND PROGENY TESTING.

* * *

We wish you could come to IMPERIAL Breeding Farm, talk to us, look over the hundreds of Egg contest hens, Trapnest-Pedigree hens, R. O. P. hens and males and the many champions, prize winners and special selected birds in the dozens and dozens of pens on our great breeding farm. This wonderful Trapnest, Pedigree, R. O. P. blood and outstanding prize winners give us the foundation for one of the country's greatest breeding programs.

* * *

We invite your close attention to this table which gives in a short, concise way of comparison of the excellent performance of our birds in competition with other Iowa R. O. P. Flocks.

LEGHORN PRODUCTION

	...	...	R.O.P. Advanced	...
			Average Lay	
All Flocks	...	...	239	...
Rucker Birds	...	...	271	...

* * *

PAR. 4. Through the use of the statements and representations, hereinabove set forth, and others similar thereto, not specifically set out herein, respondents represented directly and by implication that 100 baby chicks would be given free to certain prospective customers chosen by respondents as persons with whom respondents desired to place a flock of chickens for advertising or display purposes and that said offer of free chicks was limited to one person in each neighborhood; that the chicks supplied to the purchasing public were hatched from eggs produced at hatcheries operated by respondents; and that they were United States Record of Performance poultry breeders and operated poultry plants under the supervision of an official from the agency supervising United States Record of Performance work in Iowa and Missouri.

PAR. 5. The foregoing claims, statements, and representations are grossly exaggerated, false, and misleading. In truth and in fact, 100 chicks were not given free as represented but the delivery of such chicks was contingent upon a purchase of other chicks by the recipient, and in certain cases customers of respondents received a lesser number of so-called free chicks than ordered, with the explanation made by the respondents that the lesser number of chicks delivered was of a better grade or quality than ordered. The offer of so-called free chicks was not limited to certain prospective customers chosen by respondents as persons with whom respondents desired to place a flock of chicks for advertising or display purposes and was not limited to one person in each neighborhood or otherwise limited. A large majority of the chicks supplied to the purchasing public are hatched from eggs produced on farms on which the respondents have supplied the breeding stock from their own trapnest breeding farms.

Respondents are not United States Record of Performance poultry breeders and do not operate poultry-breeding plants under the supervision of an official for the agency supervising United States Record of Performance work in Iowa and Missouri.

PAR. 6. A United States Record of Performance breeder is understood by members of the poultry industry to be one operating a poultry-breeding plant under the official State agency cooperating with the Bureau of Animal Industry, United States Department of Agriculture. United States Record of Performance embraces record of egg production, body weight made on the breeder's premises under official supervision, and similar records made at officially conducted egg-laying contests when such records are passed upon by the official State inspector or official State supervisor and when the individual birds meet other United States Record of Performance requirements.

PAR. 7. The Commission further finds that the representations regarding "Get 100 Chicks Free" as hereinabove set out were discontinued prior to the issuance of the complaint herein.

PAR. 8. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations, has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce a substantial portion of the purchasing public to purchase respondents' baby chicks because of such erroneous and mistaken belief.

CONCLUSION

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

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, and a stipulation as to the facts entered into upon the record, which stipulation provided, among other things, that the Commission might proceed upon the facts as stipulated without further evidence (the report of the trial examiner, briefs of counsel, and oral argument having been expressly waived); and the Commission, having duly approved said stipulation, made and entered its findings as to the facts, conclusion, and order to cease and desist on October 21, 1944. Thereafter, on November 3, 1944; the respondents filed a motion to modify the findings as to the facts, conclusion, and order to cease and desist; and the Commission, having considered said motion and the record herein and being of the opinion that a modified order to cease and desist should be issued in said cause, issues this its modified order to cease and desist.

It is ordered, That the respondent, Rucker's Imperial Breeding Farm, Inc., a corporation, and its officers, and the respondent, Ross R. Salmon 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 baby chicks or other poultry in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondents are R.O.P. poultry breeders or that they operate a poultry plant under the supervision of an official State agency supervising United States Record of Performance Work; or in any other manner misrepresenting the egg-production record of respondents' flocks or the extent of supervisions maintained over said flocks.

2. Representing that baby chicks hatched from eggs produced on farms other than those owned and controlled by the respondents were hatched from eggs produced at the hatcheries operated by the respondents.

3. Representing that any number of chicks will be delivered free, when such delivery is contingent upon the purchase of other chicks from the respondents.

4. Representing that a certain number of chicks will be supplied with the purchase of a stated number of chicks unless the additional chicks so specified are actually delivered or authority to substitute is obtained from the purchaser prior to delivery.

5. Representing that respondents are making a special offer to a limited number of prospective purchasers for advertising or display purposes or otherwise, when such offer is made available to purchasers generally, without restriction as to number or location.

Order

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It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondents, Famous Poultry Farms, Inc., a corporation, and Hillview Poultry Farms, Inc., a corporation.

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

Complaint

IN THE MATTER OF

B. F. SHRIVER COMPANY

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

Docket 5217. Complaint, Sept. 18, 1944—Decision, Oct. 23, 1944

Where a corporation engaged in packing and canning corn, peas, beans, lima beans, succotash, tomatoes, asparagus, beets, and other vegetable products, and in the interstate sale and distribution thereof—

Paid or granted, directly or indirectly, brokerage or commissions, compensation, allowances, or discounts in lieu thereof, to buyers of such products upon purchases made in their own names and for their own accounts:

Held, That such practice was in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act

Mr. Edward S. Ragsdale for the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (c) of Section 2 of the Clayton Act (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, B. F. Shriver Co., is a corporation, organized and existing under the laws of the State of Maryland, with its principal office and place of business located at Westminster, Md. The respondent also operates plants located at Westminster and New Windsor, Md., and Littlestown, Pa.

PAR. 2. Respondent, B. F. Shriver Co., is now engaged, and for many years prior hereto, has engaged in the business of packing, canning, distributing and selling canned corn, peas, beans, lima beans, succotash, tomatoes, asparagus, beets, and other vegetable products (all of which are hereinafter called vegetable products), in its own name and for its own account for resale, directly to buyers located in States other than the State in which respondent is established. As a result of respondent's instructions, such vegetable products are shipped and transported across State lines to such buyers, who are located in various States of the United States other than the State where the respondent is established.

The respondent, to distinguish its vegetable products from the vegetable products sold by competitors and to facilitate sales, utilizes registered trade-marks and brands for the various types and grades of vegetable products it sells. Among and representative of respondent's brands are:

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Blue Ridge
A No. I
Lady Host

New Windsor
World's Favorite
Shriver

PAR. 3. The respondent, since June 19, 1936, in connection with the interstate sale and distribution of vegetable products has been and is now paying or granting or has paid or granted, directly or indirectly, commissions, brokerage or other compensation or allowances or discounts in lieu thereof to buyers of said vegetable products sold under its own labels, unlabeled and under buyers' labels.

PAR. 4. The respondent, since June 19, 1936, has distributed and sold and distributes and sells vegetable products directly to certain buyers in interstate transactions as aforesaid and has paid to such buyers commission or brokerage fees on purchases made by them in their respective names and for their respective accounts. The respondent's method of distribution and sale, as hereinafter described, is representative of the sales methods of a number of East Coast distributors.

The buyers above referred to customarily designate themselves as "brokers," "merchandise brokers," or as "primary distributors," although they are known to the trade as "buying brokers" or "speculative brokers." Such "buying brokers" or "speculative brokers" customarily operate by placing orders for merchandise with those sellers, and only with those sellers, who will grant and pay them commissions or brokerage fees on their own purchases. Some such buyers are large scale buyers and sellers of vegetable products distributed under their own private brands, which brands usually show the name and address of the buyer, but not of the packer, and identify the merchandise as being the product of the particular buyer who owns the label.

Some such buyers customarily purchase their private brand vegetable products from respondent and many other sellers and often during a given season, after shopping the market, will purchase such commodities under the same private brands from several competing sellers, placing their orders where they are able to secure the most favorable prices and terms.

Such buyers place their orders for merchandise with respondent and other sellers, who, on receiving and accepting such orders, deliver the merchandise to a common carrier for delivery, but require that the buyer pay the purchase price as a condition precedent of the delivery of the merchandise. If such merchandise is lost or damaged in transit, such buyers file claims in their own names and collect damages from the carrier for their own account.

On receipt of the merchandise, such buyers insure such merchandise and warehouse it in their own warehouses or in public warehouses, and thereafter generally utilize the warehouse receipts covering the merchandise, together with the insurance contract, as collateral or security to obtain bank loans.

Such buyers mask these buying operations under the fictionalized designation of "brokers," "merchandise brokers," or "primary distributors," for the sole purpose of coloring the name and method of their buying operations in order to collect commissions or brokerage fees from respondent and from other sellers who will pay such buyers commissions or brokerage fees on their own purchases, notwithstanding the fact that it is well known

to be the custom of such buyers to invoice and sell such merchandise in their own names, for their own accounts, at their own prices, and on their own terms, and to assume full and complete credit risks.

PAR. 5. The acts and practices of the respondent in promoting sales of vegetable products by paying to buyers, directly or indirectly, commissions, brokerage or other compensation and allowances or discounts in lieu thereof, as set forth above, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U.S.C. Title 15, Sec. 13), the Federal Trade Commission on September 18, 1944, issued and subsequently served its complaint in this proceeding upon the party respondent named in the caption hereof, charging said respondent with violation of the provisions of subsection (c) of Section 2 of said Clayton Act, as amended. After the issuance of said complaint the respondent filed its answer in due course, which answer admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and answer, and the Commission, having duly considered the same and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, B. F. Shriver Co., is a corporation, organized and existing under the laws of the State of Maryland, with its principal office and place of business located at Westminster, Md. Respondent also operates plants located at Westminster and New Windsor, Md., and Littlestown, Pa.

PAR. 2. Respondent is now, and for many years prior hereto, has been engaged in the business of packing and canning corn, peas, beans, lima beans, succotash, tomatoes, asparagus, beets, and other vegetable products, and selling and distributing such products to buyers located in various States of the United States other than the States in which respondent maintains places of business, such products being shipped and transported across State lines to such buyers.

PAR. 3. Respondents since June 19, 1936, in connection with the interstate sale and distribution of its products, has paid or granted, directly or indirectly, brokerage, or commissions, compensation, allowances, or discounts in lieu thereof, to buyers of such products upon purchases made by such buyers in their own respective names and for their own respective accounts.

The record indicates that this practice has now been discontinued by respondent.

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CONCLUSION

The practice of the respondent, as herein found, was in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, which answer admits all of the material allegations of fact set forth in said complaint and waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of subsection (c) of Section 2 of the Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U.S.C. Title 15, Sec. 13).

It is ordered, That the respondent, B. F. Shriver Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the sale and distribution of vegetable products or other commodities in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Paying or granting to any buyer, directly or indirectly, anything of value as brokerage, or any commission, compensation, allowance, or discount in lieu thereof, upon purchases made for such buyer's own account.

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
ARTHUR VON SENDEN 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 5154. Complaint, Apr. 24, 1944—Decision, Oct. 25, 1944

Where a corporation engaged in interstate sale and distribution of religious books, including the New Testament and a Catholic Prayer Book which were about $2\frac{3}{4}$ " by $4\frac{1}{2}$ " in size, with the front cover bearing an additional cover of steel, and which it designated as "Shield of Faith," "Heart-Shield Bible" and "Armored Bible"—

- (a) Represented and implied that its said books might stop bullets and save the lives of soldiers; that the life of one soldier had actually been saved because of the metal cover over a copy of the New Testament he carried; that such "armored" books were capable of deflecting bullets, shrapnel, or bayonets; and that the books fitted into the left breast pocket of the uniform and thereby protected the heart of the wearer; through circular letters, display cards, newspaper mats, and circulars which it furnished to its customers and prospective customers, and which reproduced a news item telling of the deflection of a bullet by a soldier's New Testament "with a metal heart shield" and such statements as "Armored New Testament or Catholic Prayer Book CAPABLE OF DEFLECTING BULLETS, SHRAPNEL OR BAYONETS. MAY SAVE A LIFE! THE HEART-SHIELD BIBLE FITS THE POCKET OVER THE HEART. THE ENGRAVED GOLD PLATED STEEL FRONT COVER PROTECTS THE HEART. IT FITS THE UNIFORM POCKET. With invasion at hand . . . it is more important than ever before . . . that you SEND YOUR SERVICE MAN a 'Shield of Faith' . . . TODAY";

The facts being that while there might have been isolated instances in which the carrying of a steel-covered copy of a Testament or Prayer Book was instrumental in preventing a wound or even saving the life of a soldier, its steel-covered books would not physically protect the person carrying one of them, or save his life; they were not capable of deflecting bullets, shrapnel, or bayonets; only in the event of a "spent" bullet would the book be sufficient to prevent the bullet from entering the body, in which case the book without the cover would be sufficient; said cover in fact created an additional hazard of causing a more serious wound, through distorting a bullet or deflecting a bayonet blow struck at an angle; while some pieces of shrapnel might be deflected, any book of about the same size and thickness would give the same protection; and the books did not "fit" the pocket of the uniform but were much smaller and did not necessarily protect nor fit over the heart of the wearer; and

- (b) Placed in the hands of its customers the means of making to the purchasing public such representations as above set out through recommending and suggesting to them that as a means of increasing their sales and profits they feature and utilize the aforesaid news item by means of such typical statements as "CASH IN ON THIS AMAZING EXPERIENCE OF A SOLDIER! ADVERTISE 'SHIELDS OF FAITH' NOW. SEND FOR NEWSPAPER MATS. One of the Great Stories of The War. Feature 'Shields of Faith' in your Show Window. We are enclosing a photographic reprint of one of the greatest stories that has come out of the war. This story appeared in many newspapers throughout the

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country, and numerous of our customers have already picked up this story and used it in their advertising for 'Shields of Faith' . . . our suggestion is that you capitalize on this great story. Send for window displays and newspaper mats." The facts being that the news item recommended to be featured and displayed as aforesaid dealt with an isolated occurrence which could not fairly constitute a basis for any representation and implication that the carrying of metal-covered books would afford the same protection to all soldiers;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, eager to seize any opportunity or means whereby in any manner the lives of friends and relatives in the armed forces might be protected or their chances for injuries and wounds lessened, with respect to the physical protection supplied by its books, and thereby cause it to purchase substantial quantities thereof:

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

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

Mr. William L. Pencke for the Commission.

Reed, Smith, Shaw & McClay, of Pittsburgh, Pa., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Arthur Von Senden 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. Arthur Von Senden Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 321 Boulevard of Allies, in the city of Pittsburgh and State of Pennsylvania. Respondent is now and for more than one year last past has been engaged in the sale and distribution of religious books, including the New Testament and a Catholic Prayer Book. Said books are approximately two and three-quarter inches by four and one-half inches in size, with the front cover bearing an additional cover of steel. Respondent sells said books to retailers situated in the various States of the United States and in the District of Columbia, causing them to be transported from its said place of business in the State of Pennsylvania to purchasers thereof located in the various States of the United States other than the State of Pennsylvania and in the District of Columbia. Respondent maintains, and at all times herein mentioned has maintained a course of trade in said books in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business in commerce, as aforesaid, and for the purpose of inducing its prospective retailer customers, as well as members of the purchasing public to purchase said books, respond-

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ent furnishes and has furnished to its customers and prospective customers advertising material consisting of circular letters, display cards, newspaper mats and circulars.

PAR. 3. In said advertising material, distributed as aforesaid, respondent has made and is making false, deceptive and misleading statements and representations with respect to the amount of protection afforded by carrying one of its steel covered books described by respondent as "Shields of Faith," "Heart-Shield Bible" and "Armored Bible" and sold and distributed in commerce as aforesaid, while serving with the armed forces. Among and typical of said statements and representations used and caused to be used by said respondent are the following:

BULLET BARS CHUTIST'S HOP
FROM PLANE ABOVE SICILY

* * *

In the left breast pocket of his jump suit Hines was carrying a New Testament with a metal heart shield sent him months ago by Miss Doris Jones of Labelle, Pa., with a request that "you wear it always." The bullet hit the metal cover just above the inscription, "May the Lord Be With You" and glanced off under his arm instead of penetrating his chest.

BIBLE STOPS
BULLET!

SAVES SOLDIER'S
LIFE!!

With invasion
at hand . . . it is
more important
than ever before . . .
that you SEND
YOUR SERVICE MAN
a "Shield of Faith"
. . . today.

ARMORED NEW TESTAMENT
OR CATHOLIC PRAYER BOOK
CAPABLE OF DEFLECTING BULLETS, SHRAPNEL
OR BAYONETS

MAY SAVE A LIFE.

THE HEART-SHIELD BIBLE FITS THE POCKET OVER THE HEART
THE ENGRAVED GOLD PLATED STEEL FRONT COVER PROTECTS
THE HEART
IT FITS THE UNIFORM POCKET

PAR. 4. Through the use of the aforesaid statements and representations and other of similar import and meaning not herein set out, respondent represents and implies that its so-called "Shields of Faith," "Heart-Shield Bible" and "Armored Bible" will stop bullets and save the lives of soldiers; that the life of one soldier had actually been saved because of the metal cover over a copy of the New Testament carried by said soldier; that said "armored" books are capable of deflecting bullets, shrapnel or bayonets; that said books fit into the left breast pocket of the uniform and thereby protect the heart of the wearer.

PAR. 5. In truth and in fact said representations, statements and implications used and disseminated and caused to be used and disseminated, as aforesaid, are false, exaggerated, deceptive and misleading. While there

may have been an isolated instance in which the wearing of a steel-covered copy of a Testament or Prayer Book was instrumental in preventing a wound or even saving the life of a soldier, respondent's said steel covered books will not physically protect the person carrying one of them, nor will said books save the life of a soldier as a result of the physical protection afforded. Said books are not capable of deflecting bullets, shrapnel or bayonets. Said armored books do not fit the pocket of the uniform in the sense that said books are approximately of the size of such pockets, but on the contrary they are much smaller and neither protect nor fit over the heart of the wearer.

The metal cover of respondent's said "armored" books would neither stop nor deflect a bullet, regardless of whether such bullet is fired from an automatic pistol, revolver, rifle, or machine gun, unless the bullet is a "spent" bullet by reason of having lost its velocity and, in such event, the book itself, without a metal cover, would be sufficient to prevent the bullet from entering the human body. Moreover, said metal cover, instead of being a protection, affords an additional hazard for the reason that a bullet passing through said cover will be distorted because of the impact on the metal and, upon entering the body, will cause a much more serious and painful wound than if the metal cover had not been present. While it may be true that some pieces of shrapnel striking a man may be deflected by said metal cover, any book of approximately the same size and thickness of the books sold by respondent would give the same protection against such shrapnel. In the case of rifle bullets, said cover would afford no protection whatever for the reason that the rifle bullets used in modern warfare would readily penetrate steel covers many times the thickness of respondent's metal cover. With respect to the deflection of bayonet thrusts, respondent's metal cover would not deflect a blow squarely struck upon it, but if a soldier were struck with a bayonet at an angle, said cover would merely deflect the blow in such a manner as to cause a more severe wound.

PAR. 6. In the course and conduct of its said business, as aforesaid, respondent, in addition to furnishing the advertising material, as hereinabove described, recommends and suggests to its said customers that as a means of increasing their sales and profits they feature and utilize the news item regarding the prevention of serious injury to a soldier carrying a metal covered Testament, set forth in paragraph 3 hereof. Typical of the recommendations and suggestions so made are the following:

**CASH IN ON THIS AMAZING EXPERIENCE
OF A SOLDIER.**

**ADVERTISE "SHIELDS OF FAITH" NOW
SEND FOR NEWSPAPER MATS**

One of the
Great Stories of
The War

Feature
"Shields of Faith"
in your Show Window

**REPLENISH YOUR STOCK TODAY
SALES WILL BE TREMENDOUS**

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From every conceivable standpoint, this "ARMORED BIBLE"

is truly

TODAY'S GREATEST MILITARY GIFT

We are enclosing a photographic reprint of one of the greatest stories that has come out of the war. This story appeared in many newspapers throughout the country, and numerous of our customers have already picked up this story and used it in their advertising for "Shields of Faith" . . . our suggestion is that you capitalize on this great story. Send for window displays and newspaper mats.

PAR. 7. Through the use of the foregoing suggestions and recommendations, and others similar thereto, respondent places in the hands of its customers the means of making the false, misleading and deceptive representations to the purchasing public described in paragraphs 3 and 4 hereof. The display of said news item is calculated to and does create the belief in the mind of the purchasing public that respondent's steel-covered books afford protection against injury and death to all soldiers carrying the same.

PAR. 8. In truth and in fact, said recommendations and suggestions are not warranted by the facts. Said news item, recommended to be featured and displayed as aforesaid, deals with an isolated occurrence which cannot fairly constitute a basis for any representation and implication that the carrying of metal-covered books will afford the same protection to all soldiers. The suggestion to "cash in" and "capitalize" on said story is a mercenary perversion of a natural human reaction to news of casualties.

PAR. 9. There are presently in the United States millions of citizens who have relatives and friends in the armed services, many of whom are engaged in active combat, with resulting death and casualties in action. The concern and anxiety of those citizens whose friends and relatives are so engaged in active combat is very great and they will readily seize upon any opportunity or means whereby in any manner whatever the lives of such members of the armed forces may be protected or whereby the chances for injuries and wounds may be lessened. In making the statements and representations, as hereinabove set forth, respondent abuses and betrays the anxiety and confidence of such citizens by urging them to buy said armored books and commercializes the isolated experience of a soldier whose life may have been saved by reason of his wearing a metal-covered Testament or Prayer Book.

PAR. 10. The use of the said exaggerated, misleading and deceptive statements and representations, as aforesaid, has had and now has the tendency and capacity to, and does mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said representations and implications are true. As a result of such erroneous and mistaken beliefs, many members of the purchasing public have purchased a substantial number of respondent's said metal-covered testaments.

PAR. 11. The aforesaid acts and practices of the respondent, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 24, 1944, issued and subsequently served its complaint in this proceeding upon the respondent, Arthur Von Senden 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 by respondent of its answer to the complaint, certain stipulations of fact were entered into between the attorney for the Commission and the attorney for respondent, which stipulations provided, among other things, that the Commission might proceed upon the complaint, the answer, and the stipulations to make its findings as to the facts (including inferences which it might draw from the stipulated facts) and its conclusion based thereon, and might enter an appropriate order disposing of the proceeding. Oral argument before the Commission and the filing of briefs in support of and in opposition to the complaint were expressly waived. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answer, and stipulations; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest 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 Von Senden Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 321 Boulevard of Allies, Pittsburgh, Pa. Respondent is now and for more than one year last past has been engaged in the sale and distribution of religious books, including the New Testament and a Catholic Prayer Book. These books are approximately two and three-quarter inches by four and one-half inches in size, with the front cover bearing an additional cover of steel.

PAR. 2. Respondent sells its books to retailers situated in the various States of the United States and in the District of Columbia, causing them to be transported from its place of business in the State of Pennsylvania to such purchasers. Respondent maintains and at all times herein mentioned has maintained a course of trade in said books in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business in commerce, as aforesaid, and for the purpose of inducing its prospective retailer customers as well as members of the purchasing public to purchase its books, respondent has furnished to its customers and prospective customers advertising material consisting of circular letters, display cards, newspaper mats, and circulars.

In such advertising material respondent has made certain statements and representations with respect to the amount of protection afforded those serving with the armed forces by carrying one of its steel-covered

books designated by respondent as "Shield of Faith," "Heart-Shield Bible," and "Armored Bible." Among and typical of said statements and representations used and caused to be used by respondent were the following:

**BULLET BARS CHUTIST'S HOP
FROM PLANE ABOVE SICILY**

* * *

In the left breast pocket of his jump suit Hines was carrying a New Testament with a metal heart shield sent him months ago by Miss Doris Jones of Labelle, Pa., with a request that "you wear it always." The bullet hit the metal cover just above the inscription, "May the Lord Be With You" and glanced off under his arm instead of penetrating his chest.

Armored New Testament
or Catholic Prayer Book

**CAPABLE OF DEFLECTING BULLETS,
SHRAPNEL OR BAYONETS**

MAY SAVE A LIFE!

**THE HEART-SHIELD BIBLE
FITS THE POCKET OVER THE HEART**

**THE ENGRAVED GOLD PLATED STEEL
FRONT COVER PROTECTS THE HEART**

IT FITS THE UNIFORM POCKET

**BIBLE STOPS
BULLET!**

**Saves
Soldier's
Life!**

With invasion at hand . . .
it is more important
than ever before . . . that
you SEND YOUR SERVICE
MAN a "Shield of Faith"
. . . TODAY.

The first two items in the left-hand column of the above-quoted matter are quotations from a news item which appeared in the public press. These items did not originate with respondent but were later incorporated by respondent in some of its advertising material.

PAR. 4. Through the use of these statements and representations and others of similar import, respondent represented and implied that its so-called "Shield of Faith," "Heart-Shield Bible," and "Armored Bible" may stop bullets and save the lives of soldiers; that the life of one soldier had actually been saved because of the metal cover over a copy of the New Testament carried by the soldier; that such "armored" books are capable of deflecting bullets, shrapnel, or bayonets; and that the books fit into the left breast pocket of the uniform and thereby protect the heart of the wearer.

PAR. 5. While there may have been isolated instances in which the carrying of a steel-covered copy of a Testament or Prayer Book was instrumental in preventing a wound or even saving the life of a soldier, respondent's steel-covered books will not physically protect the person carrying one of them, nor will the books save the life of a soldier as a result

of the physical protection afforded. The books are not capable of deflecting bullets, shrapnel, or bayonets. The books do not fit the pocket of the uniform in the sense that they are approximately the size of the pocket but, on the contrary, they are much smaller and do not necessarily protect nor fit over the heart of the wearer.

The metal cover of respondent's books would neither stop nor deflect a bullet, regardless of whether such bullet is fired from an automatic pistol, revolver, rifle, or machine gun, unless the bullet is a "spent" bullet by reason of having lost its velocity; and in such event, the book itself, without a metal cover, would be sufficient to prevent the bullet from entering the human body. Moreover, the metal cover, instead of being a protection, creates an additional hazard for the reason that a bullet passing through the cover will be distorted because of the impact on the metal and, upon entering the body, will cause a much more serious and painful wound than if the metal cover had not been present. While it may be true that some pieces of shrapnel striking a man might be deflected by the metal cover, any book of approximately the same size and thickness would give the same protection against such shrapnel. In the case of rifle bullets the cover would afford no protection whatever, for the reason that the rifle bullets used in modern warfare would readily penetrate steel covers many times the thickness of respondent's metal cover. With respect to the deflection of bayonet thrusts, respondent's metal cover would not deflect a blow squarely struck upon it, but if a soldier were struck with a bayonet at an angle, the cover would merely deflect the blow in such a manner as to cause a more severe wound.

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

PAR. 7. In the course and conduct of its business respondent, in addition to furnishing the advertising material described above, recommended and suggested to its customers that as a means of increasing their sales and profits they feature and utilize the news item regarding the prevention of serious injury to a soldier carrying a metal-covered Testament set forth in paragraph 3 hereof. Typical of the recommendations and suggestions so made were the following:

CASH IN ON THIS AMAZING EXPERIENCE
OF A SOLDIER!

ADVERTISE "SHIELDS OF FAITH" NOW
SEND FOR NEWSPAPER MATS

One of the
Great Stories of
The War

Feature
"Shields of Faith"
in your Show Window

REPLENISH YOUR STOCK TODAY
SALES WILL BE TREMENDOUS

From every conceivable standpoint,
this "ARMORED BIBLE" is truly
TODAY'S GREATEST MILITARY GIFT

We are enclosing a photographic reprint of one of the greatest stories that has come out of the war. This story appeared in many newspapers throughout the country, and numerous of our customers have already picked up this story and used it in their advertising for "Shields of Faith" . . . our suggestion is that you capitalize on this great story. Send for window displays and newspaper mats.

PAR. 8. Through the use of the foregoing suggestions and recommendations and others similar thereto, respondent placed in the hands of its customers the means of making the representations to the purchasing public described in paragraphs 3 and 4 hereof. The display of such news item was calculated to create the belief in the minds of the purchasing public that respondent's steel-covered books might afford protection against injury and death to soldiers carrying them.

PAR. 9. In truth and in fact, such recommendations and suggestions were not warranted by the facts. The news item recommended to be featured and displayed as aforesaid dealt with an isolated occurrence which cannot fairly constitute a basis for any representation and implication that the carrying of metal-covered books will afford the same protection to all soldiers.

There are presently in the United States millions of citizens who have relatives and friends in the armed services, many of whom are engaged in active combat, with resulting death and casualties in action. The concern and anxiety of those citizens whose friends and relatives are so engaged in active combat is very great, and they will readily seize upon any opportunity or means whereby in any manner whatever the lives of such members of the armed forces may be protected or whereby the chances for injuries and wounds may be lessened.

PAR. 10. The record indicates that on or about May 1, 1944, shortly after the receipt by respondent of the complaint in this proceeding, respondent discontinued the representations in question and also discontinued furnishing its customers with the advertising material described above.

PAR. 11. The acts and practices of respondent, had the tendency and capacity, to mislead and deceive a substantial portion of the purchasing public with respect to the physical protection supplied by respondent's books, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such books as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

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

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 stip-

ulations of fact entered into between the attorney for the Commission and the attorney for respondent; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Arthur Von Senden 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 metal-covered books in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondent's books are capable of stopping or deflecting bullets, shrapnel, or bayonet thrusts, or otherwise affording physical protection to persons carrying such books.

2. Representing, directly or by implication, that respondent's books are approximately the size of the left breast pocket of a soldier's uniform, or that such books fit over or protect the heart.

3. Supplying to dealers news items or other printed or written material representing, directly or by implication, that books such as those sold by respondent are capable of affording physical protection to persons carrying them.

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

UTAH WHOLESALE GROCERY, SYMNS-UTAH GROCER
COMPANY, ZIONS WHOLESALE GROCERY, AND JOHN
SCOWCROFT & SONS COMPANY

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

Docket 4643. Complaint, Nov. 25, 1941—Decision, Oct. 28, 1944

Where four wholesale grocers, engaged in the State of Utah in the interstate purchase and sale of groceries and other articles, doing about ninety per cent of the wholesale grocery business, in competition with others similarly engaged in Salt Lake City and in the trade territory of Utah, southern Idaho, southeastern Wyoming and eastern Nevada—

Agreed and conspired among themselves and with others to create and maintain a monopoly in the wholesale grocery business in aforesaid territory and, in connection therewith, undertook to drive out competitors and forestall potential competition; and in so doing—

- (a) Threatened to, and did, boycott manufacturers and jobbers for selling merchandise to their said competitors, and, upon learning of such sales, through threats and coercion caused said manufacturers and jobbers to divert the shipments in transit to others and thereby prevent the purchasers from obtaining their merchandise; and
- (b) Upon learning of cases where competitors had obtained groceries from manufacturers and jobbers, through concerted action among themselves and the manufacturers and jobbers, reduced the prices of such commodities to a point where said competitors could not sell them except at a loss;

Capacity, tendency and effect of which agreement and conspiracy, and aforesaid acts and practices, were to hinder and prevent dealers from obtaining merchandise; lessen and suppress competition; drive out competitors and forestall potential competition in the purchase, sale and distribution of merchandise at wholesale in the territory described; deprive the purchaser and consuming public of the advantages which they enjoy under normal and unobstructed or free and fair competition, in price, service, and other considerations in industry concerned; and otherwise operate as a restraint of trade and obstruction to the natural flow thereof into the channels of commerce:

Held, That such acts, practices and methods, under the circumstances set forth, were all to the prejudice of competitors and the public; had a dangerous tendency to and did actually hinder and prevent competition in the wholesale purchase, sale and distribution of groceries and other commodities; unreasonably restrained such commerce; had a dangerous tendency to create in said wholesale grocers a monopoly in the sale of said products; and constituted unfair methods of competition in commerce.

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

Mr. Everett F. Haycraft and *Mr. Floyd O. Collins* for the Commission.

Mr. Louis H. Callister, of Salt Lake City, Utah, for Utah Wholesale Grocery, and, along with *Judd, Ray, Quinney & Nebeker*, of Salt Lake City, Utah, for Symns-Utah Grocer Co., who also represented Zion's Wholesale Grocery.

Thatcher & Young, of Ogden, Utah, for John Scowcroft & Sons Co.

Complaint

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the corporations hereinafter named and described and referred to as respondents have violated the provisions of Section 5 of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Utah Wholesale Grocery, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Utah, with its home office and principal place of business located at 344 West Temple, Salt Lake City, Utah.

Respondent, Symns-Utah Grocer Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Utah, with its home office and principal place of business located at 331 West Second South, Salt Lake City, Utah.

Respondent, Zion's Wholesale Grocery, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Utah, with its home office and principal place of business located at 40 South Second West, Salt Lake City, Utah.

Respondent, John Scowcroft & Sons Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Utah, with its home office and principal place of business located at Ogden, Utah.

PAR. 2. All of the respondents herein named are now and have been for a number of years last past engaged in buying and selling at wholesale groceries and other articles generally bought and sold by persons or firms engaged in the wholesale grocery business, and in the course and conduct of their business have bought groceries and other articles from sellers located at points outside of the State of Utah and have caused said groceries and other articles to be shipped to them from said points located outside of the State of Utah to their places of business located in the State of Utah.

The respondents, in the course and conduct of their business, sell groceries and other articles to purchasers located outside of the State of Utah and have caused said groceries and other articles to be shipped to the purchasers thereof. The business done by the respondents in the territory hereinafter described constitutes about ninety percent of the wholesale grocery business done in said territory.

PAR. 3. There are now and have been for a number of years last past other corporations and firms and persons engaged in buying and selling groceries and other articles generally bought and sold by persons engaged in the wholesale grocery business in Salt Lake City and in the territory of Utah, southern Idaho, southwestern Wyoming, and eastern Nevada. Among such corporations are the Associated Food Stores, Inc., Market Wholesale Company, and Pacific Fruit & Produce Company, and with such corporations and firms and persons the respondents have been in active and substantial competition.

PAR. 4. Respondents prior to June 1940 agreed and conspired with themselves and with other persons to create and maintain a monopoly in

the wholesale grocery business in the territory hereinabove described and in carrying out said agreement and conspiracy respondents have undertaken to drive out competitors and to forestall potential competition and in so doing have engaged in and performed among others, the following methods and practices:

(a) Respondents have threatened to boycott and have boycotted manufacturers and jobbers for selling merchandise to respondents' said competitors.

(b) In cases where manufacturers and jobbers have sold merchandise to respondents' said competitors, respondents, upon learning of said sales, have through threats and coercion caused said manufacturers and jobbers, while the merchandise so sold was in transit, to divert the shipment to persons other than the purchasers and thereby prevent the purchasers from obtaining the merchandise so purchased.

(c) In cases where competitors have obtained groceries from manufacturers and jobbers, respondents, upon learning of the purchase, have, through concerted action between themselves and the manufacturers and jobbers, reduced the prices of such commodities to a point where their competitors could not sell such commodities so purchased except at a financial loss.

PAR. 5. The capacity, tendency and effect of the agreement and conspiracy and the acts and practices of the respondents, as hereinabove alleged, are and have been to hinder and prevent dealers from obtaining merchandise; to lessen and suppress competition; and to drive out competitors and forestall potential competition in the purchase, sale and distribution of merchandise at wholesale in the territory hereinabove described; and to deprive the purchaser and consuming public of the advantages of price, service and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free and fair competition in said industry; and to otherwise operate as a restraint of trade and a detriment to the freedom of fair and legitimate competition in said trade, and to obstruct the natural flow of trade into the channels of commerce in and among the several States of the United States.

PAR. 6. The acts and practices of the respondents, as herein alleged, are all to the prejudice of competitors of respondents and of the public; have a dangerous tendency to and have actually hindered and prevented competition in the purchase, sale and distribution of groceries and other commodities sold at wholesale in commerce within the intent and meaning of Section 4 of the Federal Trade Commission Act; have unreasonably restrained such commerce in the purchase, sale and distribution of groceries and other commodities at wholesale; and have a dangerous tendency to create in respondents a monopoly in the sale of said products; and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 25, 1941, 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 Section 5 of the said act. After the issuance of the complaint and the filing of the respondents' answers, the Commission by orders entered herein granted requests made by the respondents for permission to withdraw the answers theretofore filed and to substitute therefor answers admitting all of the material allegations of fact in the complaint and waiving all intervening procedure and further hearing as to the facts, which substitute answers were duly filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint and the substitute answers; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Utah Wholesale Grocery, Symns-Utah Grocer Co., and Zion's Wholesale Grocery, are all corporations, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with their respective home offices and principal places of business located in Salt Lake City in said State; and respondent, John Scowcroft & Sons Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its home office and principal place of business located at Ogden, Utah.

PAR. 2. All of the respondents have for a number of years last past engaged in buying and selling, at wholesale, groceries and other articles generally bought and sold by persons or firms engaged in the wholesale grocery business, and in the course and conduct of their respective businesses have bought groceries and other articles from sellers located at points outside of the State of Utah, and have caused such groceries and other articles to be shipped to them from said points located outside of the State of Utah to their respective places of business located in the State of Utah. The respondents also sell groceries and other articles to purchasers located outside of the State of Utah, and have caused such groceries and other articles to be shipped to the purchasers thereof. The business done by the respondents in the territory hereinafter described constitutes about ninety percent (90%) of the wholesale grocery business done in said territory.

PAR. 3. There are now and have been for a number of years last past other corporations and firms and persons engaged in buying and selling groceries and other articles generally bought and sold by persons engaged in the wholesale grocery business in Salt Lake City and in the territory of Utah, southern Idaho, southwestern Wyoming, and eastern Nevada. Among such corporations are the Associated Food Stores, Inc., Market Wholesale Co., and Pacific Fruit & Produce Co., and with such corporations and firms and persons the respondents have been in active and substantial competition.

PAR. 4. Respondents, prior to June, 1940, agreed and conspired among themselves and with other persons to create and maintain a monopoly in the wholesale grocery business in the territory hereinabove described, and

in carrying out said agreement and conspiracy respondents have undertaken to drive out competitors and to forestall potential competition, and in so doing have engaged in and performed, among others, the following methods and practices:

(a) Respondents have threatened to boycott and have boycotted manufacturers and jobbers for selling merchandise to respondents' said competitors.

(b) In cases where manufacturers and jobbers have sold merchandise to respondents' said competitors, respondents upon learning of said sales have, through threats and coercion, caused said manufacturers and jobbers, while the merchandise so sold was in transit, to divert the shipment to persons other than the purchasers and thereby prevent the purchasers from obtaining the merchandise so purchased.

(c) In cases where competitors have obtained groceries from manufacturers and jobbers, respondents upon learning of the purchases have, through concerted action among themselves and the manufacturers and jobbers, reduced the prices of such commodities to a point where their competitors could not sell such commodities so purchased except at a financial loss.

PAR. 5. The capacity, tendency, and effect of the agreement and conspiracy and the acts and practices of the respondents, as hereinabove set forth, are and have been to hinder and prevent dealers from obtaining merchandise; to lessen and suppress competition; to drive out competitors and forestall potential competition in the purchase, sale, and distribution of merchandise at wholesale in the territory hereinabove described; to deprive the purchaser and consuming public of the advantages of price, service and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free and fair competition in said industry; and otherwise to operate as a restraint of trade and a detriment to the freedom of fair and legitimate competition in said trade, and to obstruct the natural flow of trade into the channels of commerce in and among the several States of the United States.

CONCLUSION

The acts and practices of the respondents, as herein found, are all to the prejudice of competitors of respondents and of the public; have a dangerous tendency to hinder and prevent and have actually hindered and prevented competition in the purchase, sale, and distribution of groceries and other commodities sold at wholesale in commerce, as "commerce" is defined in the Federal Trade Commission Act; have unreasonably restrained such commerce in the purchase, sale, and distribution of groceries and other commodities at wholesale; have a dangerous tendency to create in respondents a monopoly in the sale of said products; and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission and the substitute answers of the respondents, in which answers the respondents admit all of 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.

It is ordered, That the respondents, Utah Wholesale Grocery, Symns-Utah Grocer Co., Zion's Wholesale Grocery, and John Scowcroft & Sons Co., corporations, and their officers, representatives, agents, and employees, in connection with the purchase or sale 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 planned common course of action, agreement, understanding, combination, or conspiracy between or among any two or more of the respondents, or between any one or more of the respondents and others not parties to this proceeding, to do or perform any of the following acts or things:

1. Boycotting or threatening to boycott manufacturers or jobbers for selling merchandise to any of respondents' competitors or to any potential competitor of respondents.

2. Through threats and coercion, causing manufacturers or jobbers who have sold merchandise to respondents' competitors to divert shipments of such merchandise to persons other than the purchasers thereof.

3. Reducing prices on such merchandise as is bought and sold both by respondents and their competitors with the purpose or effect of causing such competitors to sustain a loss on such merchandise.

4. Engaging in any act or practice substantially similar to those set out in this order with the purpose or effect of lessening, hindering, restraining, or preventing competition in the purchase or sale of merchandise in the trade territory in which the respondents operate.

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

Syllabus

IN THE MATTER OF
 CHARLES DEER AND JACK DEER, TRADING AS SAVOY
 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 4763. Complaint, May 21, 1942—Decision, Nov. 1, 1944

Where two individuals who were engaged in the interstate sale and distribution of various household furnishings and articles, including electrical appliances, carpet sweepers, cutlery, blankets, comforters, bedspreads, lamps, tableware, chinaware, luggage and furniture, and who represented themselves as "Manufacturers and Distributors of Quality Merchandise for Concessionaires, Indoor and Outdoor Carnivals, Fairs, Bazaars, Parks, Celebrations, Amusement Resorts, Bridge Prizes, Premium Users, etc.," and had printed on their letterheads "Let US help solve your bingo-bridge and carnival problems, We have the experience"—

- (a) On request supplied to customers, including churches, lodges, clubs and other groups, their "Club Plan," for use in selling and distributing merchandise bought from them to members of the purchasing public, consisting of (1) their catalog which, entitled "Savoy's Super-De-Luxe Merchandise Club of Quality," illustrated the various articles offered by them and stated the terms on which any of them could be obtained through the operation of said "Club Plan," and (2) membership cards for use under the plan by which each member agreed to pay a specified amount, consisting usually of 25¢ a week for 26 weeks, the member whose number was drawn each week received one of the articles described in the catalog—retail value of each of which was about \$6.50—for the amount thus far paid by him, and all other members who had made their payments received also one of aforesaid articles for the entire amount thus paid in; and
- (b) On request sold or furnished along with merchandise sold to customers, as aforesaid, paraphernalia for its distribution to the purchasing public through the use of the game of "bingo," and in some instances furnished the merchandise on consignment, accompanied by said paraphernalia for purchasers' use and return after its employment, by means of which that one of the player participants—each of whom received a number of markers and a card on which appeared numbers in rows, and each of whom, when the game was conducted for profit, paid for the privilege of participation—who first had in a straight line on his card five numbers, as disclosed by the counters drawn from the box, and called by the person conducting the game, won the prize; and

Thereby supplied to and placed the means of conducting lotteries in the sales of their merchandise, in the hands of the organizations which purchased and distributed it to the purchasing public in accordance with the aforesaid sales plans, involving game of chance or sale of chance to procure article at much less than its normal retail price, contrary to an established public policy of the United States and in competition with others who do not use methods involving chance or otherwise contrary to public policy;

With tendency and capacity to divert trade in commerce to said individuals from their aforesaid competitors who do not use equivalent sales plans; and

- (c) Represented through inclusion of the word "Manufacturing" in their trade name and through statements on their letterheads "Manufacturers and Distributors" of

merchandise (many kinds of which were there listed), that they were the manufacturers of their products;

The facts being that while at one time they had made some of their merchandise, for about 15 years last past they had not made any of the articles which they sold and distributed and they were not manufacturers, with whom a substantial portion of the purchasing public and trade has long preferred to deal directly, as thereby securing them, in their belief, lower prices, elimination of middlemen's profits, superior products and other advantages;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and into the purchase thereby of a substantial volume of their products:

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

Before *Mr. Randolph Preston*, trial examiner.

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

Mr. Leon Himmelfarbe, 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 Charles Deer and Jack Deer, individuals, trading as Savoy Manufacturing Co., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Charles Deer and Jack Deer, are individuals, trading under the name of Savoy Manufacturing Co., with their principal place of business located at 12 West 23rd Street, in the city of New York, State of New York. Respondents are now, and for more than one year last past have been engaged in the sale and distribution of merchandise including electrical appliances, carpet sweepers, cutlery, blankets, comforters and bedspreads, lamps, tableware, chinaware, luggage, furniture, and other house furnishings and household articles. Respondents cause and have caused said merchandise when sold to be transported from their aforesaid place of business in New York, N. Y. to purchasers thereof at their respective points of location in the various States of the United States other than the State of New York and in the District of Columbia. There is now and for more than one year last past has been, a course of trade by respondents in said merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondents are and have been in competition with other individuals and 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. Respondents in selling and distributing their said merchandise have supplied their customers with a certain plan known as the "club plan" for the distribution of said merchandise by means of which said merchandise is sold and distributed to the public in a manner which involves the operation of a game of chance, gift enterprise, or lottery scheme.

Said plan is substantially as follows: Respondents furnish to churches, lodges, groups, clubs, and other organizations, catalogs of their merchandise, together with a number of cards designated as membership cards. The organizations thereupon distribute said cards to a specified number of members joining the club, each member agreeing to pay a specified amount, usually 25¢ per week for 26 weeks. Each card contains 26 numbers which represent 26 weeks in the year. Each card also has a number which represents the number of the member participating in the club. Once each week the organization conducting the club has a drawing at which time one of the numbers represented by a card is drawn and the member whose number is drawn thereupon receives one of respondents' articles of merchandise as illustrated and described in the catalog which is furnished the organization conducting the club. The member whose number is drawn the first week receives his article of merchandise for 25¢ and the member whose number is drawn the second week receives his article of merchandise for 50¢, and so on until at the end of 26 weeks the members whose numbers have been drawn have paid prices ranging from 25¢ to \$6.50 for their various articles of merchandise. All members whose names are not drawn before the 26th week and who have paid in the specified weekly amount of 25¢ each week receive one of the articles of merchandise described in respondents' catalog. These articles are valued at approximately \$6.50 each. All of said articles of merchandise are thus of substantially the same retail value. The amount which the ultimate consumer pays for one of the said articles of merchandise is thus determined wholly by lot or chance.

Respondents have also in connection with the sale of their merchandise in commerce furnished to organizations, churches, and other purchasers of their said merchandise, Bingo paraphernalia to be used in connection with the distribution of said merchandise. The organizations furnished said Bingo paraphernalia have used the same in conducting Bingo games for the distribution of respondents' merchandise by lottery means or games of chance.

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

PAR. 4. The sale of merchandise to the purchasing public by the methods or plans, hereinbefore set forth, involves a game of chance or the sale of a chance to procuring an article of merchandise at a price less than the normal retail price thereof. Many persons, firms and corporations who

sell or distribute merchandise in competition with respondents as above alleged, do not use said methods or any methods involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy. Many persons are attracted by said sales plans or methods employed by the respondents in the sale and distribution of its merchandise and by the element of chance involved therein and are thereby induced and persuaded to buy and sell respondents' merchandise in preference to merchandise of said competitors of respondents who do not use the same or equivalent methods. The use of said methods by the respondents because of said game of chance, has a tendency and capacity to divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or equivalent sales plans or methods.

PAR. 5. In the course and conduct of their business, respondents by the use of the words "manufacturing company" and "mfg. company" on circulars distributed through the United States mails and otherwise, by the use of advertising literature and letter heads used in correspondence with purchasers and prospective purchasers, of their products, have misrepresented themselves to be manufacturers of the products sold by them.

In truth and in fact respondents do not manufacture any of the merchandise sold and distributed by them.

PAR. 6. There has long been a preference on the part of a substantial portion of the purchasing public and the trade, for dealing directly with the manufacturer in the belief that lower prices, elimination of middlemen's profits, superior products, and other advantages, can thereby be obtained.

PAR. 7. The use by the respondents of the false and misleading representations above, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the members of the purchasing public into the erroneous belief that such representations are true and to a purchasing of a substantial volume of respondents' products on account of such beliefs so induced.

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 the 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 21, 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 and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before an examiner of the Commission theretofore

duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, report of the trial examiner, and 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. Respondents, Charles Deer and Jack Deer, are individuals, trading under the name "Savoy Manufacturing Co.," with their principal place of business located at 12 West Twenty-third Street, New York, N. Y. Respondents are now, and for more than a year last past have been, engaged in the sale and distribution of merchandise, including electrical appliances, carpet sweepers, cutlery, blankets, comforters, bedspreads, lamps, tableware, chinaware, luggage, furniture, and various other house furnishings and household articles. They represent themselves as "Manufacturers and Distributors of Quality Merchandise for Concessionaires, Indoor and Outdoor Carnivals, Fairs, Bazaars, Parks, Celebrations, Amusement Resorts, Bridge Prizes, Premium Users, etc."

PAR. 2. Respondents cause, and have caused, the aforesaid merchandise, when sold, to be transported from their place of business in New York, N. Y., to purchasers thereof at their respective points of location in the various States of the United States other than the State of New York and in the District of Columbia. There is now, and for more than one year last past has been, a course of trade by respondents in said merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have, when requested by any customer, supplied to such customer a sales plan designated as the "Club Plan," for the use of such customer in selling and distributing the merchandise bought from respondent to members of the purchasing public. This club plan consisted of respondents' catalog entitled "Savoy's Super-De-Luxe Merchandise Club of Quality" and "membership" cards. The catalogs contained illustrations of various articles offered for sale by respondents and statements of the terms on which any of such articles could be obtained through the operation of said club plan. The membership cards carried on their faces:

Date Started..... No.....

MEMBERSHIP CARD

Name.....

Address.....

State Article Desired

.....

For Period of Weeks

Around the edge of the cards the numbers 1 to 26 appeared. On the back of the cards appeared "Super De Luxe Merchandise Club, Savoy Mfg. Co., 12 W. 23rd Street, New York City." Respondents have furnished to customers, including churches, lodges, clubs, groups, and other organizations, catalogs of their merchandise and membership cards such as those described above. The customer thereupon distributed membership cards to a specified number of members joining the club, each member agreeing to pay a specified amount, usually 25¢ per week for 26 weeks. Once each week the organization conducting the club held a drawing, at which time one of the numbers represented by a card was drawn, and the member whose number was drawn thereupon received one of respondents' articles of merchandise illustrated and described in the catalog furnished. The member whose number was drawn the first week received his article of merchandise for 25¢ and the member whose number was drawn the second week received his article of merchandise for 50¢, and so on until at the end of 26 weeks the members whose numbers were drawn paid prices ranging from 25¢ to \$6.50 for the various articles of merchandise. All members whose names were not drawn before the 26th week and who paid in the specified amount of 25¢ each week received one of the articles of merchandise described in respondents' catalog. The retail value of these articles was approximately \$6.50 each, and all of said articles were of substantially the same retail value. Various organizations who purchased respondents' merchandise and used the said club plan sold such merchandise to the purchasing public in accordance with the plan described.

PAR. 4. Respondents also sell merchandise and on request of the customer sell or furnish therewith paraphernalia for the distribution of such merchandise to the purchasing public through the use of the game of bingo. In some instances the merchandise is furnished on consignment and the paraphernalia of the bingo game is furnished for the use by the purchaser in distributing such merchandise, and thereafter the bingo paraphernalia is returned to respondents. The game of bingo is played with many variations but is substantially as follows: The person who conducts the game has a box or cage containing 75 balls or counters numbered consecutively from 1 to 75. The number of players who may participate is practically unlimited. Each player receives a number of markers and a card on which some of the numbers from 1 to 75 appear in rows. The person conducting the game draws the counters one at a time by chance and calls the number of each as it is drawn, and if the number called appears on the player's board he designates it with a marker. The first player who has on his card five numbers which have been called and which are in a straight row on his card wins. As conducted by clubs and other organizations for the purpose of profit, the players pay a consideration for the privilege of participating in the bingo game, thus securing a chance to win a prize. Respondents do not themselves conduct or operate the bingo games for their customers, but they represent on their letterheads "Let US help solve your bingo-bridge and carnival problems. We have the experience." Approximately one-third of respondents' total sales of merchandise are to bingo customers.

PAR. 5. Lodges, clubs, and other organizations purchasing respondents' merchandise distribute it to the purchasing public in accordance with the sales plans heretofore described. Respondents thus supply to and place in

the hands of others the means of conducting lotteries in the sale of their merchandise. 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 plans or methods, is a practice of a sort which is contrary to an established public policy of the United States. The sale of merchandise to the purchasing public by such methods or plans involves a game of chance or the sale of a chance to procure an article of merchandise at a price less than the normal retail price thereof. There are others who sell or distribute merchandise in competition with respondents and who do not use said methods, or any methods involving a game of chance or the sale of a chance to win something by chance, or any other method contrary to public policy. The use of said methods by the respondents has a tendency and capacity to divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or equivalent sales plans or methods.

PAR. 6. Respondents now trade, and for many years have traded, under the name "Savoy Manufacturing Company," and in addition to this trade name represent themselves on their letterheads as "Manufacturers and Distributors" of merchandise, many kinds of which are listed on such letterheads. At one time respondents manufactured some of the merchandise sold by them, but for approximately the last 15 years respondents have not manufactured any of the articles of merchandise which they sell and distribute under the aforesaid trade name or as to which they represent themselves to be the manufacturers and distributors. By the use of the word "Manufacturing" in their said trade name, and by representations that they are "manufacturers" appearing on the letterheads used in their business, respondents falsely represent that they are the manufacturers of products sold by them. There has long been a preference on the part of a substantial portion of the purchasing public and the trade for dealing directly with manufacturers in the belief that lower prices, elimination of middlemen's profits, superior products, and other advantages can thereby be obtained. The use by respondents of the aforesaid false and misleading representations concerning their business status, has had, and has, the capacity and tendency to mislead and deceive a substantial portion of the members of the purchasing public into the erroneous belief that such representations are true and into the purchasing of a substantial volume of respondents' products because of such belief.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and 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, the answer of respondents, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner, and briefs in support of and in opposition to the complaint (oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Charles Deer and Jack Deer, jointly or severally, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of electrical appliances, carpet sweepers, cutlery, blankets, comforters, bedspreads, lamps, tableware, chinaware, luggage, furniture, or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others any "club-plan" catalogs, cards, or other articles, or any other sales promotion plan, either with assortments of merchandise or separately, which plan is so designed that its use in the distribution of merchandise constitutes the operation of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others bingo paraphernalia or similar devices, either with assortments of merchandise or separately, which bingo paraphernalia 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.

4. Using the word "manufacturing," or any word or words of similar import or meaning, in or as a part of any trade or corporate name used to designate their business or representing in any other manner that merchandise not manufactured by respondents is manufactured by them.

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

Syllabus

IN THE MATTER OF
 DAVID JACOBS AND ALLIED NEWS-PHOTO SERVICE
 CORP., ETC.

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

Docket 4884. Complaint, Dec. 31, 1942—Decision, Nov. 4, 1944

Where an individual and a corporation controlled by him, engaged in interstate sale and distribution of photographs and "Goldtone Miniatures" made therefrom, through the mails and salesmen whom they supplied with purported "Press Cards" which contained such matter as "To Police Department: Please extend every reasonable courtesy essential to the bearer," "Issued to" (followed by provision for "Signature of Bearer"), set forth their trade name "Allied News Photographic Service, 439 Madison Avenue, New York City," followed by the words "London, Paris, Berlin," contained a blank for the insertion of the name of a person as "General Manager," and set forth such other matter as might be expected to be contained on such a card, followed by provisions for bearer's description and the words "Not Transferable"—

(a) Represented, directly or by implication, through use of corporate name "Allied News Photo Service Corporation," and trade names "Globe Press-Photo Service" and "Allied News Photographic Service," which were brought to the attention of prospects orally by their salesmen, by mailing envelopes sent to prospects, and by the display of aforesaid cards with which they supplied their salesmen, that they were in the business of obtaining photographs of persons of public interest for the press, throughout the United States; that such photographs were desired by them because of their news value; that newspapers desiring photographs of prospective subjects, would obtain said photographs from them; and that they were news or press photographers or photographic agencies as distinguished from portrait photographers;

The facts being that they did not conduct a news or press photographic agency and had no regular connection with any such, nor did they, except in rare instances, furnish them with photographs; but were engaged in the business of making photographs and "Goldtone Miniatures" and selling them to individual private customers;

(b) Represented falsely, directly and by implication, through the use of the aforesaid cards and statements by their agents, that the persons who carried said cards were accredited representatives of a recognized news photographic service or agency to whom, in the course of their work, police authorities frequently accorded opportunities to photograph current events not accorded to others; and that they had offices or agencies or representatives in London, England; Paris, France; and Berlin, Germany;

(c) Represented to prospects directly and by implication, through their representatives and salesmen, that photographs were desired in order that prints might be available in the event that the press desired them for publication, and that many newspapers obtained such photographs from them;

When in fact they desired to take photographs in order that they might receive orders therefor and for "Goldtone Miniatures" made therefrom, from the subjects thereof; and they were not, except in very rare instances, a source of supply for photographs to newspapers;

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(d) Represented also that they were "official photographers" for, or were connected with, particular newspapers and were obtaining photographs for such newspapers, by means of statements of their representatives and salesmen and by the display of letters containing such statements, on the letterheads of such newspapers, which they had secured from them;

The facts being they had no connections with said newspapers and were not obtaining photographs for them, except that they did supply to each one print of each photograph taken in the community in which such newspaper was located, as consideration for the giving by said newspaper of the letter referred to above; and

(e) After taking photographs of those who had consented thereto, and submitting proofs thereof to such persons, in an endeavor to sell to said persons prints and later, "Goldtone Miniatures" made therefrom, represented, in letters sent to said persons, that they had on hand completed "Goldtone Miniatures" of such persons; that such miniatures had been made for purposes of display at an exhibition as especially fine examples of their art and workmanship; that said exhibition had been concluded and many of the miniatures there displayed by them had been purchased by the persons whom they portrayed; that unless the said individuals purchased the said miniatures they would be dismantled or used by their salesmen as examples of their workmanship; and that although the regular or usual price at which such miniatures were sold by them was \$75.00, said individuals might purchase them at a special or reduced price of \$12.50;

The facts being they never displayed any miniatures at any "exhibition" in any accepted sense of the word, but merely from time to time hung some few on the walls of their place of business; only in rare instances did they even have miniatures of the individuals to whom such letters were sent, since usually such miniatures were made only after they had been ordered; and the price of \$12.50 quoted by them was not special or reduced but was their regular and usual selling price;

With the effect of misleading and deceiving a substantially large number of the purchasing public into the erroneous belief that said representations were true, and thereby into the purchase of substantial numbers of their said photographs and miniatures, and with capacity and tendency so to do:

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. Boris Marcus, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that David Jacobs, an individual, and Allied News-Photo Service Corporation, a corporation, also trading under the names, Allied News Photographic Service, Shelburne Studios, Shelburne Co., Miniature Gallery of New York and Globe Press-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, David Jacobs, is an individual, with an office and principal place of business at 439 Madison Avenue, city and State of New York; respondent, Allied News-Photo Service Corporation, is a corporation, organized under the laws of the State of New York, with an office and principal place of business at 439 Madison Avenue, city and State of New York. Respondent, Jacobs, holds all the offices in said corporation and is now, and at all times mentioned herein has been, in control of the management, policies and operation thereof, particularly in respect to the acts and practices herein alleged. Said respondents trade under the names, Allied News Photographic Service, Shelburne Studios, Sehlburne Co., Miniature Gallery of New York, and Globe Press-Photo Service.

PAR. 2. Respondents are now, and have been for more than two years last past, engaged in the business of making photographs of persons, and selling and distributing said photographs and "Goldtone Miniatures" made therefrom. Respondents cause said photographs and miniatures, when sold, 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. 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 and for the purpose of securing permission to take said photographs as a necessary preliminary to inducing the purchase thereof, respondents have made, and caused to be made, false and misleading statements and representations with respect to the identity, nature and character of their business, to prospective subjects for and purchasers of said photographs and miniatures.

PAR. 4. Through the use of the names, "Allied News-Photo Service Corporation," "Globe Press-Photo Service" and "Allied News Photographic Service" respondents have represented, directly and by implication, to prospective subjects for photographs, that they are in the business of obtaining photographs of persons whose photographs are or may be of interest to the public for the press, i.e., for newspapers, magazines and other periodicals published throughout the United States; that such photographs are desired by respondents because of their present or prospective news value; that respondents are connected with newspapers in such a fashion that in the event that such papers desire photographs of such prospective subjects, they would obtain them from respondents and that the said respondents are news or press photographers or photographic agencies as distinguished from portrait photographers.

The said names are brought to the attention of prospective subjects, and subjects, orally by respondents' salesmen, by the use of mailing envelopes sent to prospective purchasers of photographs and by the display of cards with which respondents supply their salesmen and representatives. Said cards are substantially in the following form:

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To Police Department:
Please extend every reasonable
courtesy essential to the bearer

Issued to
Signature of Bearer

Authorized as Staff Photographer.....

PRESS PASS

Allied News
Photographic Service
439 Madison Avenue B. Gordon
New York City
General Manager
London Paris Berlin

CONDITIONS

The holder hereof in accepting this card, as-
sumes all risk of injury or accident and
damage to person or property incident to
the use thereof.

The bearer agrees to abide by any reasonable
direction of a Police officer or a member of
the Fire Dept.

.....
Weight Eyes Hair Height Age
.....

NOT TRANSFERABLE

PAR. 5. The aforesaid representations were deceptive and untrue. In truth and in fact, respondents do not conduct a news or press photographic agency but are engaged in the business of making portrait photographs and Goldtone Miniatures and selling them to individual private customers. Respondents have no regular connection with any newspaper or news gathering or news disseminating agency, nor do they, except in rare instances, furnish photographs to newspapers or to such agencies. Respondents seek permission to take photographs of individuals as a necessary preliminary to the sale of said photographs and Goldtone Miniatures to such individuals and not for the purpose of obtaining photographs of present or potential news value for the press.

PAR. 6. Through the use of the said cards and oral statements of respondents' agents and representatives, respondents have represented, directly and by implication, that the persons who carry such said cards are accredited representatives of a recognized news photographic service or

agency to whom, in the course of their work, there are frequently accorded by police authorities opportunities to observe and take photographs of current events not accorded to others, and that respondents have offices or agencies or representatives in London, England; Paris, France and Berlin, Germany.

PAR. 7. The aforesaid representations were deceptive and untrue. In truth and in fact respondent has not, and never had, offices or agencies or representatives in London, England or Paris, France, or Berlin, Germany. Respondents' representatives and salesmen were not accredited representatives of a recognized news photographic service or agency, and the said cards were supplied to them solely for the purpose of inducing those asked to pose for photographs to believe that their pictures were being sought because of their present or potential news value.

PAR. 8. Respondents' representatives and salesmen also orally represented, directly and by implication, to prospective subjects that their photographs were desired in order that prints would be available in the event that they were desired for publication by the press and that many newspapers obtained such desired photographs from respondents.

PAR. 9. The aforesaid representations were deceptive and untrue. In truth and in fact respondents desired to take photographs in order that they might receive orders therefore and for Goldtone Miniatures made therefrom, from the subjects thereof, and not in order that they might be available for publication in the press. Respondents were not, except in very rare instances, a source of supply for photographs to newspapers.

PAR. 10. Respondents also represented that they were "official photographers" for, or were connected with, particular newspapers and were obtaining photographs for such newspapers. Such representations were made orally by respondents' representatives and salesmen and the display of letters on the letterheads of such newspapers containing such statements.

PAR. 11. The said representations were deceptive and untrue. In truth and in fact respondents did not have connections with said newspapers and were not obtaining photographs for them, except that respondents did supply to each such newspaper one print of each photograph taken in the community in which such newspaper was located as consideration for the giving by said newspaper of the letter referred to above.

PAR. 12. After taking photographs of those who consented thereto, respondents submitted proofs thereof to such persons and endeavored to sell them prints and later endeavored to sell to such persons "Goldtone Miniatures" made from said photographs. In the course and conduct of their business and for the purpose of inducing the purchase of said miniatures, respondents have made and caused to be made, directly and by implication, by means of letters sent to prospective purchasers of said miniatures many false and deceptive representations with respect thereto. Among and typical of such representations are the following.

... our photographer made several very fine portrait studies of you, one of which we have found admirably adaptable for reproduction as a Goldtone Miniature.

Recently we held an exhibition of Goldtone Miniatures and we are disposing of those which remain at the especially reduced price of \$12.50. Our regular price is \$75. We offer you the opportunity of acquiring one of these yourself at the special price of \$12.50.

Recently we made a Goldtone Miniature from one of your negatives for display at an exhibition of miniatures. . . . The exhibition has been concluded and we are . . . offering you the opportunity of acquiring for yourself this fine reproduction at the greatly reduced price of \$12.50. Our regular price is \$75.

We would appreciate hearing from you before dismantling the miniature.

. . . a very fine miniature of yours which we have on hand from our recent exhibition of miniatures. . . . Inasmuch as we have no further exhibitions planned at this time we believe that the miniature would be of far greater value to you than to us. . . . those few miniatures which remain will shortly be sent out to our salesmen as additional samples of our workmanship.

As your negatives were very suitable for miniature work, we recently finished a Goldtone Miniature from one of these negatives for an exhibit. Inasmuch as this exhibit is over, we can now offer this excellent piece of workmanship to you at a price of \$12.50. The regular price for this work is \$75.00.

PAR. 13. Through the use of the representations in said letters hereinabove set forth, and others similar thereto not specifically set out herein respondents have represented, directly and by implication, to the individuals to whom said letters were sent, that respondents had on hand completed Goldtone Miniatures of such persons; that such miniatures had been made for purposes of display at an exhibition as especially fine examples of respondents' art and workmanship; that said exhibition had been concluded and many of the miniatures there displayed by respondents had been purchased by the persons whom they portrayed; that unless the said individuals purchased the said miniatures they would be dismantled or used by respondents & salesmen as examples of respondents' workmanship, and that although the regular or usual price at which such miniatures were sold by respondents was \$75.00, that said individuals might purchase them at a special or reduced price of \$12.50.

PAR. 14. The said representations were deceptive and untrue. In truth and in fact respondents never displayed any miniatures at any "exhibition" in any accepted sense of the word but merely from time to time hung some few such miniatures on the walls of their place of business. Only in rare instances did they even have miniatures of the individuals to whom such letters were sent, since usually such miniatures were made only after they had been ordered. Respondents' regular and customary price for such miniatures was not \$75.00 and the price of \$12.50 quoted by respondents was not a special or reduced price but that at which they were regularly and usually sold by respondents.

PAR. 15. The use by respondents of the foregoing false and deceptive representations with respect to their photographs and miniatures 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 were true and into the purchase of substantial numbers thereof because of said erroneous and mistaken belief.

PAR. 16. 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 December 31, 1942, issued and subsequently served its complaint in this proceeding upon respondents, David Jacobs, and Allied News-Photo Service Corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, David Jacobs, is an individual, with his office and principal place of business at 439 Madison Avenue, New York, N. Y. Respondent, Allied News-Photo Service Corporation, is a corporation, organized under the laws of the State of New York, with its office and principal place of business at 439 Madison Avenue, New York, N. Y. Respondent, Jacobs, holds all the offices in said corporation and is now, and at all times mentioned herein has been, in control of the management, policies, and operation thereof, particularly in respect to the acts and practices herein found. Said respondents trade under the names Allied News Photographic Service, Shelburne Studios, Shelburne Company, Miniature Gallery of New York, and Globe Press-Photo Service.

PAR. 2. Respondents are now, and have been for more than two years last past, engaged in the business of making photographs of persons and selling and distributing said photographs and "Goldtone Miniatures" made therefrom. Respondents cause said photographs and miniatures, when sold, 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. 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 and for the purpose of securing permission to take said photographs as a necessary preliminary to inducing the purchase thereof, respondents have made, and caused to be made, false and misleading statements and representations to prospective subjects for and purchasers of said photographs and miniatures concerning the identity, nature, and character of their business.

PAR. 4. Through the use of the names "Allied News-Photo Service Corporation," "Globe Press-Photo Service," and "Allied News Photographic

Service," respondents have represented, directly and by implication, to prospective subjects for photographs that they are in the business of obtaining photographs of persons whose photographs are, or may be, of interest to the public for the press, i.e., for newspapers, magazines, and other periodicals published throughout the United States; that such photographs are desired by respondents because of their present or prospective news value; that respondents are connected with newspapers in such a fashion that in the event that such papers desire photographs of such prospective subjects, they would obtain them from respondents; and that the said respondents are news or press photographers or photographic agencies as distinguished from portrait photographers. The said names are brought to the attention of subjects and prospective subjects orally by respondents' salesmen, by the use of mailing envelopes sent to prospective purchasers of photographs, and by the display of cards with which respondents supply their salesmen and representatives. Said cards are in substantially the following form:

.....
 To Police Department:
 Please extend every reasonable courtesy
 essential to the bearer

Issued to
 Signature of Bearer

Authorized as Staff Photographer.....

Allied News
 Photographic Service
 439 Madison Avenue B. Gordon
 New York City
 General Manager
 London Paris Berlin

PRESS
 CARD

.....
CONDITIONS

The holder hereof in accepting this card, assumes all risk of injury or accident and damage to person or property incident to the use thereof.

The bearer agrees to abide by any reasonable direction of a Police officer or a member of the Fire Dept.

.....
 Weight Eyes Hair Height Age

NOT TRANSFERABLE

PAR. 5. The aforesaid representations are deceptive and untrue. In truth and in fact, respondents do not conduct a news or press photographic agency but are engaged in the business of making portrait photographs and "Goldtone Miniatures" and selling them to individual private customers. Respondents have no regular connection with any newspaper or news-gathering or news-disseminating agency, nor do they, except in rare instances, furnish photographs to newspapers or to such agencies. Respondents seek permission to take photographs of individuals as a necessary preliminary to the sale of said photographs and "Goldtone Miniatures" to such individuals and not for the purpose of obtaining photographs of present or potential news value for the press.

PAR. 6. Through the use of the said cards and oral statements of respondents' agents and representatives, respondents have represented, directly and by implication, that the persons who carry such said cards are accredited representatives of a recognized news photographic service or agency to whom, in the course of their work, there are frequently accorded by police authorities opportunities to observe and take photographs of current events not accorded to others, and that respondents have offices or agencies or representatives in London, England; Paris, France; and Berlin, Germany. These representations are deceptive and untrue. In truth and in fact, respondents have not, and never had, offices or agencies or representatives in London, England; or Paris, France; or Berlin, Germany. Respondents' representatives and salesmen are not accredited representatives of a recognized news photographic service or agency, and the said cards were supplied to them solely for the purpose of inducing those asked to pose for photographs to believe that their pictures were being sought because of their present or potential news value.

PAR. 7. Respondents' representatives and salesmen also orally represented, directly and by implication, to prospective subjects that their photographs were desired in order that prints would be available in the event that they were desired for publication by the press and that many newspapers obtained such desired photographs from respondents. These representations were deceptive and untrue. In truth and in fact, respondents desired to take photographs in order that they might receive orders therefor and for "Goldtone Miniatures" made therefrom, from the subjects thereof, and not in order that they might be available for publication in the press. Respondents were not, except in very rare instances, a source of supply for photographs to newspapers.

PAR. 8. Respondents also represented that they were "official photographers" for, or were connected with, particular newspapers and were obtaining photographs for such newspapers. Such representations were made orally by respondents' representatives and salesmen and the display of letters on the letterheads of such newspapers containing such statements. These representations were deceptive and untrue. In truth and in fact, respondents did not have connections with said newspapers and were not obtaining photographs for them, except that respondents did supply to each such newspaper one print of each photograph taken in the community in which such newspaper was located as consideration for the giving by said newspaper of the letter referred to above.

PAR. 9. After taking photographs of those who consented thereto, respondents submitted proofs thereof to such persons and endeavored to sell

them prints and later endeavored to sell to such persons "Goldtone Miniatures" made from said photographs. In the course and conduct of their business and for the purpose of inducing the purchase of said miniatures, respondents have made and caused to be made, directly and by implication, by means of letters sent to prospective purchasers of said miniatures, many false and deceptive representations with respect thereto. Among and typical of such representations are the following:

* * * our photographer made several very fine portrait studies of you, one of which we have found admirably adaptable for reproduction as a Goldtone Miniature.

* * * * *

Recently we held an exhibition of Goldtone Miniatures and we are disposing of those which remain at the especially reduced price of \$12.50. Our regular price is \$75. We offer you the opportunity of acquiring one of these yourself at the special price of \$12.50.

* * * * *

Recently we made a Goldtone Miniature from one of your negatives for display at an exhibition of miniatures * * *. The exhibition has been concluded and we are * * * offering you the opportunity of acquiring for yourself this fine reproduction at the greatly reduced price of \$12.50. Our regular price is \$75.

* * * * *

We would appreciate hearing from you before dismantling the miniature.

* * * * *

* * * a very fine miniature of yours which we have on hand from our recent exhibition of miniatures. * * * Inasmuch as we have no further exhibitions planned at this time we believe that the miniature would be of far greater value to you than to us. * * * those few miniatures which remain will shortly be sent out to our salesmen as additional samples of our workmanship.

* * * * *

As your negatives were very suitable for miniature work, we recently finished a Goldtone Miniature from one of these negatives for an exhibit. Inasmuch as this exhibit is over, we can now offer this excellent piece of workmanship to you at a price of \$12.50. The regular price for this work is \$75.00.

PAR. 10. Through the use of the representations in said letters, hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication, to the individuals to whom said letters were sent, that respondents had on hand completed "Goldtone Miniatures" of such persons; that such miniatures had been made for purposes of display at an exhibition as especially fine examples of respondents' art and workmanship; that said exhibition had been concluded by many of the miniatures there displayed by respondents had been purchased by the persons whom they portrayed; that unless the said individuals purchased the said miniatures they would be dismantled and used by respondents' salesmen as examples of respondents' workmanship; and that although the regular or usual price at which such miniatures were sold by respondents was \$75.00, that said individuals might purchase them at a special or reduced price of \$12.50. These representations are decep-

tive and untrue. In truth and in fact, respondents never displayed any miniatures at any "exhibition" in any accepted sense of the word but merely from time to time hung some few such miniatures on the walls of their place of business. Only in rare instances did they even have miniatures of the individuals to whom such letters were sent, since usually such miniatures were made only after they had been ordered. Respondents' regular and customary price for such miniatures was not \$75.00 and the price of \$12.50 quoted by respondents was not a special or reduced price but that at which they were regularly and usually sold by respondents.

PAR. 11. The use by respondents of the foregoing false and deceptive representations with respect to their photographs and miniatures 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 numbers thereof because of said erroneous and mistaken belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That respondent, David Jacobs, an individual, his representatives, agents, and employees, and respondent, Allied News-Photo Service Corporation, its officers, representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of photographs and miniatures made therefrom in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "News" or "Press," or any other word or words of similar import or meaning, in or as a part of any corporate or trade name for the business of selling to persons photographed prints of such photographs; or otherwise representing in any manner in connection with such business that respondents are news or press photographers.

2. Representing, directly or by implication, in the course of their usual business as commercial portrait photographers that they desire to take photographs of individuals because of the present or potential news value of such photographs, or for any reason other than their desire to sell to such individuals prints of such photographs.

3. Representing, directly or by implication, that they have any regular connection with any newspaper or news-gathering or news-disseminating agency.

4. Representing, directly or by implication, that they maintain any place of business or any agent or employee in any location where in fact no place of business or agent or employee is maintained.

5. Representing, directly or by implication, as the regular or usual prices of their products, any amounts other than those at which such products are regularly and customarily sold by them; or representing as special or reduced prices the amounts at which such products are regularly and customarily sold by them.

6. Representing, directly or by implication, that they have prepared or placed on exhibition any photograph or miniature of any purchaser or prospective purchaser thereof unless such photograph or miniature has in fact been produced or placed on exhibition.

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
 GENERAL FOODS CORPORATION; FROSTED FOODS SALES
 CORPORATION; GENERAL SEAFOODS CORPORATION;
 AND 40-FATHOM FISH, INC.

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

Docket 4627. Complaint, Nov. 7, 1941—Decision, Nov. 18, 1944

Where a corporation and its three wholly owned subsidiaries, with principal offices and places of business in New York City and in Boston, engaged in the interstate sale and distribution, among other things, of frozen rosefish fillets which they usually shipped in cartons of from 5 to 10 pounds to wholesalers and retailers in the inland regions of the United States, and principally in the Middle Western States centering around Chicago, in which area is also usually sold the fresh water yellow perch or "perch"—

Designated their said rosefish fillets as "Ocean Perch Fillets" and, when sold under trade name "Birds Eye Frosted Foods" by particular subsidiary concerned, as "Fillets of Red Perch," and prominently displayed said words on the cartons packaging said products, on the waxed paper in which they were wrapped, in advertisements in newspapers and periodicals, and in booklets, pamphlets and other advertising material and sold the same to dealers by whom they were displayed, usually with skin side down, so as to be indistinguishable by purchasers generally from yellow perch, and by whom they were in some instances designated as perch, or so sold;

The facts being the fish properly designated and commonly known to the consuming public generally, particularly in the Middle Western States, as "perch," the yellow perch, which is found exclusively in fresh water and chiefly in the Great Lakes region, is in large demand by the public, and particularly so in aforesaid States; and there is no scientific basis or common usage which would justify use of the word "perch" to thus designate said former throwaway fish, price of which was as low as 25¢ for 100 pounds prior to the time they began marketing the fillets thereof under the aforesaid names;

With the result that, through thus advertising and designating their rosefish fillets as "ocean perch" and "red perch," they placed in the hands of retailers and resellers of said products a means and instrumentality wherewith to mislead and deceive members of the consuming public, and many customers of aforesaid dealers purchased as and for yellow perch such rosefish fillets; and with tendency and capacity to mislead and deceive members of the buying and consuming public in the aforesaid respect, and with effect of inducing purchase of substantial quantities of said fillets of rosefish by members of the consuming public by reason 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. Arthur F. Thomas* and *Mr. Andrew B. Duwall*, trial examiners.

Mr. Merle P. Lyon and *Mr. Clark Nichols* for the Commission.

Mr. Lester E. Waterbury, of New York City, for respondents.

Complaint

39 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 General Foods Corporation, a corporation, Frosted Foods Sales Corporation, a corporation, General Seafoods Corporation, a corporation, and 40-Fathom Fish, 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, General Foods Corporation, is a Delaware corporation, having its principal office and place of business located at 250 Park Avenue, New York, N. Y. Affiliated with and controlled by it, through stock ownership, are the respondents, Frosted Foods Sales Corporation, a New York corporation, having its principal office and place of business located at 250 Park Avenue, New York, N. Y.; General Seafoods Corporation, a Massachusetts corporation, having its principal office and place of business located at Boston Fish Market, South Boston, Mass.; and 40-Fathom Fish, Inc., a Massachusetts corporation, having its principal office and place of business located at Boston Fish Market, South Boston, Mass. The said respondents are now, and for several years last past have been, engaged, among other things, in the sale and distribution of certain fish products in commerce between and among the various States of the United States and in the District of Columbia. Respondents have maintained, and now maintain, a course of trade in said products in said commerce, and have caused and now cause said products, when sold by them, to be shipped from their respective places of business aforesaid to purchasers, including retailers, located in various States of the United States other than the State of origin of the shipment.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, and in connection with the offering for sale, sale and distribution of their fish products in commerce, respondents have cause and now cause certain of their said products to be packaged in cartons on which appeared the following:

40-Fathom
(picture of fish).
Quick-Frozen Fish
Ocean Perch Fillets
Packed by General Seafoods Corporation;
Boston, Mass. Distributed by 40-Fathom Fish, Inc.

* * * *

Birdseye Frosted Foods
Fillets of Red Perch
Packed for
Frosted Foods Sales Corporation
New York, N. Y.

The words "Ocean Perch Fillets," or "Fillets of Red Perch," appear at five different places on cartons used in packing said products and also appear in booklets and pamphlets distributed by said respondents among customers and prospective customers containing menus and directions for handling and cooking said fish products. In addition to the above, respondents wrap the fillets in wax paper on which the above descriptive words are printed in a conspicuous manner. Retailers usually make use of said wrappings in displaying and offering said products for sale in such a manner that said words are easily and ordinarily observed by prospective purchasers.

PAR. 3. The fish properly designated and commonly known to the consuming public generally as "perch" is a yellow perch, which is found exclusively in fresh water and chiefly in the lakes of the Middle Western States of the United States and is in large demand by the public, particularly in the Middle Western States. The perch, properly so-called, is a fish of the Order Percomorphi, Series Kurtiformes, of the Family Percidae Genus Perca, and Species Flavescens.

The fish products packaged and sold by respondents in the manner hereinbefore set out and designated and described as "Ocean Perch Fillets" and "Fillets of Red Perch" are fillets of a fish properly known and described as "rosefish," a small red colored fish found abundantly in the North Atlantic Ocean, and popularly known as redfish.

The said rosefish is of the Order Cataphracti, Series Scorpaeniformes, Family Scorpaenidae, Genus Sebastes, Species Marinus, and is related generally to the scorpion fishes and rock cods, and has no family connection with or relation to the perches.

The names or terms "ocean perch" and "red perch" have no factual basis and there is no precedent for them either in scientific classification or popular usage. Said names or terms are, in fact, inherently false in their implication.

PAR. 4. The established market value and desirability of the rosefish are far inferior to those of the yellow perch. The principal market existing for the sale of rosefish was developed by respondent, beginning in 1933, and thereafter expanded by them, in the area of the Great Lakes region of the United States during a period of scarcity of yellow perch. Respondents cause their rosefish fillets to be "block frozen" in cartons of five or ten pounds, and ship them in such condition to wholesalers and retailers in the inland regions of the United States. The frozen rosefish fillets are ultimately sold, both in a frozen and unfrozen condition, to the general public as and for "ocean perch" or "red perch," in competition with yellow perch.

PAR. 5. Respondents' practice in advertising and packaging fillets of rosefish as "ocean perch" or "red perch" has had, and now has, the tendency and capacity to mislead and deceive members of the buying and consuming public into the false and erroneous belief that said fillets of rosefish are in fact fillets of yellow perch, or of a fish closely related thereto, or fillets of fish of the perch family. Such practice has induced and now induces, the purchase of substantial quantities of said fillets of rosefish by members of the consuming public due to such false and erroneous belief engendered.

The respondents' aforesaid practice further places in the hands of retailers and resellers of respondents' said products a means and instrumentality wherewith to mislead and deceive members of the buying and consuming public in the manner and form as aforesaid.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission 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 7, 1941, issued and subsequently served its complaint in this proceeding on the respondents, General Foods Corporation, a corporation; Frosted Foods Sales Corporation, a corporation; General Seafoods Corporation, a corporation; and 40-Fathom Fish, 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 the answers of the respondents 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, briefs in support of and in opposition to the complaint, 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, General Foods Corporation, is a Delaware corporation, having its principal office and place of business located at 250 Park Avenue, New York, N. Y.

Respondent, Frosted Foods Sales Corporation, is a Delaware corporation, having its principal office and place of business located at 250 Park Avenue, New York, N. Y., and is a wholly owned subsidiary of respondent, General Foods Corporation.

Respondent, General Seafoods Corporation, is a Massachusetts corporation, having its principal office and place of business located at Fish Pier, Boston, Mass., and is a wholly owned subsidiary of respondent, General Foods Corporation.

Respondent, 40-Fathom Fish, Inc., is a Delaware corporation, having its principal office and place of business located at Boston, Mass., and is a wholly owned subsidiary of respondent, General Foods Corporation.

Respondent, General Seafoods Corporation, is a producer, wholesaler, and distributor of fresh, frozen, and canned fishery products, which it sells entirely to the respondents, 40-Fathom Fish, Inc., and Frosted Foods Sales Corporation.

PAR. 2. Respondent, General Foods Corporation, acting by and through its wholly owned subsidiaries above described, respondent, General Seafoods Corporation, acting by and through respondents, Frosted Foods Sales Corporation, and 40-Fathom Fish, Inc., and respondents, Frosted Foods Sales Corporation, and 40-Fathom Fish, Inc., are now, and for several years last past have been, engaged in the sale and distribution, among other things, of frozen rosefish fillets in commerce among and between the various States of the United States and in the District of Columbia. Respondents cause said products, when sold, to be transported from their respective places of business to purchasers thereof located in the various States of the United States other than the State of origin of such shipments. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, the respondents have designated and described rosefish fillets sold by and through respondent, 40-Fathom Fish, Inc., as "Ocean Perch Fillets." The rosefish fillets, sold by and through Frosted Foods Sales Corporation, are sold under the trade name "Birds Eye Frosted Foods" and are designated and described as "Fillets of Red Perch." The words "Ocean Perch Fillets" and "Fillets of Red Perch" are prominently displayed on the respective cartons used in packing said products. The terms "Ocean Perch Fillets" and "Fillets of Red Perch" are also used to designate and describe said rosefish fillets in advertisements in newspapers and periodicals and in booklets, pamphlets, and other advertising material distributed by the respondents for the purpose of inducing the purchase of their said products. In addition to the designations appearing on the cartons, such designations also appear upon the waxed paper in which said fillets are wrapped.

PAR. 4. There is no scientific basis or common usage which would justify or warrant the use of the word "perch" to designate or describe rosefish. The fish properly designated and commonly known to the consuming public generally, particularly in the Middle Western States, as "perch" is the yellow perch, which is found exclusively in fresh water and chiefly in the Great Lakes region and is in large demand by the public, particularly in the Middle Western States. The yellow perch is a fish of the order Percomorphi, series Kurtiformes, of the family Percidae, genus *Perca*, and species *Flavescens*.

The rosefish, the fillets of which are sold by the respondents as "ocean perch" and "red perch," is a small red-colored fish, popularly known as "redfish," which is found abundantly in the North Atlantic Ocean. The rosefish is related generally to the scorpion fishes and the rock cods and has no family connection with, or relation to, the perches. It is scientifically designated as of the order Cataphracti, series Scorpaeniformes, family Scorpaenidae, genus *Sebastes*, species *Marinus*.

Prior to the time that the respondents began marketing the fillets of rosefish under the names "ocean perch" and "red perch" the rosefish or redfish was a throw-away fish which sold as low as 25 cents for 100 pounds.

PAR. 5. Respondents usually ship their rosefish fillets, designated as "ocean perch" and "red perch," in cartons of 5 to 10 pounds to wholesalers and retailers in the inland regions of the United States. The principal market was in the Middle Western States, centering around the city of Chicago, Ill. This is also the area where yellow perch is usually sold. When offering respondents' fillets for sale to the public, dealers usually display such fillets with skin side down, which causes them to be indistinguishable from yellow perch by purchasers generally. In some instances they were designated by such dealers as "perch" or sold as "perch," with the result that many customers purchased said rosefish fillets in the belief that they were buying yellow perch.

By advertising, designating, and describing their rosefish fillets as "ocean perch" and "red perch," the respondents placed in the hands of retailers and resellers of said products a means and instrumentality where-with to mislead and deceive members of the buying and consuming public.

PAR. 6. Respondents' practice in advertising and packaging fillets of rosefish as "ocean perch" or "red perch" has had, and now has, the tendency and capacity to mislead and deceive members of the buying and consuming public into the false and erroneous belief that said fillets of rosefish are in fact fillets of yellow perch or of a fish closely related thereto or are fillets of fish of the perch family. Such practice has induced the purchase of substantial quantities of said fillets of rosefish by members of the consuming public due to such false and erroneous belief.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice of the public and constitute unfair and deceptive acts and practices within the 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 answers of the respondents, 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, report of the trial examiner upon the evidence, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered that the respondents, General Foods Corporation, a corporation; Frosted Foods Sales Corporation, a corporation; General Seafoods Corporation, a corporation; and 40-Fathom Fish, 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, and distribution of rosefish fillets in commerce as

Order

“commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the terms “ocean perch” or “red perch” or the term “perch,” either alone or in combination with other words, to in any way designate, describe, or refer to the rosefish or redfish.

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
DOW CHEMICAL COMPANY

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

Docket 3991. Complaint, Jan. 4, 1940—Decision, Nov. 22, 1944

Where a corporation engaged, among other things, in the manufacture and interstate sale and distribution of chlorinated hydrocarbon solvents used in dry cleaning clothing, the most important of which were carbon tetrachloride and mixtures thereof with other solvents, making about half of the carbon tetrachloride and ethylene dichloride used in dry cleaning, and selling to nearly half of the 4,000 to 5,000 dry cleaners who use synthetic solvent machines, synthetic solvents, the nonflammable nature of which permits their use in locations where the fire hazard of petroleum solvents would constitute a public hazard and most of which, in contrast to the petroleum solvents, can be recovered after dry cleaning use in synthetic plants designed therefor;

In selling its said synthetic solvents to numerous jobbers or distributors in various cities through or with the aid of men who were skilled in salesmanship and in the chemistry and use of synthetic dry cleaning solvents, called on dry cleaners in the company of salesmen employed by jobbers, carrying with them equipment for testing dry cleaning solvents, and who were given instructions by said corporation's offices on comparative products and the manner in which they were to deal with problems met in the field; in competition, among others, with the corporate manufacturer of "Kolene C" dry cleaning solvent, which solicited business from about half of the dry cleaners using synthetic solvent machines and regularly sold its solvent to about 500 of them—

Made false, misleading and disparaging representations concerning said "Kolene C," to numerous distributors, customers, prospective purchasers of dry cleaning solvents and manufacturers of dry cleaning machines located in various states, and thus also placed in the hands of others the means of further disseminating such misrepresentations,—which were vigorously used to persuade dry cleaners not to use "Kolene C," even to the extent of cancelling orders therefor—whereby in substance it was represented in many different ways that the fumes produced by "Kolene C" were more dangerous and toxic than the fumes produced by its solvent, contents of "Kolene C" were misrepresented, and it was falsely represented directly and by implication that it contained "naptha," was a "Petroleum blend," and was inflammable and explosive and therefore dangerous when used under the usual conditions of operation by dry cleaners;

The facts being that "Kolene C" was not more dangerous or toxic than the solvents sold by it; said competitive preparation contained no "naptha" as used and understood in the trade, and was not a carbon tetrachloride—naptha blend as represented, but was a mixture of carbon tetrachloride, benzol and a small proportion of trichlorethylene; had a small fire hazard rating and was not flammable under standard or usual conditions of dry cleaning clothing; and, during the period concerned, a solvent sold, though not made, by corporation in question, was given the same or higher fire hazard rating than that assigned said competitive "Kolene C"; With tendency and capacity, through said false and disparaging representations made by it as aforesaid, to mislead and deceive a substantial portion of the purchasing

public into the false belief that said statements were true and into the purchase of its products in preference to said "Kolene C," and thereby unfairly to divert trade from the sellers of "Kolene C" to sellers of its preparations:

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 method of competition in commerce and unfair and deceptive acts and practices therein.

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

Mr. D. E. Hoopingarner and *Mr. R. P. Bellinger* for the Commission.
Campbell, Groening, Jr. & Prince, of Midland, 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 the Dow Chemical Company, a corporation, hereinafter referred to as the respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The Dow Chemical Co., is a corporation, organized under the laws of the State of Michigan with its principal office and place of business located at Midland, Mich.

PAR. 2. Respondent is now, and for more than two years last past, has been engaged in the manufacture and sale of numerous chemical preparations including chemical preparations used in dry cleaning clothes. Respondent causes said preparations when sold to be transported from its place of business in the State of Michigan to its purchasers located in various other States of the United States and in the District of Columbia.

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

PAR. 3. In the course and conduct of its said business the respondent is in competition with other corporations and with partnerships and individuals engaged in the sale of preparations used in the dry cleaning of clothes in commerce between and among the various States of the United States and in the District of Columbia. Among said competitors of respondent engaged in commerce as aforesaid, is Kolene, Inc., a corporation organized and existing under the laws of the State of Michigan.

PAR. 4. The Dow Chemical Co., in the course and conduct of its business, and for the purpose of inducing individuals, firms and corporations to purchase its chemical preparations used in dry cleaning clothes in preference to the chemical preparation sold by Kolene, Inc., has made, directly and by inference, numerous unfairly disparaging statements concerning the preparation Kolene. These statements and representations have been disseminated by the said respondent between and among the various States of the United States and in the District of Columbia. Typical of the unfairly disparaging representations thus made by the respondent are the following:

Kolene is inflammable and explosive and therefore dangerous when used under standard or usual conditions for dry cleaning clothes.

Kolene is a compound composed solely of tetrachloride and benzine.

Kolene is highly corrosive of the metals of the dry cleaning machinery wherein it is used.

The fumes produced by the preparation Kolene are more dangerous and toxic than are the fumes produced by the cleaning preparations sold by respondent.

PAR. 5. The aforesaid representations with respect to the preparation Kolene are untrue, misleading and unfairly disparage the preparation Kolene. In truth and in fact the preparation Kolene is neither explosive nor inflammable and is not dangerous when used under standard or usual working conditions for dry cleaning clothes. Kolene is not a compound of tetrachloride and benzine only. Kolene is not highly corrosive of the metals of the dry cleaning machinery wherein it is used. The fumes produced by the preparation Kolene are not more dangerous or toxic than are the fumes produced by the dry cleaning preparations sold by respondent.

PAR. 6. The respondent has disseminated the aforesaid false, misleading and unfairly disparaging representations to its distributors located in the various States of the United States and in the District of Columbia, thus placing in the hands of said distributors a means of further disseminating said false and unfairly disparaging statements.

The aforesaid false, misleading and unfairly disparaging representations made by respondent, as hereinabove alleged, have had and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said statements are true and into the purchase of respondent's products in preference to the product Kolene because of such erroneous belief brought about as hereinabove set out. Further said false and misleading statements and unfair disparagements have a tendency to and do divert trade unfairly to respondent and the sellers of respondent's preparation from the sellers of the preparation Kolene.

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 4, 1940, issued and subsequently served its complaint in this proceeding, upon the respondent named in the caption hereof, 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 respondent filed its answer, 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 in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts, its conclusion based thereon, and its order disposing of the proceeding without intervening procedure save the filing of briefs and presentation of oral argument (the reservation as to oral argument was subsequently waived). Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, stipulation, and briefs in support of and in opposition to the complaint, 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, The Dow Chemical Co., (the corporation referred to in the complaint as Dow Chemical Co.), is a corporation, organized and existing under the laws of the State of Michigan, with its principal office and place of business located at Midland, Mich.

PAR. 2. Respondent is now, and for a number of years last past has been, engaged in the manufacture, sale, and distribution of numerous chemical products, including chlorinated hydrocarbon solvents used in dry cleaning clothing, the most important of which are carbon tetrachloride and mixtures of carbon tetrachloride and other solvents. Respondent causes said solvents, when sold, to be transported from its place of business in the State of Michigan to purchasers at their various points of location in 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 solvents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is in competition with other corporations and with partnerships and individuals engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia, of solvents used in the dry cleaning of clothing. Among said competitors of respondent is Kolene, Inc., a corporation organized and existing under the laws of the State of Michigan and engaged in the business of selling a solvent known as "Kolene C" for the dry cleaning of clothing.

PAR. 4. Approximately 25 percent of the dry cleaning in the United States is done in machines using synthetic solvents, commonly known as "synthetic solvent machines," and the remainder is done in machines using petroleum naphtha, commonly known as "naphtha plants" and "naphtha systems." Of the dry cleaning done in synthetic solvent machines, most is done with carbon tetrachloride; a part is done with mixtures containing carbon tetrachloride, including blends of carbon tetrachloride and ethylene dichloride, and about 10 percent with trichlorethylene and perchlorethylene. Respondent makes approximately 50 percent of the carbon tetrachloride and ethylene dichloride thus used. In addition to respondent

ent, a few other concerns make carbon tetrachloride. Between four and five thousand dry cleaners in the United States used synthetic solvent machines and approximately 40 to 50 percent of these dry cleaners use synthetic solvents purchased from respondent, the others purchasing their supplies of solvents from competitors of respondent. Kolene, Inc., has solicited business from about half the dry cleaners using synthetic solvent machines and regularly sells its solvent to approximately 500 of the dry cleaners using such machines.

PAR. 5. (a) The numerous dry cleaning plants known as "naphtha plants" and "naphtha systems" use as a cleaning agent petroleum naphtha only. In the fractional distillation of petroleum, also called "naphtha," consisting of a mixture of hydrocarbons, portions thereof also called petroleum distillates, or fractions boiling between 14° C. and 240° C., are called "petroleum naphthas." Lower-boiling portions consisting of several of the lighter and more volatile constituents of petroleum, including gasoline, and boiling between 40° C. and 70° C., are called "petroleum ether" and also "benzine." Gasoline, also called "petroleum ether" and "naphtha," consists of low-boiling petroleum distillates boiling between 14° C. and 90° C. The low-boiling petroleum naphthas, including benzine and gasoline, and also the higher-boiling petroleum naphthas, including Stoddard Solvent which boils between 149° C. and 210° C., and various other similar high-boiling petroleum naphthas sold under various trade names, have been used extensively in dry cleaning. The dry cleaning plants using petroleum naphtha are generally recognized as presenting greater fire hazards than dry cleaning plants using synthetic solvents. Though the term "naphtha" is technically descriptive of benzine and other petroleum naphthas and benzine (benzol), in the dry cleaning trade the term "naphtha," when used without qualification, is usually understood to refer to "petroleum naphtha."

(b) The term "benzene" is the scientific name for C_6H_6 and its commercial name is benzol. Benzol is obtained from the destructive distillation of coal. The "cut" boiling between 74° C. and 110° C. consists principally of the hydrocarbons benzene and toluene and is called "90 percent benzol." The "cut" obtained between 110° C. and 140° C. consists essentially of the same two hydrocarbons plus xylene, and is called "50 percent benzol." The "cut" obtained between 140° C. and 170° C. consists of higher-boiling members of the benzene series of hydrocarbons and is called "solvent naphtha," "burning naphtha," "naphtha," or "160° benzol."

PAR. 6. (a) The solvent "Kolene C" sold by Kolene, Inc., is a mixture of carbon tetrachloride, benzene (benzol), and a relatively small proportion of trichlorethylene. The benzol used in this solvent is that heretofore described as "90 percent benzol," which boils between 74° C. and 110° C. Carbon tetrachloride is a fire extinguisher and is given a "0" rating by Underwriters' Laboratories, Inc. The rating of ether is 100; gasoline is rated 90-100; ethyl alcohol, 60-70; kerosene (100 F. Flash), 30-40; and paraffin oil, 10-20. The fire hazard of benzol is about the same as that of gasoline and that of ethylene dichloride is about the same as ethyl alcohol. In a report of January 12, 1939, Underwriters' Laboratories, Inc., stated that the fire hazard of "Kolene C" is very small and rated it 1 to 2. "Kolene C" is not flammable or explosive and, therefore, is not dangerous

when used under standard or usual conditions of dry cleaning clothing, but is slightly flammable at higher temperatures which are encountered only under laboratory conditions.

(b) Respondent's solvent "Dowlene" is a mixture of carbon tetrachloride and ethylene dichloride. All solvents manufactured by respondent for sale to the dry cleaning trade as of January 12, 1939, were, and at all times since have been, rated "O" by Underwriters' Laboratories, Inc., and thus classed as completely nonflammable. Respondent, however, during the time referred to herein, sold a dry cleaning solvent not manufactured by it, trichlorethylene, which was given the same or a higher rating by Underwriters' Laboratories, Inc., than the rating assigned "Kolene C."

(c) Synthetic Solvent plants can be designed to recover in usable form most of the synthetic solvents used for dry cleaning, whereas the recovery of petroleum solvents, because of their flammable nature, cannot be done as efficiently. The nonflammable nature of the synthetic solvents permits their use in locations where the fire hazard of the petroleum solvents would constitute a public hazard.

PAR. 7. (a) In 1935 the manufacturers of benzol and carbon tetrachloride, respectively and independently of each other, entered into agreements with the United States Public Health Service with respect to the labeling of benzol and carbon tetrachloride. These agreements were voluntary and did not constitute findings by a public body as to the properties of the products covered by the agreements or a determination by the United States Public Health Service of the comparative toxicity of carbon tetrachloride and benzol. The manufacturers of benzol agreed that mixtures containing 15 percent or more of benzol should be labeled as follows:

CAUTION—POISON

This Product Contains More Than 15%

BENZOL Which Is A

VOLATILE SOLVENT

USE WITH ADEQUATE VENTILATION

AVOID PROLONGED BREATHING

OF VAPOR

The manufacturers of carbon tetrachloride agreed that mixtures containing 24 percent or more of carbon tetrachloride should be labeled as follows:

VOLATILE SOLVENT

USE WITH ADEQUATE VENTILATION

AVOID PROLONGED BREATHING

OF VAPOR

and, further, that the labels of such carbon tetrachloride mixtures should include the statement: "Contains more than 24 percent by weight of carbon tetrachloride."

(b) Kolene, Inc., used the "volatile solvent" label but did not use the benzol "poison" label or the statement: "Contains more than 24 percent

by weight of carbon tetrachloride." Respondent did not sell benzol or a dry cleaning solvent containing more than 15 percent benzol, and used the "volatile solvent" labels where applicable but not the statement: "Contains more than 24 percent by weight of carbon tetrachloride."

(c) The solvent "Kolene C" is not more toxic or dangerous than the cleaning solvents sold by respondent.

PAR. 8. (a) As heretofore stated, respondent manufactures about half of the carbon tetrachloride and ethylene dichloride used in dry cleaning and sells its synthetic solvents to approximately half of the dry cleaners using synthetic solvent machines. Respondent thus occupies the most important, if not a dominant position, in the production and distribution of synthetic solvents for the dry cleaning industry. Respondent maintains a solvent sales office at Midland, Mich., to handle the sale and distribution of its synthetic dry cleaning solvents and also maintains branch offices in New York, Chicago, and St. Louis. It sells such solvents to numerous jobbers or distributors located in various cities of the United States and employs a number of men skilled in salesmanship and in the chemistry and use of synthetic dry cleaning solvents who call upon said distributors and dry cleaners in the interest of the sale and distribution of respondent's synthetic dry cleaning solvents. These men often make calls on dry cleaners in the company of salesmen employed by jobbers. They often carry with them equipment for testing in the field dry cleaning solvents and are given instructions by respondent's main office and branch offices on comparative products and the manner in which they are to deal with problems met in the field.

(b) Respondent and its representatives and agents have made false, misleading, and disparaging representations concerning "Kolene C" to numerous distributors, customers, prospective purchasers of dry cleaning solvents, and manufacturers of dry cleaning machines located in various States, including Michigan, Illinois, Iowa, Wisconsin, Minnesota, Pennsylvania, New York, and in the District of Columbia, and have also thus placed in the hands of others the means of further disseminating such false, misleading, and disparaging representations. The substance of the false, misleading, and disparaging representations is to represent that the fumes produced by "Kolene C" are more dangerous and toxic than the fumes produced by the solvents sold by respondent; to misrepresent the contents of the preparation "Kolene C"; and to represent, directly and by implication, that "Kolene C" contains "naphtha," is a "petroleum blend," is inflammable and explosive, and therefore dangerous when used under the usual conditions of operation by dry cleaners.

(c) The aforesaid false, misleading, and disparaging representations, were made in many different ways, typical instances of which appear below. In the course of correspondence with a manufacturer of synthetic solvent machines concerning "Kolene C," respondent suggested the "possibility of a solvent consisting of Carbon Tetrachloride and naphtha acting differently than Carbon Tetrachloride alone"; approved the machine manufacturer's attitude in recommending that his "machine owners stay away from using any mixture of a naphtha-Carbon Tetrachloride nature"; stated, "We, of course, do not believe that any mixture of Carbon Tetrachloride and naphtha can be safe when used in a synthetic solvent machine"; suggested that in such a mixture carbon tetrachloride would evap-

orate first and leave behind the naphtha, and thus produce a solvent having a "lower flash point than the solvent as it was originally blended"; and stated, "In the stills as designed for synthetic units, this is likely to result in a rather hazardous operation." In a letter written to its Chicago office concerning "Kolene C" respondent referred to the alleged lower boiling point of carbon tetrachloride and stated, "Because of this, the naphtha or petroleum base which is left behind is gradually increasing in concentration"; and suggested a personal call on a particular purchaser of "Kolene C" "to point out to him some of the reasons why this particular dry cleaning fluid should not be used." In writing to one of its distributors, respondent suggested that "Kolene C" "is a blend of Carbon Tetrachloride and Benzol which, of course, takes it out of the classification of a completely nonflammable dry cleaning solvent"; and in a subsequent letter to this distributor stated in part, "from information we have received, the Kolene solvent does tend to flash after 95% has been distilled." In reporting a call on a dry cleaner using synthetic solvents, one of respondent's salesmen referred to the change by this dry cleaner from the use of respondent's solvents to "Kolene C" and advised that he pointed out to this dry cleaner that "there might be some fire hazard with C. T. (carbon tetrachloride)-Petroleum Blend." In writing to another manufacturer of synthetic solvent machines, respondent referred to "Kolene C" and stated that in its experience such blends are worse with respect to toxic vapors than a straight chlorinated solvent and that "In regard to toxicity, we would like to call your attention to the statement made by the Manufacturing Chemists' Association; namely, that a blended solvent carrying a volume percentage of over 15% of Benzol in Carbon Tetrachloride is 'more hazardous than straight Carbon Tetrachloride.'" In writing to one of its distributors concerning "Kolene C," respondent stated, "however, as you know, Benzol is much more hazardous from the standpoint of toxicity than is Carbon Tetrachloride and, consequently, this fact might deter a great many dry cleaners from using any Benzol mixtures." In reporting a call upon a dry cleaner using synthetic solvents, one of respondent's salesmen wrote, "We had a long talk going over again the comparison of Dowlene and Kolene. I stressed toxicity of Benzol, etc. * * *, Of course, I brought up the point that he was actually giving his operator a more dangerous material to use."

(d) The record shows that the hazards respondent asserted existed in the use of "Kolene C" were vigorously used by respondent and by others in whose hands such assertions were placed as a means of persuading dry cleaners not to begin or to continue, as the case might be, the use of "Kolene C," even to the extent of inducing cancelation of orders for such product. At the time respondent was referring to "Kolene C" as a carbon tetrachloride-naphtha blend and to the evaporation and distillation problems arising from the naphtha petroleum base said to be left behind in increasing concentration, respondent had the results of routine analyses made by its laboratory indicating that "Kolene C" was a carbon tetrachloride and benzol blend. These analyses were of a type which would not disclose the presence of a relatively small proportion of trichlorethylene in "Kolene C." There are, however, more elaborate, more costly, and more accurate methods of analyzing cleaning solvents.

PAR. 9. The false, misleading, and disparaging representations, made by respondent to the effect and in the manner, above found, have had, and have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said statements are true and into the purchase of respondent's products in preference to the product "Kolene C." Because of such erroneous belief, said false and misleading statements and disparagements also have the tendency and capacity unfairly to divert trade from the sellers of the preparation "Kolene C" to respondents and to the sellers of respondent's 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 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, a stipulation as to the facts entered into between the respondent herein and Richard P. Whiteley, Assistant Chief Counsel for the Commission, and briefs in support of and in opposition to said complaint, and said stipulation providing, among other things, that without further evidence or other intervening procedure save the presentation of briefs and oral argument (oral argument having subsequently been waived) the Commission may issue and serve upon 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 conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, The Dow Chemical 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 its dry cleaning solvents in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting in any manner the constituents of "Kolene C" or of any other competing dry cleaning solvent.

2. Representing, directly or by implication, that "Kolene C" is inflammable or explosive when used for dry cleaning under standard or usual conditions for such work.

3. Representing, directly or by implication, that the hazard of fire or explosion from the use of "Kolene C," or any other competing dry cleaning solvent, either absolutely or in comparison with respondent's solvents, is greater than any such hazard is in fact.

4. Representing, directly or by implication, that the toxicity of or dangers from the fumes of "Kolene C" are greater than the toxicity of or

dangers from the fumes of respondent's dry cleaning solvents; or misrepresenting in any manner the absolute or comparative toxicity of or dangers from the fumes of "Kolene C," or of any other competing dry cleaning solvent.

5. Making or publishing any false and disparaging representations concerning the dry cleaning solvents of competitors.

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

IN THE MATTER OF
SUPERBILT MANUFACTURING COMPANY, INC.

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

Docket 4944. Complaint, Apr. 16, 1943—Decision, Nov. 23, 1944

Where a corporation engaged in the manufacture and interstate sale and distribution of furniture, mattresses, box springs and like products to retailers and others—

- (a) Represented that its "Super Rest Mattresses and Matching Box Springs" were customarily sold by retail dealers for \$39.50 each in the usual course of business through such advertisements in newspapers and otherwise as "We Join Superbilt in This Special Introductory Offer A Challenge Value! \$39.50 Super Rest Mattress \$39.50 Matching Box Springs Both for \$39.50 Featuring the New Super Rest Quilted-Top Tuftless Inner Spring Mattress," which were also placed in newspapers by retail store purchasers of said products, and in the payment for which it participated;

Notwithstanding the fact that its "Special Introductory Offer" of said merchandise was the first time said Super Rest mattress and matching box springs had been placed on the market and there was no established retail market price of \$39.50 each for said articles at that time; the sum of \$39.50 had been the usual and customary retail selling price for both of said articles combined as one sale at all times subsequent to their introduction in the year 1940; and stated price of \$39.50 each, as set out in the advertisement, was in fact a fictitious price and was greatly in excess of the actual retail price, as stated above; and

- (b) Through use of such practices, placed in the hands of dealers a means and instrumentality whereby they were enabled to mislead and deceive the purchasing public as to the regular retail price and value of its said products;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and into the purchase of substantial quantities of its said products as a result of such erroneous belief:

Held, That said 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. Clark Nichols for the Commission.

Mr. Arthur A. Tarlow and *Bischoff & Bischoff*, of Portland, Ore., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, Superbilt Manufacturing Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at 2511 N. E. Holladay Street, Portland, Oreg.

Said respondent is now, and for more than three years last past has been, engaged in the manufacture of furniture, mattresses, box springs and like products, and in the sale and distribution of the same to retailers and others located in the various States of the United States other than the State of origin.

Respondent causes and has caused its said products, when sold, to be shipped or transported from its 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. 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. 2. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its said products, respondent caused to be published in newspapers and by other means advertisements circulated among prospective purchasers in various of the several States of the United States, which advertisements, among others, read in part as follows:

We Join Superbilt in This Special Introductory Offer

A Challenge Value!

\$39.50 Superest Mattress

\$39.50 Matching Box Spring

Both for \$39.50

Featuring the New Superest Quilted-Top Tuftless Innerspring Mattress.

The name of the respective retailer or dealer was inserted at the bottom of said advertisement, and respondent required its retailers to publish said advertisement in the manner and form as above set out and participated and cooperated in the payment of the costs of said publication.

Through the use of the aforesaid statements, respondent represented, that its Superest Mattress and Matching Box Spring are customarily sold by retail dealers for the sum of \$39.50 each, in the usual course of business.

PAR. 3. In truth and in fact, respondent's Superest Mattress and Matching Box Spring had not at the time said representations were made sold for the sum of \$39.50 each by retail dealers in the usual course of business. Respondent's "special introductory offer" of said merchandise was the first time said Superest Mattress and Matching Box Spring had been placed on the market, and there was no established retail market price of \$39.50 each for said articles at that time, nor has the price of \$39.50 each been established subsequently thereto as the usual and customary selling price thereof at retail. In fact, the sum of \$39.50 is and has been the usual and customary retail selling price for both said articles at all times subsequent to their introduction in the year 1940, and neither of said articles, except in isolated instances, has been sold separately at \$39.50 or any sum near that amount.

The stated prices of \$39.50 each, as set out in the advertisement caused to be published as aforesaid, were in fact fictitious prices, and were greatly in excess of the retail prices at which such mattresses and box springs have been customarily sold by retail dealers in the usual and normal course of business. Furthermore, the fair retail values of said mattresses and box springs were considerably less than the sum of \$39.50 each, and said articles of furniture were not reasonably worth at retail the sum of \$39.50 each as represented.

PAR. 4. By the practices, hereinbefore set out, respondent has placed in the hands of dealers a means and instrumentality whereby such dealers are enabled to mislead and deceive members of the purchasing public as to the regular value and retail price of respondent's Superest Mattresses and Matching Box Springs.

PAR. 5. The use by the respondent of the practices, hereinabove set forth, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are true, and into the purchase of substantial quantities of respondent's mattresses and box springs as a result of such erroneous belief.

PAR. 6. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 16, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Superbilt Manufacturing Company, 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. Subsequently the respondent filed its answer, in which answer it admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the 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, Superbilt Manufacturing Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its principal place of business located at 2511 Northeast Holladay Street, Portland, Ore. Respondent is now and for several years last past has been engaged in the manufacture of furniture, mattresses, box springs and like products and in the sale and dis-

tribution of same to retailers and others located in the various States of the United States other than the State of Oregon. Respondent causes and has caused its said products, when sold, to be transported from its place of business in the State of Oregon to the purchasers thereof located in the various other States of the United States and in the District of Columbia.

There is now, and has been for some time 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.

PAR. 2. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its products, respondent caused to be published in newspapers, and by other means, advertisements which were circulated among prospective purchasers in various of the several States of the United States, and which read in part as follows:

We Join Superbilt in This Special Introductory Offer
A Challenge Value!
\$39.50 Super Rest Mattress
\$39.50 Matching Box Springs
Both for \$39.50
Featuring the New Super Rest Quilted-Top Tuftless
Inner Spring Mattress

These advertisements and others of similar import were placed in newspapers by retail stores who had purchased the Super Rest mattress and box springs from the respondent, and respondent participated and cooperated in the payment of the costs of such publication. Through the use of the aforesaid statements respondent represented that its Super Rest mattress and its matching box springs were customarily sold by retail dealers for the sum of \$39.50 each, in the usual course of business.

PAR. 3. Respondent's Super Rest mattress and its matching box springs had not at the time said representations were made sold for the sum of \$39.50 each by retail dealers in the usual course of business. Respondent's "Special Introductory Offer" of said merchandise was the first time said Super Rest mattress and matching box springs had been placed on the market and there was no established retail market price of \$39.50 each for said articles at that time, nor was the price of \$39.50 each established subsequently thereto as the usual and customary selling price thereof at retail. In fact, the sum of \$39.50 has been the usual and customary retail selling price for both of said articles combined as one sale at all times subsequent to their introduction in the year 1940, and neither of said articles, except in isolated instances, has been sold separately for \$39.50 or for any sum closely approximating that amount. The stated price of \$39.50 each, as set out in the advertisement, was in fact a fictitious price and was greatly in excess of the retail price at which such mattress and box springs have been customarily sold by retail dealers in the usual and normal course of business.

PAR. 4. Through the use of these practices, respondent has placed in the hands of dealers, a means and instrumentality, whereby such dealers are enabled to mislead and deceive the purchasing public as to the regular retail price and value of respondent's Super Rest mattress and matching box springs.

PAR. 5. The use by the respondent of these practices, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are true, and into the purchase of substantial quantities of respondent's products as a result of such erroneous 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 and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Superbilt Manufacturing 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 respondent's mattresses, box springs, and other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing as the usual or customary retail prices or values of respondent's products, prices or values which are in excess of the prices at which such products are customarily sold at retail.

2. Representing, directly or by implication, that the prices at which respondent's products are offered for sale at retail are reduced or special or introductory prices, when such prices are in fact the usual and customary retail prices of such products.

3. Cooperating or participating with dealers in disseminating any advertisement containing any representation prohibited by this order.

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
 IMPERIAL CANDY COMPANY

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

Docket 5046. Complaint, Sept. 11, 1943—Decision, Nov. 29, 1944

Where a corporation engaged in the competitive interstate sale and distribution of certain assortments of peanuts so packed and assembled as to involve the use of games of chance, gift enterprises or lottery schemes when sold and distributed to the consumer—typical assortments including (1) 36 one-half pound tins, together with a 400-hole punchboard for use under a plan, as thereon announced, under which a customer paid from 1¢ to 5¢ or nothing, and received one of said tins or nothing depending on the number he punched, and the person making the last punch also received a tin; and (2) 36 one-half pound packages of peanuts together with a device known as a “Whirling Derby” containing a number of slips with concealed numbers, for use under a scheme, as announced by a placard attached thereto, under which customers receiving certain numbers received a package free, the others paying 10¢ and the last sale receiving two packages—

Sold such assortments so packed and assembled to wholesalers, jobbers and retailers by whom, as direct or indirect purchasers, they were exposed and sold to the purchasing public in accordance with the aforesaid sales plan involving a game of chance or sale of chance to procure nuts at much less than their normal retail price; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries in the sale of its products in accordance with the aforesaid sales plan, contrary to an established public policy of the United States Government and in competition with many who do not use any sales method involving chance or otherwise contrary to public policy;

With the result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell its nuts in preference to those of said competitors, and with tendency and capacity to unfairly divert interstate trade to it from its said competitors, whereby substantial injury was done by it to competition in commerce:

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

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

Skeel, McKelvy, Henke, Evenson & Uhlmann, of Seattle, Wash., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, Imperial Candy Co., is a corporation, organized and doing business under and by virtue of the laws of the State of Washington with its office and principal place of business located at 800 Western Avenue, Seattle, Wash. Respondent is now, and for more than six months last past, has been, engaged in the sale and distribution of peanuts and other products to wholesale dealers, jobbers and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said peanuts and other products, when sold, to be transported from its place of business in the city of Seattle, Wash., to purchasers thereof at their respective points of location in various States of the United States other than Washington and in the District of Columbia. There is now and has been for more than six months last past a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

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

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers and retail dealers certain assortments of peanuts so packed and assembled as to involve the use of games of chance, gift enterprises or lottery schemes when sold and distributed to the consumers thereof. Typical of said assortments, are the ones hereinafter described, for the purpose of showing methods used by respondent, and are as follows: One of said assortments includes 36 one-half pound tins of peanuts and a punchboard. Appearing on the face of the punchboard is the following legend:

SALTED SOCIETE PEANUTS

Pay What You Punch

	1¢ to 5¢		1¢ to 5¢	
	All numbers ending in		1 pay 1¢	
[Picture	All numbers ending in		2 pay 2¢	[Picture
of tin of	All numbers ending in		3 pay 3¢	of tin of
Peanuts]	All numbers ending in		4 pay 4¢	Peanuts]
	All numbers ending in	5, 6, 7, 8, 9 pay 5¢		
	All numbers ending in	"0" ARE FREE		

Numbers 11-22-33-44-55-66-77 Each Receive

½ lb. Tin "Societe" Blanched Salted Peanuts

Numbers 111-122-133-144-155-166-177 Each Receive

½ lb. Tin "Societe" Blanched Salted Peanuts

Numbers 211-222-233-244-255-266-277 Each Receive

½ lb. Tin "Societe" Blanched Salted Peanuts

Numbers 311-322-333-344-355 Each Receive

½ lb. Tin "Societe" Blanched Salted Peanuts

LAST SALE IN EACH SECTION RECEIVES

½ lb. TIN OF "SOCIETE" BLANCHED SALTED PEANUTS.

Said peanuts are distributed to the purchasing public in accordance with the foregoing legend and in the following manner: The punchboard contains 400 punches, each concealing a number. Said numbers are not arranged in numerical sequence. Whether the purchaser pays 1, 2, 3, 4, or 5 cents or receives his chance free is determined by the last digit of the number of the slip punched by him from the punchboard, and whether he receives a can of peanuts or nothing for his money is determined by the number appearing on the slip punched by him from said board. Persons who qualify by receiving one of the designated numbers receive a tin of peanuts. Persons not obtaining one of the designated numbers receive nothing. The numbers are effectively concealed from purchasers and prospective purchasers until a punch selection has been made and a particular punch separated from the board. The peanuts are thus distributed to purchasers of punches from the board wholly by chance and the amount to be paid for each punch or purchase is determined wholly by chance.

Another assortment sold and distributed by respondent consists of 36 one-half pound packages of peanuts and a device known as a Whirling Derby. This device consists of a number of slips of paper, each containing a concealed number, the numbers running from 1 to 1000, but not consecutively. The slips are attached to a stand so that they may be easily removed by a purchaser or prospective purchaser, and the numbers concealed from such purchaser until one of the slips has been pulled from the stand. Attached to the stand is a placard containing the following legend:

SALTED SOCIETE PEANUTS

$\frac{1}{2}$ -lb. Packages Blanched Nuts

800 FREE NUMBERS

Numbers ENDING 3 and 9 Pay 10 CENTS—All Others FREE

Numbers 10, 20, 30, 40, 50, 60, 70, 80, 90, 100, 110, 120, 130, 140, 150, 160, 170, 180, 190, 200, 210, 220, 230, 240, 250, 260, 270, 280, 290, 300, 310, 320, 330, 340, Each Receives $\frac{1}{2}$ -lb. Package Societe Salted Peanuts
Last Sale Receives 2 Packages Societe Peanuts

The peanuts are distributed to the purchasing public by means of the device containing the sealed numbers in accordance with the above legend. The peanuts are thus distributed to purchasers of slips from the device wholly by chance, and the amount to be paid for each slip or purchase is also determined wholly by chance.

PAR. 3. Retail dealers who purchase respondent's nuts, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan, hereinabove set forth. The use by respondent of said sales plan or method in the sale of its nuts and the sales of said nuts 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 nuts to the purchasing public by the method or plan, hereinabove set forth, involves a game of chance or the sale of a

chance to procure nuts at prices much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute nuts in competition with respondent, as above alleged, do not use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method contrary to public policy. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its nuts and in the element of chance involved therein, and are thereby induced to buy and sell respondent's nuts in preference to nuts of said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent because of said game of chance has a tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from its said competitors who do not use the same or equivalent methods, and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent, as herein 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 11, 1943, issued and thereafter served its complaint in this proceeding upon respondent, Imperial Candy 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. After the issuance of said complaint and the filing of respondent's answer, the Commission by order entered herein granted respondent's request for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Imperial Candy Co., is a corporation, organized and doing business under and by virtue of the laws of the State of Washington with its office and principal place of business located at 800 Western Avenue, Seattle, Wash. Respondent is now, and for more than six months last past, has been, engaged in the sale and distribution of peanuts and other products to wholesale dealers, jobbers and retail dealers

located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said peanuts and other products, when sold, to be transported from its place of business in the city of Seattle, Wash., to purchasers thereof at their respective points of location in various States of the United States other than Washington and in the District of Columbia. There is now and has been for more than six months last past a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

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

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers and retail dealers certain assortments of peanuts so packed and assembled as to involve the use of games of chance, gift enterprises or lottery schemes when sold and distributed to the consumers thereof. Typical of said assortments are the ones hereinafter described for the purpose of showing methods used by respondent, and are as follows: One of said assortments includes 36 one-half pound tins of peanuts and a punchboard. Appearing on the face of the punchboard is the following legend:

SALTED SOCIETE PEANUTS

Pay What You Punch

1¢ to 5¢		1¢ to 5¢	
[Picture of tin of Peanuts]	All numbers ending in	1 pay 1¢	[Picture of tin of Peanuts]
	All numbers ending in	2 pay 2¢	
	All numbers ending in	3 pay 3¢	
	All numbers ending in	4 pay 4¢	
	All numbers ending in	5, 6, 7, 8, 9 pay 5¢	
	All numbers ending in	"0" ARE FREE	

Numbers 11-22-33-44-55-66-77 Each Receive
 ½-lb. Tin "Societe" Blanched Salted Peanuts
 Numbers 111-122-133-144-155-166-177 Each Receive
 ½-lb. Tin "Societe" Blanched Salted Peanuts
 Numbers 211-222-233-244-255-266-277 Each Receive
 ½-lb. Tin "Societe" Blanched Salted Peanuts
 Numbers 311-322-333-344-355 Each Receive
 ½-lb. Tin "Societe" Blanched Salted Peanuts
 LAST SALE IN EACH SECTION RECEIVES
 ½-lb. TIN OF "SOCIETE" BLANCHED SALTED
 PEANUTS.

Said peanuts are distributed to the purchasing public in accordance with the foregoing legend and in the following manner. The punchboard contains 400 punches, each concealing a number. Said numbers are not arranged in numerical sequence. Whether the purchaser pays 1, 2, 3, 4, or 5 cents or receives his chance free is determined by the last digit of the

number of the slip punched by him from the punchboard, and whether he receives a can of peanuts or nothing for his money is determined by the number appearing on the slip punched by him from said board. Persons who qualify by receiving one of the designated numbers receive a tin of peanuts. Persons not obtaining one of the designated numbers receive nothing. The numbers are effectively concealed from purchasers and prospective purchasers until a punch selection has been made and a particular punch separated from the board. The peanuts are thus distributed to purchasers of punches from the board wholly by chance and the amount to be paid for each punch or purchase is determined wholly by chance.

Another assortment sold and distributed by respondent consists of 36 one-half pound packages of peanuts and a device known as a Whirling Derby. This device consists of a number of slips of paper, each containing a concealed number, the numbers running from 1 to 1000, but not consecutively. The slips are attached to a stand so that they may be easily removed by a purchaser or prospective purchaser, and the numbers concealed from such purchaser until one of the slips has been pulled from the stand. Attached to the stand is a placard containing the following legend.

SALTED SOCIETE PEANUTS

½-lb. Packages Blanched Nuts

800 FREE NUMBERS

Numbers ENDING 3 and 9 Pay 10 CENTS — All Others FREE

Numbers 10, 20, 30, 40, 50, 60, 70, 80, 90, 100, 110, 120, 130, 140, 150, 160, 170, 180, 190, 200, 210, 220, 230, 240, 250, 260, 270, 280, 290, 300, 310, 320, 330, 340, Each Receives ½-lb. Package Societe Salted Peanuts.

Last Sale Receives 2 Packages Societe Peanuts.

The peanuts are distributed to the purchasing public by means of the device containing the sealed numbers in accordance with the above legend. The peanuts are thus distributed to purchasers of slips from the device wholly by chance, and the amount to be paid for each slip or purchase is also determined wholly by chance.

PAR. 3. Retail dealers who purchase respondent's nuts, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to, and places in the hands of others, the means of conducting lotteries in the sale of its products, in accordance with the sales plan, hereinabove set forth. The use by respondent of said sales plan or method in the sale of its nuts and the sales of said nuts 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 nuts to the purchasing public by the method or plan, hereinabove set forth, involves a game of chance or the sale of a chance to procure nuts at prices much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute nuts in competition with respondent, as above found, do not use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method contrary to public policy. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its nuts and in the element of chance

involved therein, and are thereby induced to buy and sell respondent's nuts in preference to nuts of said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent because of said game of chance has a tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from its said competitors who do not use the same or equivalent methods, and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Imperial Candy 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 peanuts 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 peanuts or any merchandise so packed and assembled that sales of such peanuts or other merchandise to the general public are to be made or may be made by means of a game of chance, gift enterprise, or lottery scheme.

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

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

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

IN THE MATTER OF
GRAPHIC ARTS CLUB OF CHARLOTTE, 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 4517. Complaint, June 6, 1941—Decision, Dec. 2, 1944

Where a membership corporation, the "active" or "regular" members of which included, with some three or four exceptions, all of the commercial printing concerns in Charlotte, N. C., and the "associate" members of which (with no voice in the conduct and operation of said "club") included those there engaged in engraving; various individuals who served as officers, directors, or executive secretary thereof; and its said active or regular members who were in substantial competition with one another and with other commercial printers in the sale and distribution of printing and printed materials in commerce except in so far as such competition had been restrained and suppressed as below described, and who in the conduct of their respective businesses made use of the loose-leaf "Franklin Printing Catalog" handbook, leased to subscribers on an annual rental basis, to assist printers in arriving at a price for a given job of printing, and in which, while the word "price" was not used, the figures quoted—"value," "economic value" and "correct value"—did in fact make allowance for a reasonable profit;

- (a) Took definite and cooperative action toward achieving, through the use of said catalog, uniformity in the prices to be charged by the members for printing, through resolutions agreeing on one of their number to act as an official "for giving out prices on ruling and binding because of the difficulty in figuring out these prices," making arrangement for bringing before the board "jobs requiring the meeting of out-of-town prices or unfriendly competitors' prices," and making use of their bulletins, prepared by the club's executive secretary and distributed among the members, for instructions for finding the price in particular cases, such as where the customer furnishes the stock;
- (b) Similarly agreed upon discounts to apply with respect to various situations, including work for the city and county and power company, and upon various terms and conditions of sale such as procedure in the event of standard forms held by the printer, the grading of all work by the ream, carton or four-carton price for the exact amount of stock to be used on the job and in accordance with the price as established by the local paper dealers, and limitations on the amount of advertising to be done by the printer in quoting for printing programs, and brokerage to dealer; and

Where said members, pursuant to and in furtherance of such agreements—

- (c) Filed their proposed bids and price quotations with the executive secretary of the club, by whom each one was checked against the catalog; and usually revised bids found not to be in conformity therewith under procedure by which all bids and quotations filed were available to all members; and
- (d) Frequently requested said executive secretary, who was more skilled in the use of said catalog than the members, to calculate prices on particular jobs, which were given to all members requesting the same;

With the result that through such means and filing, urged upon the members through the club bulletin and comment therein, general uniformity in prices was achieved; and

Where said club, its various officers and members, as above set forth,

(e) Thereby entered into and put into operation and effect an agreement, understanding, combination, and conspiracy to restrain, lessen, injure, and suppress competition in the sale and distribution of commercial printing and printed material in commerce among and between various states;

Tendency, capacity and effect of which understanding and conspiracy and of the acts and things done pursuant thereto as above set forth, had been and were unduly and unlawfully to restrain and suppress competition in the interstate sale and distribution of commercial printing and printed material, and unduly and unlawfully to restrict and restrain trade in such products in commerce as aforesaid:

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

As respects the contention of certain commercial printers, including, with three or four exceptions, all of those engaged in such business in the city herein concerned, that agreements entered into by them to establish and maintain uniform prices, discounts and other terms and conditions governing the sale of their products had to do only with sales made in said city and the county in which it is situated, and had no relation to out-of-state jobs: Where (1) documentary evidence, including the minutes of their membership corporation or "club," disclosed no distinction in the agreements between local and out-of-state sales and the entire record—aside from the oral testimony of some of them—indicated that the agreements were general in their scope and covered all work done by the members; (2) it was to the interest of the members to obtain the generally higher prices provided in the schedules of the printers' handbook made use of by them on out-of-state sales just as on local sales and they did in fact use said handbook on both classes of sales; (3) local non-member printers were told by certain members and officers that the purpose of the club was to regulate all sales both local and out-of-state; and (4) the executive secretary of the club advised the secretary of an out-of-state employing printers' association that if at any time confronted with the threat of competition from the city concerned they would be protected in every way upon being notified; the conclusion was reached that, while said commercial printers undoubtedly were concerned primarily with the regulation of local sales, which comprised by far the greater portion of sales, the agreements were not restricted thereto but were general in their scope and were so regarded by said sellers.

Before *Mr. John L. Hornor*, trial examiner.

Mr. Daniel J. Murphy for the Commission.

Cochran & McCleneghan, Roberson & Jones and *McDougle & Ervin*, of Charlotte, N. C., for respondents.

COMPLAINT

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

Complaint

39 F. T. C.

PARAGRAPH 1. Respondent, Graphic Arts Club of Charlotte, Inc., hereinafter referred to as the "respondent Club," is a membership corporation, organized and existing under the laws of the State of North Carolina and having its principal office and place of business located in Suite 310, Piedmont Building, Charlotte, N. C.

The respondent officers of the respondent Club are as follows:

President, Fred H. Plexico, % Standard Printing Co., 117 Garland Court, Charlotte, N. C.;

First vice president, Norman Foust, % Washburn Printing Co., Inc., 214 W. Morehead Street, Charlotte, N. C.;

Second vice president, Elliott Hall, % The News Publishing Co., Charlotte, N. C.;

Secretary, James Webb, % Rush Printing Co., 116 S. Church Street, Charlotte, N. C.;

Treasurer, William S. Wallace, % The R & W Printing Co., 124 W. Fourth Street, Charlotte, N. C.;

Executive secretary, Albert Stowe Blankenship, 310 Piedmont Building, Charlotte, N. C.

The control and management of the policies and actions of the respondent Club are vested in its board of directors which consists of the above-named respondent officers and four additional directors appointed by the president of the respondent Club for a term of two months each. The following respondents, in addition to the above-named respondent officers, have served as members of the board of directors at various times during the year 1940:

Alf Asten, % The Herald Press, Inc., 225 S. Church Street, Charlotte, N. C.

Banks R. Cates, % The Observer Printing House, Inc., Charlotte, N. C.

Steve Kokenas, % Mercury Press, Charlotte, N. C.

W. W. Kale, % Kale-Lawing, 229 S. Tryon Street, Charlotte, N. C.

Haines Lassiter, % Lassiter Press, Inc., Charlotte, N. C.

The membership of said respondent Club is composed of (1) "active" or "regular" members, to wit: individuals, firms or corporations, engaged in the business of commercial printing and having places of business located in Charlotte N. C., and (2) "associate" members, to wit: individuals, firms or corporations, engaged in business as engravers and having places of business located in Charlotte, N. C. The associate members do not have any voice in the conduct and operation of the respondent Club and are not named as respondents herein.

PAR. 2. Among the "active" or "regular" members of the said respondent Club are the following respondents:

Roy T. Barbee, an individual, doing business under the firm name and style of R. T. Barbee Co., located at 326 South Church Street, Charlotte, N. C.

F. William Cullingford, an individual, doing business under the firm name and style of Commercial Printing Service, located at 407 East Trade Street, Charlotte, N. C.

John Goines, A. C. Goines and Charles Goines, copartners, doing business under the firm name and style of Economy Printing Co., located at 824 N. Caldwell Street, Charlotte, N. C.

The Herald Press, Inc., a corporation, organized under the laws of the State of North Carolina having its principal place of business at 225 South Church Street, Charlotte, N. C.

Huneycutt Printing Co., Inc., a corporation, organized under the laws of the State of North Carolina having its principal place of business located at 122 South Church Street, Charlotte, N. C.

Ivey Printing Co., Inc., a corporation, organized under the laws of the State of North Carolina having its principal place of business located at 122 East Fourth Street, Charlotte, N. C.

Kale-Lawing, a corporation, organized under the laws of the State of North Carolina, having its principal place of business located at 227-9 South Tryon Street, Charlotte, N. C.

Lassiter Press, Inc., a corporation, organized under the laws of the State of North Carolina, having its principal place of business located in Charlotte, N. C.

The Observer Printing House, Inc., a corporation, organized under the laws of the State of North Carolina, having its principal place of business located at 204 West Second Street, Charlotte, N. C.

Pound and Moore Co., a corporation, organized under the laws of the State of North Carolina, having its principal place of business located at 213 South Tryon Street, Charlotte, N. C.

Fred H. Plexico, an individual, doing business under the firm name and style of R & W Printing Co., located at 124 West Fourth Street, Charlotte, N. C.

Samuel L. Rush, Sr., and James Webb, copartners, doing business under the firm name and style of Rush Printing Co., located at 116 S. Church Street, Charlotte, N. C.

Standard Printing Co., a corporation, organized under the laws of the State of North Carolina, having its principal place of business located at 117 Garland Court, Charlotte, N. C.

Washburn Printing Co. (or Washburn Printing Co., Inc.), a corporation, organized under the laws of the State of North Carolina, having its principal place of business located at 214 West Morehead Street, Charlotte, N. C.

The above-named respondents, hereinafter referred to as respondent members, all regular or active members of respondent Club, do not constitute the entire regular or active membership of said respondent Club, but are representative regular or active members thereof, and are named herein as respondents, individually, and as representatives of the entire active or regular membership of said respondent Club.

PAR. 3. Respondent, Stephen G. Roszell, an individual, formerly served as executive secretary of the respondent Club from March, 1940, to October, 1940, and is now located in Savannah, Ga.

PAR. 4. Respondent members are all, respectively, engaged in the business of commercial printing, and in the regular course and conduct of their respective businesses sell and distribute printed products, including stationery and forms, and other paper upon which printing and/or engraving have been effected, to the purchasers thereof, and in connection with said sales, ship and transport, or cause to be shipped and transported, said products in commerce, to the purchasers thereof, located in the various States of the United States other than the State of origin of said shipments.

All respondent members have maintained, and still maintain, a regular current of trade in said products in commerce between and among the various States of the United States.

PAR. 5. Respondent Club, and its respondent officers and directors, and respondent, Roszell, are not and were 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. 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 commercial printers in the sale of printed products including stationery and forms, and other paper, upon which printing and/or engraving has been effected, 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 understandings, agreements, combinations and conspiracies, hereinafter set forth.

PAR. 7. Respondents, namely the said Club, hereinabove described, its officers, its former executive secretary Roszell, its directors and its active or regular members, named and included as respondents herein, during and in the period of more than three 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 printed products including stationery and forms, and other paper, upon which printing and/or engraving has been effected, in trade and commerce between and among the several States of the United States.

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. Respondents have agreed to fix and maintain, and have fixed and maintained, uniform prices for the sale of printed products, including stationery and forms, sold and distributed by respondent members.

2. Respondents have agreed to fix and maintain, and have fixed and maintained, uniform discounts, and other terms and conditions, for the sale of printed products, including stationery and forms sold and distributed by respondent members.

3. Respondents have agreed to fix and maintain, and have fixed and maintained, uniform prices for the sale by respondent members, of paper upon which printing and/or engraving has been effected.

4. Respondents have agreed to fix and maintain, and have fixed and maintained, uniform discounts and other terms and conditions, for the sale by respondent members of paper upon which printing and/or engraving has been effected.

5. Respondents have used and are now using other methods and means designed to suppress and prevent competition and restrain and restrict the sale of printed products, including stationery and forms, and other paper, upon which printing and/or engraving has been effected, in said commerce.

PAR. 9. Each of the said respondents herein acted in concert and cooperation with one or more of the 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 the respondents in the sale of printed products, including stationery and forms, and other paper, upon which printing and/or engraving has been effected, 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; and 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 June 6, 1941, issued and subsequently served its complaint in this proceeding upon the parties respondent 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 by the respondents of their answers to the complaint, testimony and other evidence in support of and in opposition to 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, answers, 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, Graphic Arts Club of Charlotte, Inc., hereinafter frequently referred to as the "respondent Club" or as "the Club," is a membership corporation, organized and existing under the laws of the State of North Carolina, with its office and place of business located in Suite 310, Piedmont Building, Charlotte, N. C.

The following respondents are or have been officers of the Club:

Fred H. Plexico, president, % Standard Printing Co., 117 Garland Court, Charlotte, N. C.

Norman Foust, First vice president, % Washburn Printing Co., Inc., 214 West Morehead Street, Charlotte, N. C.

Elliott Hall, Second vice president, % The News Publishing Co., Charlotte, N. C.

James Webb, secretary, % Rush Printing Co., 116 South Church Street, Charlotte, N. C.

William S. Wallace, treasurer, % The R & W Printing Co., 124 West Fourth Street, Charlotte, N. C.

Albert Stowe Blankenship, executive secretary, 310 Piedmont Building, Charlotte, N. C.

Respondent, Stephen G. Roszell, who preceded respondent, Blankenship, as executive secretary of the Club, is now deceased.

The control and management of the policies and activities of the Club were formerly vested in its board of directors, which consisted of the individual respondents named above and four additional directors appointed by the president of the Club for a term of two months each. The following respondents, in addition to the individuals named above, have at various times served as members of the board of directors:

Alf Asten, % The Herald Press, Inc., 225 South Church Street, Charlotte, N. C.

Banks R. Cates, now deceased.

Steve Kokenas, % Mercury Press, Charlotte, N. C.

W. W. Kale, % Kale-Lawing, 229 South Tryon Street, Charlotte, N. C.

Haines Lassiter, % Lassiter Press, Inc., Charlotte, N. C.

At the present time the Club does not have a board of directors.

The membership of the club is composed of (1) "active" or "regular" members, to wit: individuals, firms, and corporations engaged in the business of commercial printing and having places of business located in Charlotte, N. C.; and (2) "associate" members, to wit: individuals, firms, and corporations engaged in the business of engraving and having places of business located in Charlotte. The associate members have no voice in the conduct and operation of the Club, and are not joined as respondents in this proceeding.

PAR. 2. The following respondents, hereinafter frequently referred to as "respondent members" or as "members," are or have been active or regular members of the Club:

Roy T. Barbee, an individual, trading as R. T. Barbee Co., with his place of business located at 326 South Church Street, Charlotte, N. C.

F. William Cullingford, an individual, trading as Commercial Printing Service, with his place of business located at 407 East Trade Street, Charlotte, N. C.

John Goines, A. C. Goines, and Charles Goines, copartners, doing business under the firm name Economy Printing Co., with their place of business located at 824 North Caldwell Street, Charlotte, N. C.

The Herald Press, Inc., a corporation, organized under the laws of the State of North Carolina, with its place of business located at 225 South Church Street, Charlotte, N. C.

Huneycutt Printing Co., Inc., a corporation, organized under the laws of the State of North Carolina, with its place of business located at 122 South Church Street, Charlotte, N. C.

Ivey Printing Co., Inc., formerly a corporation, organized under the laws of the State of North Carolina, with its place of business located at 122 East Fourth Street, Charlotte, N. C. This corporation was dissolved on April 3, 1941.

Kale-Lawing, a corporation, organized under the laws of the State of North Carolina, with its place of business located at 227-229 South Tryon Street, Charlotte, N. C.

Lassiter Press, Inc., a corporation, organized under the laws of the State of North Carolina, with its place of business located in Charlotte, N. C.

The Observer Printing House, Inc., a corporation, organized under the laws of the State of North Carolina, with its place of business located at 204 West Second Street, Charlotte, N. C.

Pound and Moore Co., a corporation, organized under the laws of the State of North Carolina, with its place of business located at 213 South Tryon Street, Charlotte, N. C.

Fred H. Plexico, an individual, trading as R & W Printing Co., with his place of business located at 124 West Fourth Street, Charlotte, N. C.

James Webb, an individual, trading as Rush Printing Co., with his place of business located at 116 South Church Street, Charlotte, N. C. Respondent, Samuel L. Rush, Sr., formerly, a copartner, with respondent Webb, in this business is now deceased.

Standard Printing Co., a corporation, organized under the laws of the State of North Carolina, with its place of business located at 117 Garland Court, Charlotte, N. C.

Washburn Printing Co., a corporation, organized under the laws of the State of North Carolina, with its place of business located at 214 West Morehead Street, Charlotte, N. C.

The respondents named in this paragraph do not constitute the entire active or regular membership of the Club but are representative of such membership and are joined in this proceeding both individually and as representative of the entire active or regular membership of the Club. With some three or four exceptions, all of the commercial printing concerns in Charlotte are active members of the Club.

PAR. 3. In the course and conduct of their respective businesses the respondent members sell and distribute their printing and printed material to purchasers thereof located in various States of the United States other than North Carolina, and cause such products, when sold, to be transported from their respective places of business in North Carolina across State lines to such purchasers.

PAR. 4. The respondent members are in substantial competition with one another and with other commercial printers in the sale and distribution of printing and printed material in commerce among and between various States of the United States, except insofar as such competition has been restrained, lessened, injured, and suppressed as a result of the acts and practices hereinafter described.

PAR. 5. The respondent Club was organized in the latter part of 1939, and was incorporated in March, 1940. The ostensible purposes of the Club, as set forth in its constitution, were as follows:

Section 1. To effect a thorough noncommercial, non-profit-sharing organization of the employing printers and those engaged in the allied industries in the city of Charlotte, North Carolina, into a trade association in order that the printing and allied industries thereof may be improved in every proper and lawful manner.

Section 2. To promote the welfare of the printing industry and allied trades.

Section 3. To improve the conditions of the printers individually and collectively, and their service to the public.

Section 4. To encourage fraternal spirit among its members and resist encroachments upon their common rights.

Section 5. To secure uniform and united action in their common interests.

Section 6. To develop better methods of management and more highly trained personnel, and more ethical relations among themselves and with others, through collective and cooperative efforts (Comm. Ex. 2, pp. 3-4).¹

PAR. 6. There is in rather general use among the commercial printers in the United States a handbook known as the "Franklin Printing Catalog," which is published by a publishing house in Salt Lake City, Utah. The book is in loose-leaf form and is kept down to date by the publisher through the issuance from time to time of new pages and sections. It is not sold outright by the publisher but is leased to subscribers on an annual rental basis.

The purpose of the handbook is to assist printers in arriving at the price at which a given job of printing can be produced and sold profitably. One familiar with the book and reasonably skilled in its use can ascertain from it the price at which almost any printing job should be quoted. For example, one section of the book is entitled "Envelopes," and a printer desiring to bid or quote a price on a given quantity of envelopes of a designated grade can by consulting that section of the Franklin Catalog ascertain the price at which the job should be quoted. Other sections of the catalog deal with numerous other items, such as "Unruled Stationery," "Society and Wedding Stationery," "Tickets," "Blotters," "Legal Blanks," "Blank Books," etc.

While the catalog does not use the word "price" to refer to the figures quoted (such terms as "value," "economic value," and "correct value" being used instead), it appears that the figures do in fact make allowance for what is considered a reasonable profit on each job. On page 7 of Section F of the catalog (Comm. Ex. 29) appears the following:

Profits—No specific amount of profit or margin is indicated (nor will same be supplied upon request) for work done at the values in the Schedules. Costs vary in the same plant from month to month. One merchant may make a net profit at an established price on an article, while others would lose money. The same is true of printing. Conducted efficiently, a fair net (not gross) profit ought to be made by any plant at the values indicated in the Franklin Printing Catalog, but such a profit is not guaranteed. Under no circumstances will a statement be made as to the amount of profit. That depends upon the plant, regardless of size or location.

All of the respondent members use the catalog, and while their testimony generally was to the effect that the catalog was used by them merely as a guide in figuring "costs," the record taken as a whole establishes that they regarded the schedules in the catalog as indicating the actual prices which should be charged for printing.

¹Exhibits not published.

PAR. 7. Shortly after the Club was organized, the respondents took definite and cooperative action toward achieving, through the use of the Franklin Catalog, uniformity in the prices to be charged by the members for printing. The minutes of a meeting held on November 15, 1939, contain the following recitals:

Mr. Cates moves that we organize permanently on a basis of Franklin and abide by Franklin, which is a national guide and recognized by the majority of printers in the United States of America. This motion passed unanimously.

* * *

Mr. Wallace moves that we quote Franklin, less 20%, as a *minimum*, and all past transgressions are forgotten and forgiven. Mr. Banks Cates seconded this motion, and it was carried unanimously (Comm. Ex. 26-E).

In the minutes of a meeting held on November 29, 1939, the following appears:

BINDING AND RULING: Mr. Madagan of the Carolina Ruling and Binding Co. has agreed to act as official for giving out prices on ruling and binding because of the difficulty in figuring out these prices. The group agreed that this was satisfactory to them (Comm. Ex. 26-G).

The minutes of a meeting held on February 14, 1940, contain the following:

Motion was made by Mr. Hall that jobs requiring the meeting of out-of-town prices or unfriendly competitor's prices be brought before the board and under no circumstance could a member be permitted to meet prices in town of an unfriendly competitor. Motion seconded by Bill Wallace and carried (Comm. Ex. 26-N).

The minutes of a meeting held on March 18, 1940, contain the following:

Motion was made by Mr. John Fletcher that we go on straight Franklin beginning March 20, 1940.

Amendment was made to this by Mr. Faust that it take effective (sic) at the opening of business March 19 since it had been arranged and everyone was notified and agreed to it that it be so.

Amendment was accepted by Mr. Fletcher and both the motion and amendment were seconded by Mr. Asten and passed unanimously (Comm. Ex. 26-R).

From time to time, bulletins are prepared by the executive secretary of the Club and distributed among the members. In one of these bulletins, dated April 1, 1940, the following appeared:

To find the price of work done where the customer furnished the stock, first find the cost of the stock supplied and then deduct it from the price of the job as shown in your Franklin Catalog. For instance: Two thousand class A letterheads printed on 20 pound Hammermill is shown to be \$11.85. From this amount deduct the cost of one ream of the paper—20 pounds at 15 cents—\$3.00, and the correct price for printing will be found to be \$8.85. This price includes the profit that the Catalog provides on all work for the printer and to which you are duly entitled (Comm. Ex. 6).

Not only does this statement furnish further evidence of the respondents' agreement to make their prices and quotations uniform, but it also

shows that the Club members regarded the figures given in the Franklin Catalog as indicating the actual *prices* to be charged for printing and not merely the cost of a given job to the printer.

Discounts as well as prices were agreed upon. In the minutes of the March 18, 1940, meeting, the following appears:

Motion was made by Mr. Hall that will apply to *advertising agents* only:

That we adopt a standard discount of 15% from Franklin when the form is properly classified.

Mr. Wallace seconded and it was passed unanimously (Comm. Ex. 26-R).

In the minutes of a meeting held on July 17, 1940, the following appears:

Acting upon the report of the Executive Secretary as to his findings regarding all work done for the city, county, and the Duke Power Company, it was decided to base all quotations for these accounts at 20% off the Franklin List dating Monday, July 22, 1940 as a starting date (Comm. Ex. 26-Z-39).

The bulletin dated April 1, 1940, contained, under the heading "New Rulings," the following:

At the regular meeting held on Monday, April 1st, the following recommendations from the Executive Committee were read and acted upon as follows:

* * *

That on all quotations made a fixed rate of discount for payments shall be offered as 2 per cent ten days, thirty days net and that in no case shall a greater discount be offered as a sales' inducement. Carried (Comm. Ex. 6).

In addition to their agreements respecting prices and discounts, the respondents entered into other agreements relating to various terms and conditions of sale. The bulletin of April 1, 1940, contained under the heading "Some Club Rulings," the following:

Your attention is called to the following rules as formerly made and recorded in the minutes of the Club:

All jobs shall be quoted on according to their classification in the Franklin Catalog and that no reduction shall be made because of standing forms held by the printer. If it's a class B or C form originally it remains the same on all subsequent orders.

All work shall be graded by the ream, carton or four-carton price for the exact amount of stock to be used on the job and in accordance with the price as established by the local paper dealers. No one is permitted to base a quotation at a lower grade because placing mill-orders or volume orders and stocking paper at a lower cost.

Sulphite papers at the present market price must be graded as 10 cents, which covers the grade from 8 cents to 10½ cents. See section 37, page 5, in your Catalog (Comm. Ex. 6).

Under the heading "New Rulings," the bulletin contained the following:

* * * on quotations for printing programs the printer shall not agree to advertise therein for a greater amount than \$5.00 on any job selling for less than \$100.00 and not more than \$3.00 additional on each succeeding \$100.00. Carried (Comm. Ex. 6).

The minutes of the November 29, 1939, meeting contain the following:

It was discussed and agreed upon that standing forms were to be treated as new jobs and no reduction was to be made on the price (Comm. Ex. 26-G).

The minutes of a meeting held on January 2, 1940, contain the following:

Motion was made by A. C. Goines that we deal with brokers, provided that they sell on the same basis that we do. Seconded by Norman Faust and passed unanimously (Comm. Ex. 26-I).

PAR. 8. Pursuant to and in furtherance of these agreements, the respondent members filed with the executive secretary of the Club their proposed bids and price quotations. The executive secretary checked each bid or quotation against the Franklin Catalog, and if it was found not to be in conformity therewith, the member was so informed, and the bid or quotation was usually revised by the member so as to make it conform with the catalog. All bids and quotations filed were available to all members of the Club. The Executive Secretary, being more skilled in the use of the Franklin Catalog than the members, was frequently requested by them to calculate prices on particular jobs, and the figure arrived at by him was given to all members requesting such information. Through these means, general uniformity in prices was achieved.

Under the heading "File Your Quotations," the Club bulletin for November, 1940, contained the following:

There has been recently a surprising absence of unduly low price quoting. But in those few cases where someone has been wrong the error could almost always have been avoided if the offending party had filed his quotation with the secretary.

No one is perfect. You may make an error in figuring the simplest job. If you file your price any error will most likely be caught in time to correct it. If you do not file and your price is too high you are the loser. If your price is too low you are not only hurting yourself but you are being unfair to your competitors who have quoted correctly. So, if for no other reason, it would pay to file your prices to protect yourself against errors (Comm. Ex. 17).

PAR. 9. The respondents do not seriously deny that they entered into agreements to establish and maintain uniform prices, discounts, and other terms and conditions governing the sale of their products, but they insist that such agreements had to do only with sales made in the city of Charlotte and the county in which Charlotte is situated, that the agreements had no relation to out-of-State jobs. The documentary evidence in the record, however, including the minutes of the Club meetings and the bulletins issued by the Club, discloses that no distinction was made in the agreements between local and out-of-State sales. Aside from the oral testimony of some of the respondents, the entire record indicates that the agreements were general in their scope and covered all work done by the members.

The schedules in the Franklin Catalog being generally higher than the prices which the members had theretofore been getting for their work, it was to the interest of the members to obtain catalog prices on out-of-State sales just as on local sales, and the evidence shows that they did in fact use the catalog on both classes of sales. Moreover, the testimony of certain printers in Charlotte who are not members of the Club is to the effect that when they were solicited to join the Club they were told by certain members and officers that the purpose of the Club was to regulate all sales, both local and out-of-State.

Also of significance, as indicating that respondents did not regard their activities as being of an entirely local nature, is the following statement made by the executive secretary of the Club in a letter addressed to the Secretary of the Augusta Employing Printers' Association in Augusta, Ga.:

* * * if you are at any time confronted with the threat of Charlotte competition I ask that you rest assure (sic) that your notice, sent to this office, will be protected in every way (Comm. Ex. 39).

While the respondents undoubtedly were concerned primarily with the regulation of local sales, this being due to the fact that by far the greater portion of their sales were of that character, the Commission is of the opinion that the agreements were not restricted to such sales but were general in their scope and were so regarded by the respondents.

PAR. 10. The Commission therefore finds that the respondents have entered into and put into operation and effect an agreement, understanding, combination, and conspiracy to restrain, lessen, injure, and suppress competition in the sale and distribution of commercial printing and printed material in commerce among and between various States of the United States.

PAR. 11. The tendency, capacity, and effect of the agreement, understanding, combination, and conspiracy entered into among the respondents and of the acts and things done pursuant thereto and in furtherance thereof, as set forth herein, have been and are unduly and unlawfully to restrain, lessen, injure, and suppress competition among the respondents in the sale and distribution of commercial printing and printed material in commerce among and between various States of the United States, and unduly and unlawfully to restrict and restrain trade in such products in commerce as aforesaid.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, 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 briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Graphic Arts Club of Charlotte, Inc., a membership corporation, and its present and future members; and respondents, Fred H. Plexico, Norman Foust, Elliott Hall, James Webb, William S. Wallace, Albert Stowe Blankenship, Alf Asten, Steve Kokenas, W. W. Kale, and Haines Lassiter, individually, and as officers and directors of said corporation; and respondents, Roy T. Barbee, individually, and trading as R. T. Barbee Co.; F. William Cullingford, individually, and trading as Commercial Printing Service; John Goines, A. C. Goines, and Charles Goines, individually, and as copartners, trading as Economy Printing Co.; The Herald Press, Inc., a corporation; Huneycutt Printing Co., Inc., a corporation; Kale-Lawing, a corporation; Lassiter Press, Inc., a corporation; The Observer Printing House, Inc., a corporation; Pound and Moore Co., a corporation; Fred H. Plexico, individually, and trading as R & W Printing Co.; James Webb, individually, and trading as Rush Printing Co.; Standard Printing Co., a corporation; and Washburn Printing Co., a corporation; and respondents' respective officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of commercial printing and printed material 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 to this proceeding, to do or perform any of the following acts or things:

1. Fixing or establishing uniform prices, or adhering to or maintaining prices so fixed or established.
2. Quoting prices or making bids in accordance with or predicated upon figures or schedules given in the publication known as the "Franklin Printing Catalog," or any similar publication.
3. Filing with respondent Club or any officer thereof, or with any other agency, proposed price quotations or bids, or otherwise exchanging information as to prices to be quoted or bids to be made.
4. Fixing or establishing uniform discounts or other terms or conditions of sale, or adhering to or maintaining discounts, terms or conditions of sale so fixed or established.
5. Engaging in any act or practice substantially similar to those set out in this order with the purpose or effect of establishing or maintaining uniform prices, discounts, terms or conditions of sale.

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 Ivey Printing Co., Inc., Banks R. Cates, Samuel L. Rush, Sr., and Stephen G. Roszell.

IN THE MATTER OF
FRAERING BROKERAGE COMPANY, INC.

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

Docket 4823. Complaint, Aug. 26, 1942—Decision, Dec. 5, 1944

Where a corporation engaged principally as a jobber in buying and reselling in its own name and for its own account various canned foods, dried fruit, canned fish and other miscellaneous merchandise, and, to a minor extent, in acting as a broker of such products—

Received and accepted, in connection with the interstate purchase of said various products, in its own behalf and for its own account for resale, brokerage fees or allowances and discounts in lieu thereof in substantial amounts from numerous sellers, in many ways, including (1) purchases at prices lower than those at which commodities of like grade and quality were sold by the sellers to other purchasers, (2) the obtaining of the commodities at prices lower than those at which they were sold to other purchasers, by an amount which reflected all, or a part, of the brokerage fees currently being paid by such sellers to brokers for the sale of such commodities in behalf of such sellers, (3) the making of deductions in lieu of brokerage from the invoices of certain sellers, on payment of such invoices, and (4) the receiving from certain sellers of monthly rebate checks representing their customary brokerage fees:

Held, That said receipt and acceptance by it of brokerage fees, or allowances and discounts in lieu thereof, under the circumstances above set forth, was in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

Mr. Edward S. Ragsdale for the Commission.

Mr. Robert A. Ainsworth, Jr., of New Orleans, La., and *Mr. William P. Smith*, of Washington, D. C., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (c) of Section 2 of the Clayton Act (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, Fraering Brokerage Co., Inc., is a corporation, organized and existing under the laws of the State of Louisiana, with its principal office and place of business located at 423 South Front Street, New Orleans, La. Respondent was organized, as stated in its corporate charter, for the purpose of buying and selling merchandise for its own account, as well as to buy and sell merchandise on a brokerage or commission basis for the accounts of others. Respondent operates two branch

offices and warehouses, one of which is located at Alexandria, La., and the other at Jackson, Miss.

PAR. 2. Respondent is now, and for many years last past, has been engaged in business, principally as a jobber, buying in its own name for resale various canned foods, dried fruit, canned fish and other miscellaneous merchandise, and reselling such products. To a minor extent respondent acts as a broker of canned foods, dried fruits, canned fish and other miscellaneous merchandise.

PAR. 3. Respondent in the course and conduct of its said business as a jobber purchases a substantial portion of its requirements of canned foods, dried fruits, canned fish and other miscellaneous merchandise from sellers located in States other than the States in which respondent is located. Pursuant to respondent's purchase orders and instructions such commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent or to respondent's customers.

PAR. 4. Respondent since June 19, 1936, in connection with the purchase of its requirements of canned foods, dried fruits, canned fish and other miscellaneous merchandise in interstate commerce in its own behalf and for its own account for resale from numerous sellers located in States other than the State where respondent is located, has been and is now receiving and accepting from numerous sellers of said canned foods, dried fruits, canned fish and other miscellaneous merchandise, brokerage fees or allowances and discounts, in lieu of brokerage in substantial amounts.

The respondent receives such brokerage fees, discounts and allowances in lieu thereof in many ways, including the following four specified ways, and others:

1. By purchasing canned foods, dried fruits, canned fish and other miscellaneous merchandise from sellers at prices lower than the same sellers sell such commodities and commodities of like grade and quality to other purchasers.

2. By various methods obtaining such commodities at prices that are lower than the prices at which such commodities and commodities of like grade and quality are sold by such sellers to other purchasers, by an amount which reflects all, or a part, of the brokerage fees currently being paid by such sellers to brokers for the selling of such commodities in behalf of such sellers.

3. By making deductions in lieu of brokerage from the invoices of certain sellers when paying such invoices.

4. By receiving from certain sellers monthly rebate checks representing the customary brokerage fees of such sellers.

PAR. 5. A representative but incomplete list of sellers who since June 19, 1936, have sold and delivered canned foods, dried fruits, canned fish and other miscellaneous merchandise to respondent for its own account, and who have allowed, granted, and paid, directly or indirectly, as hereinabove set out, or otherwise, brokerage fees or allowances or discounts in lieu thereof on respondent's purchases for its own account from said sellers is as follows:

C. C. Lang & Son, Inc., Baltimore, Md.
 Richmond-Chase Co., San Jose, Calif.
 The Hills Bros. Co. New York City.

Taormina Corporation, Donna, Tex.
Bonner Packing Co., Fresno, Calif.
C. H. Musselman Co., Biglerville, Pa.
Dillon Candy Co., Inc., Jacksonville, Fla.

PAR. 6. The receipt and acceptance by the respondent of brokerage fees or allowances and discounts in lieu of brokerage by respondent as set forth above is in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., Sec. 13), the Federal Trade Commission on August 26, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Fraering Brokerage Company, Inc., a corporation, charging it with the violation of subsection (c) of Section 2 of said Clayton Act, as amended. After the filing by respondent of its answer to the complaint, the Commission by order entered herein granted respondent's request for permission to withdraw such original answer and to substitute therefor an amended answer admitting all of the material allegations of fact set forth in the complaint but denying that the acts of respondent set forth in the complaint constitute a violation of the statute in question. The amended answer also waived all intervening procedure, including hearings as to the facts, the filing of briefs, and oral argument before the Commission. Subsequently, the proceeding regularly came on for final hearing before the Commission upon the complaint and amended answer, and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Fraering Brokerage Co., Inc., is a corporation, organized and existing under the laws of the State of Louisiana, with its principal office and place of business located at 423 South Front Street, New Orleans, La. Respondent was organized, as stated in its corporate charter, for the purpose of buying and selling merchandise for its own account, as well as to buy and sell merchandise on a brokerage or commission basis for the accounts of others. Respondent operates two branch offices and warehouses, one of which is located at Alexandria, La., and the other at Jackson, Miss.

PAR. 2. Respondent is now and for many years last past has been engaged in business principally as a jobber, buying in its own name and for its own account various canned foods, dried fruit, canned fish and other miscellaneous merchandise, and reselling such products. To a minor ex-

tent respondent acts as a broker of canned foods, dried fruits, canned fish and other miscellaneous merchandise.

PAR. 3. Respondent in the course and conduct of its business as a jobber purchases a substantial portion of its requirements of canned foods, dried fruits, canned fish and other miscellaneous merchandise from sellers located in States of the United States other than those in which respondent is located. Pursuant to respondent's purchase orders and instructions, such commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent or to respondent's customers.

PAR. 4. Respondent since June 19, 1936, in connection with the purchase, in interstate commerce, of canned foods, dried fruits, canned fish and other miscellaneous merchandise in its own behalf and for its own account, for resale, has been and is now receiving and accepting brokerage fees, or allowances and discounts in lieu thereof, in substantial amounts from numerous sellers of such commodities.

The respondent receives such brokerage fees, or discounts and allowances in lieu thereof, in many ways, including the following:

1. By purchasing canned foods, dried fruits, canned fish and other miscellaneous merchandise from sellers at prices lower than those at which such commodities and commodities of like grade and quality are sold by such sellers to other purchasers.

2. By various methods obtaining such commodities at prices lower than those at which such commodities and commodities of like grade and quality are sold by such sellers to other purchasers, by an amount which reflects all, or a part, of the brokerage fees currently being paid by such sellers to brokers for the sale of such commodities in behalf of such sellers.

3. By making deductions in lieu of brokerage from the invoices of certain sellers when paying such invoices.

4. By receiving from certain sellers monthly rebate checks representing the customary brokerage fees of such sellers.

CONCLUSION

The receipt and acceptance by the respondent of brokerage fees, or allowances and discounts in lieu thereof, as set forth above, is in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the amended answer of respondent admitting all of the material allegations of fact in the complaint and waiving all intervening procedure, including hearings as to the facts, the filing of briefs, and oral argument before the Commission; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of subsection (c) of Section 2 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved

October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., Sec. 13).

It is ordered, That the respondent, Fraering Brokerage Co., Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of food products or other merchandise in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting from any seller, directly or indirectly, anything of value as brokerage, or any commission, compensation, allowance, or discount in lieu thereof, upon purchases made for respondent's own account.

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

WM. ROY GLOVER AND RAY M. WILSON TRADING
AS GLOVER & WILSON

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

Docket 4835. Complaint, Sept. 16, 1942—Decision, Dec. 5, 1944

Where two individuals engaged in Arkansas under their trade name as broker in the sale of food products, particularly canned fruits and vegetables, and also in buying and selling such commodities for their own account—

Received and accepted from numerous sellers in other states, brokerage-fees, or allowances or discounts in lieu thereof, on many purchases of food products for their own account, through such typical practices as receiving from a California seller of sardines a brokerage fee amounting to approximately 3% off the invoice price through deduction of said amount therefrom on making payment, receiving from a California seller of dried fruit a brokerage fee of about 5%, and brokerage of about 3½% upon purchases of canned fish from a Washington seller, and from a California seller of canned fish a 5% allowance in lieu of brokerage, which they deducted from the invoice price on making payment:

Held, That such acts and practices, under the circumstances set forth, were in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

Mr. Edward S. Ragsdale for the Commission.

Mr. E. L. Haney, Jr., of Little Rock, Ark., and *Mr. William P. Smith*, of Washington, D. C., for respondents.

COMPLAINT

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

PARAGRAPH 1. Respondents, Roy Glover and Ray Wilson, are individuals, trading and doing business as Glover & Wilson with their principal office and place of business located at No. 1 Commercial Warehouse Building, Little Rock, Ark.

PAR. 2. Respondents are now engaged in the business of acting as a broker in the sale of food products, particularly canned fruits and vegetables.

Respondents have also been engaged in the business of buying and selling, for their own account, food products, particularly canned fruits and vegetables. The purchases which respondents have been making for their own account have been made ordinarily in the name of Glover & Wilson.

Orders have been placed by the respondents with various manufacturers, packers and sellers for various food products and the respondents cause many of the products which they purchase for their own account to be shipped and transported to them across State lines from the various places of business of those sellers from whom respondents purchase said products, many of such sellers being located and doing business in States other than the State of Arkansas.

PAR. 3. In the course and conduct of their business of buying food products for their own account in commerce, as aforesaid, the respondents have been and are now receiving and accepting from numerous sellers, brokerage fees or allowances or discounts in lieu thereof on many of said purchases for their own account.

As illustrative of the practices pursued by the respondents in receiving and accepting allowances and discounts in lieu of brokerage upon their own purchases of food stuffs are the following:

1. The respondents purchase sardines for their own account from the Val Vita Food Products Co. of Fullerton, Calif., and receive from such company a brokerage fee amounting to approximately 3% off of the invoice price, which brokerage fee is deducted from the invoice when the respondents make payment to this seller for such product.

2. The respondents purchase dried fruit for their own account from the West Coast Growers and Packers of Fresno, Calif., and receive from such seller a brokerage fee of approximately 5% which is paid by such seller to the respondents upon the purchases made by the respondents for their own account.

3. The respondents purchase canned fish from the Oceanic Sales Co. of Seattle, Wash., for their own account and receive from such seller a brokerage fee of approximately 3½% upon such purchase made from such seller by the respondents. The fee is paid directly by the seller to the respondents as brokerage upon the purchases of the respondents for their own account.

4. The respondents purchase canned fish for their own account from the Superior Fisheries, Inc., of Los Angeles, Calif., and receive from such company a 5% allowance in lieu of brokerage, which allowance is deducted by the respondents from the invoice price when payment is made by the respondents to this seller for such products.

PAR. 4. The aforesaid acts of respondents constitute a violation of subsection (c) of Section 2 of the Clayton Act 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 entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., Sec. 13), the Federal Trade Commission on September 16, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Wm. Roy Glover and Ray M. Wilson, trading as Glover & Wilson, charging them with the violation of subsection (c) of Section 2 of

said Clayton Act, as amended. After the filing by respondents of their answer to the complaint, the Commission by order entered herein granted respondents' request for permission to withdraw such original answer and to substitute therefore an amended answer admitting all of the material allegations of fact set forth in the complaint but denying that the acts of respondents set forth in the complaint constitute a violation of the statute in question. The amended answer also waived all intervening procedure, including hearings as to the facts, the filing of briefs, and oral argument before the Commission. Subsequently, the proceeding regularly came on for final hearing before the Commission upon the complaint and amended answer, and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Wm. Roy Glover (referred to in the complaint as Roy Glover) and Ray M. Wilson (referred to in the complaint as Ray Wilson), are individuals, trading and doing business as Glover & Wilson, with their principal office and place of business located at No. 1 Commercial Warehouse Building, Little Rock, Ark.

Respondents are engaged in the business of acting as a broker in the sale of food products, particularly canned fruits and vegetables. Respondents are also engaged in the business of buying and selling such commodities for their own account, these purchases ordinarily being made in the name of Glover & Wilson.

PAR. 2. Respondents cause many of the products which they purchase for their own account to be shipped and transported to them across State lines from the various places of business of sellers located and doing business in States of the United States other than the State of Arkansas.

PAR. 3. In the course and conduct of their business of buying food products for their own account in interstate commerce, as aforesaid, the respondents have been and are now receiving and accepting from numerous sellers brokerage fees, or allowances or discounts in lieu thereof, on many of such purchases.

Illustrative of the practices pursued by the respondents in receiving and accepting allowances and discounts in lieu of brokerage upon their own purchases of foodstuffs are the following:

1. The respondents purchase sardines for their own account from a seller in Fullerton, Calif., and receive from such seller a brokerage fee amounting to approximately 3% off of the invoice price, which brokerage fee is deducted from the invoice when payment is made by the respondents.

2. The respondents purchase dried fruit for their own account from a seller in Fresno, Calif., and receive from such seller a brokerage fee of approximately 5%.

3. The respondents purchase canned fish from a seller in Seattle, Wash., for their own account, and receive from such seller a brokerage fee of approximately 3½% upon such purchases, such fee being paid directly by the seller to the respondents.

4. The respondents purchase canned fish for their own account from a seller in Los Angeles, Calif., and receive from such seller a 5% allowance in lieu of brokerage, which allowance is deducted by the respondents from the invoice price when payment is made by them.

CONCLUSION

The acts and practices of respondents, as set forth above, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the amended answer of the respondents admitting all of the material allegations of fact in the complaint and waiving all intervening procedure, including hearings as to the facts, the filing of briefs, and oral argument before the Commission; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of subsection (c) of Section 2 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., Sec. 13).

It is ordered, That the respondents, Wm. Roy Glover and Ray M. Wilson, individually, and trading as Glover & Wilson, or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of food products or other merchandise in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting from any seller, directly or indirectly, anything of value as brokerage, or any commission, compensation, allowance, or discount in lieu thereof, upon purchases made for respondents' own account.

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

W. M. MEADOR & COMPANY, INC.

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

Docket 4928. Complaint, Mar. 12, 1943—Decision, Dec. 5, 1944

Where a corporation engaged as a jobber in buying various food products and other merchandise and reselling the same, purchasing a substantial portion of its requirements from sellers in other states—

Received and accepted, in connection with such purchases in interstate commerce, in its own behalf and for its own account for resale, brokerage fees, or allowances and discounts in lieu thereof, in substantial amounts, from numerous sellers of such merchandise:

Held, That such receipt and acceptance by it of brokerage fees, or allowances and discounts in lieu thereof, under the circumstances above set forth, was in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

Mr. Edward S. Ragsdale for the Commission.

Mr. William P. Smith, of Washington, D. C., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (c) of Section 2 of the Clayton Act (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, W. M. Meador & Co., Inc., is a corporation, organized and existing under the laws of the State of Alabama, with its principal office and place of business located at 104 North Commerce Street, Mobile, Ala. The respondent is engaged in the purchase, sale and distribution of food products, canned goods and miscellaneous merchandise.

PAR. 2. Respondent is now and for many years last past has been engaged in business as a jobber, buying in its own name, for its own account, for resale various food products, canned goods and miscellaneous merchandise and reselling such products.

PAR. 3. Respondent, in the course and conduct of its said business as a jobber, purchases a substantial portion of its requirements of food products, canned goods, and miscellaneous merchandise from sellers located in States other than the States in which the respondent is located. Pursuant to said purchases and instructions such commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent or to respondent's customers.

PAR. 4. Respondent, since June 19, 1936, in connection with the purchase of its requirements of food products, canned goods, and miscellaneous merchandise, for resale from numerous sellers located in States other than the States where the respondent is located, has been and is now receiving and accepting in its own behalf and for its own account, brokerage fees or allowances and discounts in lieu of brokerage in substantial amounts from numerous sellers of said food products, canned goods, and miscellaneous merchandise.

PAR. 5. The receipt and acceptance by the respondent of brokerage fees or allowances and discounts in lieu of brokerage by respondent, as set forth above, is in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., Sec. 13), the Federal Trade Commission on March 12, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, W. M. Meador & Company, Inc., a corporation, charging it with the violation of subsection (c) of Section 2 of said Clayton Act, as amended. After the filing by respondent of its answer to the complaint, the Commission by order entered herein granted respondent's request for permission to withdraw such original answer and to substitute therefor an amended answer admitting all of the material allegations of fact set forth in the complaint but denying that the acts of respondent set forth in the complaint constitute a violation of the statute in question. The amended answer also waived all intervening procedure, including hearings as to the facts, the filing of briefs, and oral argument before the Commission. Subsequently, the proceeding regularly came on for final hearing before the Commission upon the complaint and amended answer, and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, W. M. Meador & Co., Inc., is a corporation, organized and existing under the laws of the State of Alabama. For a number of years immediately preceding March 31, 1943, respondent was engaged in business as a jobber, buying in its own name and for its own account various food products and other merchandise, and reselling such merchandise. Respondent's principal office and place of business were located at 104 North Commerce Street, Mobile, Ala.

While certain written instruments providing for the dissolution of the corporation were filed by the stockholders in the office of the Judge of the Probate Court for Mobile County, Alabama, on March 31, 1943, the cor-

poration under the statutes of Alabama continues to exist as a body corporate for five years after such date for the purpose of prosecuting and defending suits, settling its business, and otherwise winding up its affairs.

PAR. 2. Respondent in the course and conduct of its business purchased a substantial portion of its requirements of food products and other merchandise from sellers located in States of the United States other than the State of Alabama. Pursuant to such purchases and respondent's instructions in connection therewith, such commodities were caused to be shipped and transported by the respective sellers thereof across State lines to respondent or to respondent's customers.

PAR. 3. At various times between June 19, 1936, and March 31, 1943, in connection with the purchase in its own behalf and for its own account, for resale, of food products and other merchandise in interstate commerce, as aforesaid, respondent received and accepted brokerage fees, or allowances and discounts in lieu thereof, in substantial amounts from numerous sellers of such merchandise.

CONCLUSION

The receipt and acceptance by the respondent of brokerage fees, or allowances and discounts in lieu thereof, as set forth above, was in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the amended answer of respondent admitting all of the material allegations of fact in the complaint and waiving all intervening procedure, including hearings as to the facts, the filing of briefs, and oral argument before the Commission; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of subsection (c) of Section 2 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., Sec. 13).

It is ordered, That the respondent, W. M. Meador & Co., Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of food products or other merchandise in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting from any seller, directly or indirectly, anything of value as brokerage, or any commission, compensation, allowance, or discount in lieu thereof, upon purchases made for respondent's own account.

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

IN THE MATTER OF

H. D. CHILDERS COMPANY

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

Docket 4938. Complaint, Apr. 2, 1943—Decision, Dec. 5, 1944

Where an individual long engaged in the purchase in his own name and for his own account of food products and other merchandise and in the resale thereof, purchasing a substantial portion of his requirements from sellers in other states—

Received and accepted, in connection with such purchases in his own name and for his own account, for resale, in interstate commerce, as aforesaid, brokerage fees, or allowances and discounts in lieu thereof, in substantial amounts, from numerous sellers of such commodities:

Held, That such receipt and acceptance by it of brokerage fees, or allowances and discounts in lieu thereof, under the circumstances above set forth, was in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

Mr. Edward S. Ragsdale for the Commission.

Mr. William P. Smith, of Washington, D. C., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, Harry Duvall Childers, is an individual, doing business as H. D. Childers Co., with his principal office and place of business located at 15 South Commerce Street, Mobile, Ala. The respondent is engaged in the purchase, sale and distribution of food products, canned sea food, and miscellaneous merchandise.

PAR. 2. Respondent is now, and for many years prior hereto has been, engaged in business buying in his own name and for his own account for resale various food products, canned sea food and miscellaneous merchandise, and reselling such products.

PAR. 3. Respondent in the course and conduct of his said business purchases a substantial portion of his requirements of food products, canned sea food and miscellaneous merchandise from sellers located in States other than the State in which the respondent is located. Pursuant to said purchases and instructions, such commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent or to respondent's customers.

PAR. 4. Respondent since June 19, 1936, in connection with the purchase of his requirements of food products, canned sea food and miscel-

laneous merchandise in interstate commerce in his own behalf and for his own account for resale, has been and is now receiving and accepting from numerous sellers of said food products, canned sea food and miscellaneous merchandise, brokerage fees or allowances and discounts in lieu of brokerage in substantial amounts.

PAR. 5. The receipt and acceptance by the respondent of brokerage fees or allowances and discounts in lieu of brokerage by respondent, as set forth above, is in violation of Subsection (c) of Section 2 of the Clayton Act as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., Sec. 13), the Federal Trade Commission on April 2, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Harry Duvall Childers, an individual, doing business as H. D. Childers Co., charging him with the violation of subsection (c) of Section 2 of said Clayton Act, as amended. After the filing by respondent of his answer to the complaint, the Commission by order entered herein granted respondent's request for permission to withdraw such original answer and to substitute therefor an amended answer admitting all of the material allegations of fact set forth in the complaint but denying that the acts of respondent set forth in the complaint constitute a violation of the statute in question. The amended answer also waived all intervening procedure, including hearings as to the facts, the filing of briefs, and oral argument before the Commission. Subsequently, the proceeding regularly came on for final hearing before the Commission upon the complaint and amended answer, and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Harry Duvall Childers, is an individual, doing business as H. D. Childers Co., with his principal office and place of business located at 15 South Commerce Street, Mobile, Ala. Respondent is and for many years last past has been engaged in the purchase, in his own name and for his own account, of food products and other merchandise, and in the resale of such merchandise.

PAR. 2. Respondent in the course and conduct of his business purchases a substantial portion of his requirements of food products and other merchandise from sellers located in States of the United States other than the State of Alabama. Pursuant to respondent's purchases and instructions, such commodities are caused to be shipped and transported by the respective sellers thereof across State lines to respondent or to respondent's customers.

PAR. 3. Respondent since June 19, 1936, in connection with the purchase in his own name and for his own account, for resale, of food products and other merchandise in interstate commerce, as aforesaid, has been and is now receiving and accepting brokerage fees, or allowances and discounts in lieu thereof, in substantial amounts from numerous sellers of such commodities.

CONCLUSION

The receipt and acceptance by the respondent of brokerage fees, or allowances and discounts in lieu thereof, as set forth above, is in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the amended answer of respondent admitting all of the material allegations of fact in the complaint and waiving all intervening procedure, including hearings as to the facts, the filing of briefs, and oral argument before the Commission; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of subsection (c) of Section 2 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., Sec. 13).

It is ordered, That the respondent, Harry Duvall Childers, individually, and trading as H. D. Childers 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 purchase of food products or other merchandise in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting from any seller, directly or indirectly, anything of value as brokerage, or any commission, compensation, allowance, or discount in lieu thereof, upon purchases made for respondent's own account.

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

NORMAN WEBB HUTCHINGS, DOING BUSINESS AS
HUTCHINGS BROKERAGE COMPANY

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

Docket 5059. Complaint, Oct. 8, 1943—Decision, Dec. 5, 1944

Where an individual engaged principally as a jobber in buying various food products and other merchandise and reselling the same, purchasing a substantial portion of his requirements from sellers in other states—

Received and accepted, directly or indirectly, in connection with the purchase in his own behalf and for his own account, for resale, of such merchandise in interstate commerce as aforesaid, from numerous sellers, brokerage fees or commissions, or allowances and discounts in lieu thereof, in substantial amounts:

Held, That such receipt and acceptance by him of brokerage fees, or commissions, or allowances and discounts in lieu thereof, on purchases made for his own account, under the circumstances above set forth, was in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

Mr. Edward S. Ragsdale for the Commission.

Mr. William P. Smith, of Washington, D. C., for respondent.

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, has violated and is now violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C. Title 15, Sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Norman Webb Hutchings, is an individual, doing business under the name and style of Hutchings Brokerage Co., having his principal office, warehouse and place of business located at 120 North Water Street, Mobile, Ala., and having a branch office and warehouse at Dothan, Ala.

The respondent is engaged in the purchase, sale and distribution of food products, canned goods and miscellaneous merchandise.

PAR. 2. The respondent is now, and for many years last past has been, engaged in business principally as a jobber buying in the name of Hutchings Brokerage Co., for his own account for resale, various food products, canned goods and miscellaneous merchandise and reselling such products.

PAR. 3. Respondent in the course and conduct of his said business as a jobber purchases a substantial portion of his requirements of food products, canned goods and miscellaneous merchandise from sellers located in States other than the State in which respondent is located. Pursuant to

said purchases and respondent's instructions, such commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent or to respondent's customers.

PAR. 4. Respondent since June 19, 1936, in connection with the purchase of his requirements of food products, canned goods and miscellaneous merchandise in interstate commerce in his own behalf and for his own account for resale from numerous sellers located in States other than the State where the respondent is located, has been and is now receiving and accepting, directly or indirectly, from numerous sellers of said food products, canned goods and miscellaneous merchandise, commissions or brokerage fees or allowances and discounts in lieu of brokerage in substantial amounts.

PAR. 5. The receipt and acceptance by the respondent of commissions or brokerage fees, or allowances and discounts in lieu of brokerage, by respondent on interstate purchases of various food products, canned goods, and miscellaneous merchandise, for his own account, as set forth above, is in violation of subsection (c) of section 2 of the Clayton Act as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., Sec. 13), the Federal Trade Commission on October 8, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Norman Webb Hutchings, doing business as Hutchings Brokerage Co., charging him with the violation of subsection (c) of Section 2 of said Clayton Act, as amended. After the filing by respondent of his answer to the complaint, the Commission by order entered herein granted respondent's request for permission to withdraw such original answer and to substitute therefor an amended answer admitting all of the material allegations of fact set forth in the complaint but denying that the acts of respondent set forth in the complaint constitute a violation of the statute in question. The amended answer also waived all intervening procedure, including hearings as to the facts, the filing of briefs, and oral argument before the Commission. Subsequently, the proceeding regularly came on for final hearing before the Commission upon the complaint and amended answer, and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Norman Webb Hutchings, is an individual, doing business under the name and style of Hutchings Brokerage Co., with his principal office, warehouse, and place of business located at 120 North Water Street, Mobile, Ala., and having a branch office and warehouse at Dothan, Ala.

Respondent is now and for many years last past has been engaged in business principally as a jobber, buying in the name of Hutchings Brokerage Company, for his own account, various food products and other merchandise, and reselling such merchandise.

PAR. 2. Respondent in the course and conduct of his business as a jobber purchases a substantial portion of his requirements of food products and other merchandise from sellers located in States of the United States other than the State of Alabama. Pursuant to such purchases and respondent's instructions in connection therewith, such commodities are caused to be shipped and transported by the respective sellers thereof across State lines to respondent or to respondent's customers.

PAR. 3. Respondent since June 19, 1936, in connection with the purchase in his own behalf and for his own account, for resale, of food products and other merchandise in interstate commerce, as aforesaid, has been and is now receiving and accepting, directly or indirectly, from numerous sellers of such food products and other merchandise, brokerage fees or commissions, or allowances and discounts in lieu thereof, in substantial amounts.

CONCLUSION

The receipt and acceptance by the respondent of brokerage fees or commissions, or allowances and discounts in lieu thereof, on purchases made for his own account, as set forth above, is in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the amended answer of respondent admitting all of the material allegations of fact in the complaint and waiving all intervening procedure, including hearings as to the facts, the filing of briefs, and oral argument before the Commission; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of subsection (c) of Section 2 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., Sec. 13).

It is ordered, That the respondent, Norman Webb Hutchings, individually, and trading as Hutchings Brokerage 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 purchase of food products or other merchandise in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting from any seller, directly or indirectly, anything of value as brokerage, or any commission, compensation, allowance, or discount in lieu thereof, upon purchases made for respondent's own account.

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
HASTINGS MANUFACTURING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 2 (a) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 4437. Complaint, Dec. 27, 1940—Decision, Dec. 9, 1944

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of piston rings and other replacement parts for use in motor vehicles, to and through some six hundred jobbers, who distributed them to garages, service stations and others engaged in the repair and servicing of such vehicles; with a relative position in the industry in terms of volume of sales in the replacement trade originally apparently not better than sixth or seventh;

Following the introduction of its "steel vent" or new type of steel oil ring, and the inauguration of an aggressive campaign to acquire new and, as far as possible, exclusive channels of distribution; in pursuance of a general policy directed toward persuading jobbers to discontinue handling other lines of piston rings and to handle its rings exclusively; and as an inducement to jobbers to take on its line and handle it exclusively or at least to substitute it for one or more of the lines then handled and give it preferential treatment, used singly or in combination as required, the three principal methods below set out, supplementing them when necessary in other ways, such as granting a large jobbing account, override on the purchases of smaller jobbers in the same trading area, granting extra discounts and even in one instance the purchase of an automobile trailer from a jobber—

- (a) Purchased from distributors or prospective distributors of its said products competitive rings owned by the particular distributor or recalled by him from his customers, and even in a few instances rings purchased by said jobber at its suggestion to get the benefit of a credit balance with the particular competitor, on the understanding, usually either that its lines would be handled exclusively, or that its rings would receive preferential sales effort and constitute the number one ring line handled by the jobber; and in making such purchases regularly paid to the jobber in credit, its own rings, or cash, the actual cost to him of his "overage"—i.e. rings purchased by him as distinguished from consigned stock, which was returned to the competitor—regardless of age, condition or actual value; removed competitive rings thus acquired as soon as they could be replaced with its own or, sometimes, after a grace period during which the jobbers' salesmen and its own "missionary" men could convert the jobbers' customers to the use of its own rings; and as a matter of general policy destroyed such competitive rings and did not return them in any way to the channels of trade;
- (b) Made loans to jobbers from time to time with a view to inducing the recipients to become or continue to be exclusively its distributors or to concentrate their efforts on its line, and in some cases for jobbers' use in opening branches to handle its rings exclusively; and
- (c) Guaranteed to various jobbers from time to time that if they undertook the distribution of its rings their gross profit thereon during the year would be some specified percentage, usually 50%, greater than their gross profits from sales of competitive rings during the past year;

Capacity, tendency and effect of which acts, practices and methods—during the course of which it secured about 900 new distributors and rose from being one of the smallest ring manufacturers having national distribution to a position as the second largest seller of rings to the replacement trade—had been and was unfairly to divert trade to it from its competitors; unreasonably to hinder, hamper, and restrain manufacturers of competitive products in disposing of their merchandise to automotive parts and equipment jobbers; unreasonably to restrain and suppress competition in the sale of piston rings and other replacement parts for motor vehicles; and to tend to create in it a monopoly in the sale of said products to the replacement trade; all to the prejudice and injury of the public and of its competitors:

Held, That such acts and practices, as above set forth, constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

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

Mr. Everett F. Haycraft for the Commission.

Beaumont, Smith & Harris, of Detroit, Mich., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the Hastings Manufacturing Co., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act, and is violating the provisions of Section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act (U.S.C. Title 15, Section 13), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges as follows:

COUNT I

PARAGRAPH 1. Respondent, Hastings Manufacturing Co., is a corporation, duly organized under the laws of the State of Michigan, with its office and principal place of business located in Hastings, Mich. Respondent is now and for several years last past has been engaged in the business of manufacturing piston rings and other replacement parts for use in motor vehicles, and in the sale of said piston rings, under the trade name "Steel Vent," and other replacement parts for motor vehicles to automotive parts and equipment jobbers and wholesale distributors, hereinafter referred to as jobber customers, located in States other than the State of Michigan, and in the District of Columbia. It causes said products, when sold, to be transported from its said place of business in the State of Michigan to the said jobber customers. There has been, and now is, a course of trade in said products in commerce between the respondent and said jobber customers located throughout the several States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent is now, and has been for more than two years last past, in substantial competition with other corporations and with individuals, firms and partner-

ships engaged in the sale and distribution of piston rings and other replacement parts for use in motor vehicles, hereinafter referred to as competitive products, to automotive parts and equipment jobbers and wholesale distributors, 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, said respondent, in attempting to sell its said products either directly or on consignment to said jobber customers, as an inducement to prospective jobber customers handling and stocking said competitive products of respondent's competitors to discontinue handling and stocking all such competitive products and to thereafter handle and stock said respondent's products in place of said competitive products, engaged in the following methods and practices:

(a) Said respondent has offered and agreed, and now offers and agrees, to take over and buy up, and it has taken over and bought up, and now takes over and buys up, the stocks of competitive products in the hands of jobbers, either for cash or by giving the prospective jobber customers credit on account for the inventory value of the said competitive products then carried in stock and either removing said competitive products from the premises of the prospective jobber customers and thereafter destroying them, or, in some instances, causing the said competitive products to be sold to the trade at extremely low prices.

(b) Said respondent has offered and agreed, and now offers and agrees, to give prospective jobber customers credit on account, and it has given, and does give, prospective jobber customers credit on account, for stocks of competitive products which said jobber customers recall from their dealers to whom such competitive products had theretofore been sold by such jobber customers.

(c) Said respondent has offered and agreed, and now offers and agrees, to lend money to prospective jobber customers and it has made, and does make, loans to jobber customers, upon their terminating business relations with competitive manufacturers and taking on respondent's line of products.

(d) Respondent has offered and agreed, and now offers and agrees, to guarantee, and it has guaranteed, and does guarantee, to prospective jobber customers fixed increases, usually 50%, in gross profits in the sale of respondent's products, and to reimburse said prospective jobber customers for the amount of any deficiency between the gross profit realized and that guaranteed, by giving the jobber customers credit on account to cover such deficiency.

(e) Respondent made false and misleading statements in advertisements in publications of general interstate circulation to the effect that its said "Steel Vent" piston rings will reduce cylinder wall wear more than one-half, compared with the wear of competitive types of rings, when in truth and in fact, due to the many factors involved in making tests, it is impossible to determine the rate of cylinder wall wear by piston rings.

PAR. 4. The aforesaid acts, practices and methods of respondent have induced, and do now induce, a substantial number of jobber customers of competitors of the respondent to discontinue handling, stocking and distributing said competitors' products and to handle, stock and distribute respondent's said products instead of the products of said competitors;

and the capacity, tendency and effect of said acts, practices and methods are, and have been, unreasonably to hinder, hamper and restrain competing manufacturers of competitive products in disposing of their merchandise to automotive parts and equipment jobbers and wholesale distributors, and unreasonably to lessen, eliminate, restrain, hamper and suppress competition in the sale of piston rings and other replacement parts for motor vehicles, and to create in the respondent a monopoly in the sale of said products.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, have the tendency and capacity to unfairly divert, and have unfairly diverted, trade to respondent from its competitors, and, 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 said acts and practices are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

COUNT II

PARAGRAPH 1. The allegations of paragraphs 1 and 2 of Count I hereof are hereby incorporated herein by reference as though fully set forth verbatim in this Count.

PAR. 2. Since June 19, 1936, in the course and conduct of its business as aforesaid, the respondent has been and now is discriminating in price between purchasers buying said commodities of like grade and quality in interstate commerce, as aforesaid, through the practice of granting to some of such purchasers various concessions and monetary considerations which are not granted to other of its purchasers. Among the methods employed by the respondent in the accomplishment of the aforesaid discriminations in price are the following:

To some customers who have not previously purchased respondent's products, respondent makes cash gifts or donations in substantial amounts (such gifts or donations often ranging above \$1,000) in consideration of such customers taking on respondent's line, which gifts or donations are not granted to other of respondent's customers.

To some customers who have not previously purchased respondent's products, respondent agrees to pay and pays for the products of respondent's competitors then owned by such customers an amount substantially in excess of the value of such products, in consideration of such customers taking on respondent's line, which payments are not granted to other of respondent's customers.

PAR. 3. The effect of such discriminations in price referred to in the preceding paragraph hereof has been and may be to injure, destroy and prevent competition in the line of commerce in which respondent and its competitors are engaged.

PAR. 4. The foregoing alleged acts and practices are in violation of Sub-section (a) of Section 2 of the Clayton Act as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by Act approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission on December 27, 1940, issued and subsequently served its complaint in this proceeding upon respondent, Hastings 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 the Federal Trade Commission Act and with discriminations in price in the sale of piston rings in commerce in violation of the provisions of subsection (a) of Section 2 of the said Clayton Act as amended.

After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this 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 and exceptions thereto, briefs in support of and in opposition to the complaint, and oral arguments by opposing 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, Hastings Manufacturing Co., is a corporation, organized and existing under the laws of the State of Michigan, with its office and principal place of business in Hastings, Mich. It is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of piston rings and other replacement parts for use in motor vehicles and has caused said products, when sold, to be transported from its place of business in the State of Michigan to the purchasers thereof at their various points of location in other States. There has been, and is now, a course of trade in said products in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent is now, and has been for several years last past, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of piston rings and other replacement parts for use in motor vehicles.

PAR. 3. (a) Respondent began the manufacture of piston rings for replacement purposes about 1923. Such rings are used on the pistons of internal combustion engines to prevent loss of compression, "blow-by," and excessive oil consumption. The upper rings are generally called com-

pression rings and the bottom ring an oil ring, Until about the end of 1935 piston rings for use in internal combustion engines were customarily made of cast iron, though steel rings were then on the market. Late in 1935 respondent brought out a new type of steel oil ring under the trade name "Steel-vent," the desirable characteristics of which were said to be greater durability, better fitting in worn cylinders, and better control of oil consumption in worn motors. Respondent continued the manufacture and sale of cast iron rings for other purposes.

(b) At the time respondent brought out its "Steel-vent" ring, it had about 600 jobbers at various locations in the United States to and through whom its piston rings were distributed to garages, service stations, and others engaged in the repair and servicing of motor vehicles. At that time respondent's relative position in the industry in terms of volume of sales in the replacement trade was apparently not better than sixth or seventh, and its principal competitors were, and are: American Hammered Piston Ring Corporation (hereinafter frequently referred to as American Hammered), McQuay-Norris Manufacturing Co. (hereinafter frequently referred to as McQuay-Norris), Perfect Circle Co. (hereinafter frequently referred to as Perfect Circle), Ramsey Accessory Manufacturing Co. (hereinafter frequently referred to as Ramco), Sealed Power Corporation (hereinafter frequently referred to as Sealed Power), and Wilkening Manufacturing Co. (hereinafter frequently referred to as Pedrick). There are other producers of piston rings for replacement purposes, but their distribution is not as widespread as that of the concerns named above and their competition is in more localized areas. Hastings' business has been confined to the replacement trade, though a number of its competitors, in addition to serving the replacement trade, also have sold or sell their rings to motor manufacturers for use as original equipment. Respondent and a number of its competitors confine their business to piston rings and a few allied products, while a few of their competitors, including McQuay-Norris and Sealed Power, sell piston rings and, in addition thereto, many other automotive replacement parts.

(c) In distributing their piston rings, respondent and its competitors customarily place with jobbers a consigned stock of such rings. This stock is in the nature of a basic inventory, but usually there are some types of rings which are not included in the consigned stock and which the jobber must buy if he wishes to handle them. In some instances a larger discount is granted the jobber on outright purchases than he can secure on consigned stocks, and this tends to encourage purchases. It is not unusual for a jobber handling any of the better known lines of piston rings to have on hand a substantial quantity of rings in excess of the consigned stock, and this excess is commonly referred to as "overage." The record indicates that individual jobbers may handle from one to four lines of piston rings, and the handling of two or three competing lines is not uncommon.

PAR. 4. (a) Early in 1936 respondent began an aggressive campaign to acquire new and, so far as possible, exclusive channels of distribution. Respondent's general policy in seeking new jobber customers was directed toward persuading jobbers to discontinue handling whatever line or lines of piston rings they then stocked and in lieu thereof to handle Hastings rings exclusively. Although this was the goal, the policy was not rigid and if unable to persuade a jobbing account which it considered desirable to

"go 100% Hastings," respondent would, nevertheless, if possible, put its line in beside the other line or lines retained by the jobber upon the basis that the jobber would concentrate his sales effort on it, or in the hope that continuing efforts would persuade the jobber to abandon the competing lines in favor of the Hastings line.

(b) Three principal methods were used by respondent to induce jobbers to take on the Hastings line and handle it exclusively, or at least substitute it for one or more of the lines then being handled by such jobber and give it preferential treatment, and these methods were used singly or in combination as the circumstances of the particular case seemed to require. These methods were: The purchase from jobbers of the rings of their competitors owned by such jobbers and the replacement thereof with Hastings rings; the making of loans to jobbers where this would further respondent's purpose; and the guaranteeing of increased profits to jobbers from the sale of Hastings rings as compared with their profits during the preceding year from the sale of competitive rings. When necessary, these general methods were supplemented in other ways, such as granting a large jobbing account, which respondent considered desirable, an override on the purchases of smaller jobbers in the same trading area, granting extra discounts, and even in one instance the purchase of an automobile trailer from a jobber.

PAR. 5. (a) The purchase of competitive rings owned by a jobber was frequently offered by respondent as an inducement, and in fact operated as an inducement, in persuading a jobber to discontinue in whole or in part competitive lines of rings and substitute in lieu thereof respondent's line. When the substitution was complete, it usually followed an understanding that respondent's rings would be handled exclusively; and when the substitution was partial, the usual understanding was that respondent's rings would receive preferential sales effort and constitute the No. 1 ring line handled by the jobber. When such a purchase was negotiated, any consigned stock of the discontinued line or lines was, of course, returned to the consignor and respondent's purchase was limited to the "overage." In making these purchases, respondent regularly paid to the jobber the actual cost to him of the rings purchased, regardless of their age, condition, or actual value. The competitive rings thus purchased by respondent were shipped to its factory and there destroyed or were destroyed locally by respondent's representatives. There were a few instances where the rings purchased by the respondent were not destroyed, but in general its policy was to destroy such rings and not return them in any way to the channels of trade. After respondent negotiated a purchase of the rings of competitors, the rings thus purchased were sometimes removed from the jobber's stock as soon as they could be replaced with Hastings rings, and sometimes the jobber was allowed to retain the rings purchased for varying periods of time, occasionally for many months. Apparently this grace period was intended to protect the jobber's relations with his customers until his salesman and the "missionary men" furnished by respondent could convert all, or substantially all, of the jobber's customers to the use of the Hastings rings. The purchases from jobbers frequently contemplated and included the stocks of competitive rings of the discontinued line or lines in the hands of the jobber's customers, and respondent's "missionary men" assisted in the "lifting" of such stocks.

(b) The agreement by respondent to purchase the rings of its competitors owned by a jobber was usually negotiated at the time the jobber was persuaded to become a distributor of Hastings rings and the agreement was to purchase an indefinite quantity not to exceed a specified cost to respondent. Performance of the agreement took place when the jobber finally discontinued the competitive line or lines and delivered the rings to respondent or its representative and the exact number and cost could be finally ascertained. In some instances where a jobber who took on the Hastings line but retained a competing line of piston rings was subsequently persuaded to abandon the competing line which he had retained, respondent at that time agreed to purchase the "overage" in the jobber's hands of the discontinued line. Payment to the jobber for competitive rings purchased was usually made by setting up a credit on respondent's books in favor of the jobber in the amount of the purchase price of such rings and allowing the jobber to avail himself of this credit by deducting 25 percent from the cost of his monthly purchases from respondent until the credit was consumed. Sometimes the rate at which the jobber could avail himself of the credit was 50 percent or more instead of 25 percent of the monthly purchases, and in some instances payment for the competitive rings was made immediately by respondent in full in Hastings rings or in cash. The terms granted appear to have depended upon the trading ability of the particular jobber and the desirability of the account to respondent. The quantities of competitive rings purchased from individual jobbers by the respondent varied widely and the record shows instances ranging from \$100 or less to more than \$15,000.

(c) Respondent referred to the competitive rings purchased by it from jobbers as "obsolete." In fact, the rings purchased ranged all the way from old and unsalable odds and ends to current and salable stock, and even in a few instances to rings purchased from a competitor on the direction of respondent for the purpose of using a merchandise credit which the jobber had on the competitor's books and on which he could not obtain payment except in merchandise. Undoubtedly, substantial proportions of the competitive rings purchased by respondent from jobbers were in good condition and salable. However, when a jobber took on the Hastings line, respondent usually furnished salesmen called "missionary men" to work with the jobber's salesmen in converting the jobber's customers to the use of Hastings rings. When this was successfully done, the jobber's sales for the competitive line or lines of rings which he formerly carried ceased, though the rings might be in salable condition.

(d) Respondent's purpose and practice with respect to the purchase of rings of its competitors in the hands of jobbers are illustrated by the instances shown in the following excerpts from correspondence. An official of respondent, in writing a jobber under date of March 31, 1938, said in part:

It is understood that in return for your cooperation in pushing the sale of Hastings Piston Rings to your trade, we will protect you against any obsolescence loss on your present stocks of Pedrick and Ramco rings up to \$1,600 (Comm. Ex. 3).

In writing one of its representatives concerning a jobbing account, an official of respondent in a letter dated November 7, 1939, said in part:

What we would like to have you do, Harvey, is get into Milwaukee at your earliest convenience and get these rings returned to us here at Hastings. The \$2,000 protection was on his Pedrick stock and, as we understand it, the Sealed Power was in addition * * *.

We want you to do everything you can to get this account 100% Hastings. At any rate you can investigate and let us know the amount of Sealed Power stock still on hand at their stores and we will decide what to do later (Comm. Ex. 75).

In a letter dated September 7, 1938, to another sales representative concerning a jobbing account, respondent stated in part:

* * * If you can clean up the entire situation with Brennan for a \$350 credit and get the account 100% Hastings this certainly is the right thing to do and after you have confirmed it with Brennan give us a report on the situation and we will give him whatever confirmation he feels he has to have in writing (Comm. Ex. 87).

In reporting a deal with a jobber, two of respondent's salesmen advised respondent under date of November 17, 1938, in part:

* * * I had to make two minor concessions, inasmuch as they are going 100% Hastings and we promised to take care of their obsolescence up to \$1500.00 on the basis of 25% of their invoices per month. I now had to agree that we take care of them on their \$1500.00 immediately, that is the first \$1500.00 worth of rings that they purchase will take care of that and as much as that is done they will ship us that much in A. H. rings * * * (Comm. Ex. 95).

From the testimony of sales representatives who negotiated with many of the jobbers who became Hastings distributors, it is also apparent that respondent's purpose and efforts were to clear competitive rings from the jobbers' stocks and substitute Hastings rings exclusively, if possible, and where this was not possible, to make as full a substitution as circumstances permitted. The record shows about 173 jobbers from whom respondent purchased competitive rings during the four years beginning with 1937 at a total cost of approximately \$281,000. In substantial part these purchases were pursuant to and in furtherance of the general policy previously outlined.

(e) Respondent's standard form of consignment contract with its distributors contains a provision that the contract may be terminated

(B) By the CONSIGNOR in the event CONSIGNEE stocks or in any manner handles a competitive piston ring subsequent to the date of this agreement without permission of the CONSIGNOR (Comm. Ex. 44-A).

The evidence does not indicate that this contract provision was utilized unless a jobber, by reason of pushing some other line, became an unsatisfactory account from a business standpoint to respondent.

PAR. 6. From time to time respondent made loans to jobbers with a view to inducing the recipients to become or continue to be exclusively Hastings distributors or to concentrate their efforts on the Hastings line.

In agreeing to loan a jobber \$3,000, respondent in a letter dated May 27, 1937, stated in part:

We are doing this in consideration of your concentrating your efforts on piston ring and piston expanders to Hastings exclusively (Comm. Ex. 18).

A sales representative, in reporting to respondent on September 12, 1942, concerning a proposed deal with a large jobber, stated that the jobber wanted a loan of \$20,000 and said:

This acct would be immediately Hastings exclusive as American Hammered would be removed from their shelves at once, and completely (Comm. Ex. 121-C).

This jobber was taken to the respondent's home office where the loan was actually negotiated in the amount of \$16,000. In another instance a loan of \$2,500 was made and respondent's representative who negotiated the loan testified that it was made "to secure the account" and that in order that respondent should not appear in the transaction and that it appear to be a personal one between this representative and the jobber, the representative gave the jobber his personal check and the amount was refunded to the representative by respondent. In some cases loans were made to jobbers for their use in opening branches which would handle Hastings rings exclusively. During the years 1937-40, inclusive, respondent made loans to some 29 jobbers in an aggregate amount of approximately \$151,000, and a substantial number of these loans were in furtherance of respondent's general policy already outlined.

PAR. 7. As a means of inducing jobbers to undertake the distribution of Hastings rings exclusively or concentrate their efforts on Hastings rings, respondent from time to time guaranteed to various jobbers that if they undertook the distribution of Hastings rings their gross profit on rings during the next year would be some specified percentage, usually 50 percent, greater than their gross profits from sales of rings of respondent's competitors during the past year. Arrangements for these guarantees were usually made by respondent's sales representatives during the original negotiations, but such arrangements were frequently later confirmed in writing by respondent. An instance of such confirmation is in a letter of February 2, 1938, from respondent to a jobber, which reads as follows:

We hereby agree if you take on Hastings Rings that we will see to it that your gross profit, in Dollars, on piston rings in 1938 will be 50% more than the gross profit that you earned on piston rings in 1937. If, for any reason, the increase in your gross profit on your sales of piston rings in 1938, as compared to gross profit on piston rings sold in 1937, is less than 50%, we will credit your account with the difference (Comm. Ex. 1).

In writing a jobber confirming a verbal guarantee of greater profits through the handling of Hastings rings, respondent in a letter dated March 14, 1938, said in part:

It is usually customary, with an assurance of this kind, that the jobber, within a reasonable length of time, is pushing Hastings 100%. We are not making this requirement as we are entirely willing, as we have stated before, that you shall find out, from actual experience in the field just what you can do before you make any move to discontinuing the line and that when you make any move it will be an entirely voluntary move on your part.

We do believe that a jobber is better off pushing a line 100% and it is going to be our aim to do such a good job for you that you will want to concentrate your effort on Hastings but, as stated to you before, neither before nor after a jobber takes on our line, do we attempt to force him into any move of this kind. We just try to do such a good job that he will want to do it without any suggestion from us (Comm. Ex. 22).

In confirming a guarantee granted a jobber, respondent in a letter of July 13, 1940, stated in part:

In view of your acceptance with the trade and your 100% cooperation we feel that within a period of one year you will have no difficulty in reaching a volume that will automatically entitle you to our maximum rebate and we hereby agree that we will pay you 20% retroactive rebate on your purchases from us during the coming year and we also agree, in view of the letter that we wrote you on March 21, 1938, that your gross purchases from us will be \$25,000 as outlined above (Comm. Ex. 36-A).

An official of respondent testified that in no instance did the respondent have to make any cash payments to jobbers pursuant to their volume guarantees. Apparently a substantial number of such guarantees were made, but the record does not afford any approximation of the total number.

PAR. 8. Evidence was introduced showing jobbing accounts lost by American Hammered, McQuay-Norris, Pedrick, Perfect Circle, Ramco, and Sealed Power to respondent, the sales of these manufacturers to such accounts, and the subsequent sales by respondent to the same accounts. These accounts appear in Respondent's Exhibits 15-A to 20-D, inclusive, but they did not furnish a basis for attempting to appraise with mathematical precision the effects upon respondent's competitors of the various practices of respondent heretofore described, and any comparison of sales to individual accounts or the compilation of total figures therefrom is likely to be misleading because the testimony indicates that some of the accounts shown on these exhibits did not become exclusively Hastings accounts and the prior and subsequent sales of manufacturers whose lines were continued after the account took on Hastings rings do not appear in the exhibits, because some of the accounts carried brands of rings not appearing in the exhibits, and because it does not appear to what extent, if any, volumes shown are affected by the inclusion of sales to others on which overrides were granted to the jobbers listed. It is clear, however, that at the end of the years 1923-35, inclusive, respondent had about 600 jobbers distributing its products and that during the years 1936-40, inclusive, it secured about 900 new distributors of its rings; and, further, that respondent came from a position of being one of the smallest ring manufacturers having national distribution to a position as the second largest seller of rings to the replacement trade. The record shows, and the Commission finds, that in securing a substantial number of the new jobbing accounts acquired after 1935, including some of the larger and more desirable ones, upon an exclusive basis or upon a basis highly preferential to Hastings rings, respondent relied upon and used the practices heretofore described, and such use represented a deliberate policy executed on a large scale. The capacity, tendency, and effect of the aforesaid acts, practices, and methods, has been, and is, unfairly to divert trade to respondent from its competitors; unreasonably to hinder, hamper, and restrain manufacturers of competitive products in disposing of their merchandise to automotive parts and equipment jobbers; unreasonably to lessen, restrain, hamper, and suppress competition in the sale of piston rings and other replacement parts for motor vehicles; and to tend to create in respondent a monopoly in the sale of said products to the replacement trade, all to the prejudice and injury of the public and of respondent's competitors.

CONCLUSION

The aforesaid acts and practices, as herein found, constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and the exceptions thereto, briefs filed herein, and the oral arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent Hastings Manufacturing 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 piston rings and other automotive replacement parts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from doing, directly or indirectly, any of the following acts or things (when done as an inducement to the distributor of automotive parts concerned to discontinue handling all products competitive with respondent's and thereafter handle respondent's products in lieu thereof, or when done upon any express or implied condition, agreement, or understanding that such distributor will discontinue handling all products competitive with those of respondent, or all such products of any competitor of respondent, and will handle respondent's products in lieu thereof):

1. Purchasing from any distributor or prospective distributor of respondent's piston rings or other replacement parts his stock, or stocks recalled by him from his customers, of the products of another manufacturer which are competitive with respondent's products.

2. Making any loan to a distributor or prospective distributor of respondent's piston rings or other replacement parts.

3. Guaranteeing to distributors or prospective distributors of respondent's piston rings or other replacement parts increased gross profits from the handling of respondent's products as compared with gross profits previously obtained from the handling of products competitive with those of respondent.

It is further ordered, That Count II of the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should future facts warrant.

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

IN THE MATTER OF
AUBURN DIE 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 4921. Complaint, Mar. 2, 1943—Decision, Dec. 9, 1944

Where six corporations, four firms and an individual, engaged, in the New England states, in the manufacture and interstate sale and distribution of various types of steel cutting dies, which, used in the manufacture of shoes, are made in accordance with the specifications of each shoe manufacturing customer to conform with the particular shoe thereby made; doing an aggregate business of about \$500,000 annually, or about 35% of the total volume of cutting die business done in the New England States, and about 15% of such business done in the entire United States; in competition with one another and with others similarly engaged except insofar as such competition had been restrained and suppressed as below set forth;

Prior to the advent of the Office of Price Administration in 1942 which resulted in a change of the entire price structure, and to the current shortage of steel, in consequence of which they were unable to obtain their requirements for the manufacture of dies and shoe manufacturers were required to use the dies in their possession, with probability of few changes in shoe styles for the duration—

- (a) Entered into agreements and understandings as to sale prices and repair prices, both current and future, for dies made, sold and repaired by them, through discussing such prices at meetings of their unincorporated trade association, including base prices and specific charges for alterations, additions and repairs, and agreed to adhere to future prices thus determined; and
- (b) Republished copies of price lists containing the prices agreed upon, and later changed, as published by one member and disseminated among the others, and distributed the same to the trade, and made use thereof as a basis of quotations to customers, and generally adhered thereto;

Tendency, capacity, and effect of which agreement and conspiracy and of the acts and things done in furtherance thereof, as above set forth, had been and were unduly to restrain and suppress competition among the members in the sale and distribution of cutting dies in commerce and unduly to restrict and restrain trade therein as 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 method of competition in commerce.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Daniel J. Murphy for the Commission.

Thompson & Twomey, of Boston, Mass., for Auburn Die Co., Inc., and other respondents except as below set forth.

Goodwin, Procter & Hoar, of Boston, Mass., for Joseph E. Knox & Co., Inc.

Mr. Paul E. Nourie, of Manchester, N. H., for Axel Swanson and Raymond Duprey.

COMPLAINT

Pursuant to the provisions of the Federal 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 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, Auburn Die Co., Inc., is a corporation, organized and existing under the laws of the State of Maine, having its principal office and place of business at 22 Adams Street, Auburn, Maine.

Respondent, Androscoggin Die Co., Inc., is a corporation, organized and existing under the laws of the State of Maine, having its principal office and place of business at 11 Summer Street, Auburn, Maine.

Respondent, Joseph E. Knox & Co., Inc., is a corporation, organized and existing under the laws of the State of Massachusetts, having its principal office and place of business at 537 Broad Street, Lynn, Mass.

Respondents, John Hermanson, Stanley Leskiewicz and Joseph Toll, are copartners, doing business under the firm name and style of North Shore Cutting Die Co., having their principal office and place of business at 898 Broad Street, Lynn, Mass.

Respondents, Hyman Resnick, Henry April and Hyman Rosenblatt, are copartners, doing business under the firm name and style of Bay State Cutting Die Co., having their principal office and place of business at 380 Broad Street, Lynn, Mass.

Respondent, Boston Cutting Die Co., Inc., is a corporation, organized and existing under the laws of the State of Massachusetts, having its principal office and place of business at 190 Old Colony Avenue, Boston, Mass.

Respondents, Faustyn K. Jakiel and Richard B. Friend, are copartners, doing business under the firm name and style of State Die Co., having their principal office and place of business at Lincoln Street, Manchester, N. H.

Respondents, Axel Swanson and Raymond Duprey, are copartners, doing business under the firm name and style of Manchester Die Co., having their principal office and place of business at 134 Maple Street, Manchester, N. H.

Respondent, Vincent W. Burke, is an individual, doing business under the firm name and style of Bee Machine Co., having his principal office and place of business at 432 Union Street, Lynn, Mass.

Respondent, Brockton Cutting Die & Machine Co., Inc., is a corporation, organized and existing under the laws of the State of Massachusetts, having its principal office and place of business at Memorial Drive, Avon, Mass.

Respondent, Granite Dye Co., Inc., is a corporation, organized and existing under the laws of the State of Massachusetts, having its principal office and place of business at 18 Granite Street, Haverhill, Mass.

PAR. 2. Respondents are all, respectively, engaged in the business of manufacturing, selling and distributing steel dies used in the manufacture of shoes, for cutting leather into the various shaped and sized pieces form-

ing the component parts of a shoe. Said cutting dies are divided into hand-cutting dies and machine-cutting dies which are further divided into mallet dies, clicker dies, counter dies, machine handle tap dies, machine heel dies, etc. Each respondent, respectively, manufactures, sells and distributes one or more or all of the said various types of dies.

PAR. 3. Cutting dies are custom made in that each die is manufactured in accordance with the specifications of each particular shoe manufacturing customer, to conform with the particular style, design and type of shoe to be manufactured. The different dies, therefore, have variations consisting of angle changes of the die shape and additions to the base die such as nicks, stabs, scallops, braces, slots, etc.

PAR. 4. The aggregate annual volume of business represented by the sale of the respondents, of cutting dies, amounts to approximately \$750,000 which amounts to approximately (a) 50 percent of the total volume of such business in the New England States where all the respondents are located, and (b) 25 percent of the total volume of such business in the entire United States.

PAR. 5. Respondents in the regular course and conduct of their respective businesses, as aforesaid, sells and distribute cutting dies to the purchasers thereof, and in connection with said sales, ship and transport, or cause to be shipped and transported, said products in commerce, to the purchasers thereof, located in the various States of the United States other than the State of origin of said shipments. All the respondents have maintained, and still maintain, a regular current of trade in said products, in commerce, between and among the various States of the United States.

PAR. 6. Respondents, in the regular course and conduct of their respective businesses, as aforesaid, except to the extent to which competition in the manufacture, sale and distribution of cutting dies has been restrained, lessened, injured and suppressed by the plans, undertakings, agreements, combinations and conspiracies, hereinafter referred to, have been, and are, in active and substantial competition with each other and with other manufacturers, sellers and/or distributors of cutting dies.

PAR. 7. On or about June 11, 1941, for the purpose, and with the intention, of restraining, lessening, injuring, suppressing and destroying competition in the manufacture, sale and distribution of cutting dies in trade and commerce between and among the several States of the United States, the respondents entered into, and thereafter executed, and are now executing, sundry common courses of action, plans, undertakings, agreements, combinations and conspiracies, pursuant to and in furtherance of which the said respondents have engaged in and performed, and are now engaging in and performing, the following acts and practices, to wit:

1. Respondents have agreed to fix and maintain, and have fixed and maintained, uniform prices for the sale of cutting dies manufactured, sold and distributed by the respondents.

2. Respondents have agreed to fix and maintain, and have fixed and maintained, uniform prices for base dies, of each type, of a maximum length and width and with a predetermined angle and number of nicks, stabs, etc.

3. Respondents have agreed to fix and maintain, and have fixed and maintained, uniform charges for each variation in the angle of the die shape and additions to the base die; the ultimate sale price of each die to be

computed from the price of the base die plus the charges for each such variation and addition.

4. Respondents have agreed to fix and maintain, and have fixed and maintained, uniform charges for repairs to such cutting dies.

5. Respondents have published and disseminated common price lists which set forth the price for the base die of each type or class of die and the charges for each variation of the die angle and addition to the base die and the repair charges.

PAR. 8. The respondents, to more effectively perform, and to supervise the performance of, the foregoing acts and practices, have organized and banded themselves together in an unincorporated trade association commonly known as The Die Manufacturers' Association. At meetings of said Association the respondents discussed selling prices, current and future, for cutting dies manufactured, sold and distributed by the respondents; agreements and understandings were reached by the respondents with regard to such prices; the respondents agreed to, and did, adhere to future prices so determined in the sale of said cutting dies; complaints were received and discussed relative to violations of said agreements and additional promises were exacted from respondents, so complained against, that in the future such respondents would adhere to such agreements.

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 practices hereinabove alleged in furtherance of said common courses of action, plans, understandings, agreements, combinations and conspiracies.

PAR. 10. Said common courses of action, plans, 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 cutting dies 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 in the sale of said products in said commerce; of placing in respondents the power to control and enhance prices; and of unreasonably restraining such commerce in said products.

Said common courses of action, plans, 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 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 2, 1943, issued and subsequently served its complaint in this proceeding upon the parties respondent 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 by the respondents of their answers to the complaint, a hearing

was held before a trial examiner of the Commission theretofore duly designated by it, at which a stipulation of facts was entered into between the attorney for the Commission and the attorney for respondents, which provided that the statement of facts therein might be made a part of the record herein and might be taken as the facts in this proceeding in lieu of testimony in support of or in opposition to the complaint. The stipulation further provided that the Commission might proceed upon the pleadings and such statement of facts to make 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. Subsequently, the matter regularly came on for final hearing before the Commission on the complaint, answers, and stipulation of 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, Auburn Die Co., Inc., is a corporation, organized and existing under the laws of the State of Maine, with its principal office and place of business located at 22 Adams Street, Auburn, Maine.

Respondent, Androscoggin Die Co., Inc., is a corporation, organized and existing under the laws of the State of Maine, with its principal office and place of business located at 11 Summer Street, Auburn, Maine.

Respondent, Joseph E. Knox & Co., Inc., is a corporation, organized and existing under the laws of the State of Massachusetts, with its principal office and place of business located at 537 Broad Street, Lynn, Mass.

Respondents, John Hermanson, Stanley Leskiewicz, and Joseph Toll, are copartners, doing business under the firm name and style of North Shore Cutting Die Co., with their principal office and place of business located at 898 Broad Street, Lynn, Mass.

Respondents, Hyman Resnick, Henry April, and Hyman Rosenblatt, are copartners, doing business under the firm name and style of Bay State Cutting Die Co., with their principal office and place of business located at 380 Broad Street, Lynn, Mass.

Respondent, Boston Cutting Die Co., Inc., is a corporation, organized and existing under the laws of the State of Massachusetts, with its principal office and place of business located at 190 Old Colony Avenue, Boston, Mass.

Respondents, Faustyn K. Jakiel and Richard B. Friend, are copartners doing business under the firm name and style of State Die Co., with their principal office and place of business located on Lincoln Street, Manchester, N. H.

Respondents, Axel Swanson and Raymond Duprey, are copartners, doing business under the firm name and style of Manchester Die Co., with their principal office and place of business located at 134 Maple Street, Manchester, N. H.

Respondent, Vincent W. Burke, is an individual, doing business under

the firm name and style of Bee Machine Co., with his principal office and place of business located at 432 Union Street, Lynn, Mass.

Respondent, Brockton Cutting Die & Machine Co., Inc., is a corporation, organized and existing under the laws of the State of Massachusetts, with its principal office and place of business located on Memorial Drive, Avon, Mass.

Respondent, Granite Die Co., Inc., is a corporation, organized and existing under the laws of the State of Massachusetts, with its principal office and place of business located at 18 Granite Street, Haverhill, Mass.

PAR. 2. The respondents are engaged, respectively, in the business of manufacturing, selling, and distributing steel dies used in the manufacture of shoes, such dies being used specifically in the cutting of pieces of leather into the various shapes and sizes required to form the component parts of a shoe. Cutting dies are divided into two general classes: hand-cutting dies and machine-cutting dies, and the latter class is further divided into mallet dies, clicker dies, counter dies, machine handle tap dies, machine heel dies, etc. Each of the respondents manufactures, sells, and distributes one or more of these various types of dies.

Cutting dies are custom-made, in that each die is manufactured in accordance with the specifications of each shoe manufacturing customer to conform with the particular style, design, and type of shoe to be manufactured. The different dies therefore have variations consisting of angle changes of the die shape and additions to the base die such as nicks, stabs, scallops, braces, slots, etc. The price of a die in a particular classification is computed by taking the base price applied to such a die of a maximum length and width and with predetermined angle and number of nicks or notches, and adding to such base price the charge for changing the angle and for additional nicks, slots, braces, etc.

The aggregate volume of business done by the respondents is approximately \$500,000,000 annually, which represents approximately 35 per cent of the total volume of cutting die business done in the New England States, where all of the respondents are located, and approximately 15 per cent of the total volume of such business done in the entire United States.

PAR. 3. In the regular course and conduct of their respective businesses the respondents cause their products, when sold, to be shipped and transported to the purchasers thereof, located in various States of the United States other than the States in which such shipments originate. All of the respondents maintain and have maintained a regular current of trade in their products in commerce among and between the various States of the United States.

PAR. 4. Respondents are and have been in active and substantial competition with one another and with other persons, firms, and corporations engaged in the sale and distribution of cutting dies in commerce among and between the various States of the United States, except insofar as such competition has been restrained, lessened, injured, and suppressed by the acts and practices hereinafter described.

PAR. 5. In or prior to June, 1941, the respondents organized an unincorporated trade association commonly known as the Die Manufacturers Association. At meetings of the association the respondents, all of whom were members, discussed sale prices and repair prices, both current and future, for dies manufactured, sold, and repaired by them. Agreements

and understandings were thus reached by the respondents with respect to such prices, and respondents agreed to adhere to future prices so determined.

PAR. 6. At a meeting of the respondents held in June, 1941, they agreed on base prices and also on specific charges for alterations, additions, and repairs. Thereafter, a list containing the prices agreed upon was published by one of the members, and duplicate or mimeographed copies thereof were sent to each of the other respondents. The prices in the June list were changed at a subsequent meeting of the respondents, and a new price list was published by a member and disseminated among the other respondents, this action being taken in November, 1941. When the respondents received their copies of the adopted price list, they republished the list and distributed it to the trade. Respondents used this common price list as a basis of quotations to their customers and generally adhered to the list, although there were some variations. The advent of the Office of Price Administration in 1942 resulted in a change of the entire price structure.

PAR. 7. Membership in the association was voluntary, and members could and did withdraw at will. Respondent, Joseph E. Knox & Co., Inc., withdrew from the association in September, 1942. Respondents, Axel Swanson and Raymond Duprey (Manchester Die Co.), withdrew on January 25, 1943.

PAR. 8. At the present time the respondents, because of the shortage of steel, are unable to obtain their full requirements of steel for the manufacture of dies. In consequence, there will likely be few changes in the styles of shoes for the duration of the war. Manufacturers of shoes are now required to use the dies in their possession and to keep them in good repair because of the inability of manufacturers of dies to obtain their customary requirements of steel.

PAR. 9. The Commission finds from the facts set forth above, as well as others disclosed by the record, that the respondents have entered into and put into operation and effect an agreement, understanding, combination, and conspiracy to restrain, lessen, injure, and suppress price competition in the sale and distribution of cutting dies in commerce among and between the various States of the United States.

PAR. 10. The tendency, capacity, and effect of the agreement, understanding, combination, and conspiracy entered into by the respondents, and of the acts and things done pursuant thereto and in furtherance thereof, as set forth herein, have been and are unduly to restrain, lessen, injure, and suppress competition among the respondents in the sale and distribution of their products in commerce among and between the various States of the United States, and unduly to restrict and restrain trade in such products in commerce as aforesaid.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, and a stipulation of facts entered into between the attorney for the Commission and the attorneys for the respondents; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Auburn Die Co., Inc., a corporation; Androscoggin Die Co., Inc., a corporation; Joseph E. Knox & Co., Inc., a corporation; John Hermanson, Stanley Leskiewicz, and Joseph Toll, individually, and as copartners, trading as North Shore Cutting Die Co.; Hyman Resnick, Henry April, and Hyman Rosenblatt, individually, and as copartners, trading as Bay State Cutting Die Co.; Boston Cutting Die Co., Inc., a corporation; Faustyn K. Jakiel and Richard B. Friend, individually, and as copartners, trading as State Die Co.; Axel Swanson and Raymond Duprey, individually, and as copartners, trading as Manchester Die Co.; Vincent W. Burke, individually, and trading as Bee Machine Co.; Brockton Cutting Die & Machine Co., Inc., a corporation; and Granite Die Co., Inc., a corporation; and respondents' respective officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of cutting dies 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 to this proceeding, to do or perform any of the following acts or things:

1. Fixing or establishing uniform prices for cutting dies, or adhering to or maintaining prices so fixed or established.
2. Fixing or establishing uniform prices for base dies, or uniform prices or charges for variations, alterations, or additions to such dies, or adhering to or maintaining any prices or charges so fixed or established.
3. Fixing or establishing uniform charges for repairs to cutting dies, or adhering to or maintaining charges so fixed or established.
4. Publishing, disseminating, or using common price lists.
5. Entering into discussions at meetings with the purpose or effect of establishing or maintaining uniform prices or charges for cutting dies or repairs thereto.
6. Engaging in any act or practice substantially similar to those set out in this order with the purpose or effect of establishing or maintaining uniform prices or charges for cutting dies or repairs thereto.

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

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IN THE MATTER OF
AGRICULTURAL INSECTICIDE & FUNGICIDE
ASSOCIATION ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 4145. Order, December 14, 1944

Order, pursuant to provisions of Section 5 (b) of the Federal Trade Commission Act, in proceeding in question; in which (1) the original order issued on July 24, 1942, in Agricultural Insecticide and Fungicide Assn., et al, Docket 4145, 35 F.T.C. 201; (2) the Circuit Court of Appeals for the Second Circuit, on December 23, 1943 in *Phelps Dodge Refining Corp. et al. v. Federal Trade Commission*, 139 F. (2d) 393, 37 F.T.C. 828, unconditionally affirmed the Commission's order as to the six petitioning corporate respondents and reversed it as to petitioner Demmon, and thereafter on February 21, 1944 entered decrees in accordance with stipulation entered into by the Commission with the petitioning respondents only; and (3) the Commission on June 8, 1944, pursuant to the provisions of Sec. 5 (i), and in accordance with the decrees above referred to, modified, as to said petitioning respondents only, said order—which required respondents therein enjoined, in connection with offer, etc., in commerce, of agricultural insecticides, fungicides, and related chemicals and items for similar usage, to cease and desist from entering into, continuing, directing, instigating, or cooperating in, “any common course of action,” mutual agreement, etc., to fix, establish or maintain prices, whether on a delivered basis or otherwise, etc., or to make use of the various other practices as there specified so that as to aforesaid respondents, the above quoted words were changed to read “cooperating in any agreed or planned common course of action”; and (4) dismissed the complaint as to respondent Demmon;

Modifying similarly as to the other respondents joined in said original order, the aforesaid language so as to read, as applied to them also, “cooperating in any agreed or planned common course of action”; and

Ratifying and confirming in all other respects save as thus modified the original cease and desist order entered on July 24, 1942.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers thereto of the several respondents, and certain stipulations of fact, and respondents having expressly waived all intervening procedure and hearing as to the facts and consented that the Commission may, without any further intervening procedure, make and enter its findings as to the facts, its conclusion based thereon, and its order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act, entered its cease and desist order herein on July 24, 1942. Thereafter, the respondents, Phelps-Dodge Refining Corporation, Tennessee Corporation, American Cyanamid & Chemical Corporation, John Powell & Co., Inc.,

Southern Acid & Sulphur Co., Inc., Stauffer Chemical Co., Inc., and R. Earl Demmon, having filed in the United States Circuit Court of Appeals for the Second Circuit their petitions for a review of the Commission's said order to cease and desist, entered on July 24, 1942; and, thereafter, on December 23, 1943, the said United States Circuit Court of Appeals for the Second Circuit having unconditionally affirmed the Commission's said order to cease and desist as to the said respondents, Phelps-Dodge Refining Corporation, Tennessee Corporation, American Cyanamid & Chemical Corporation, John Powell & Co., Inc., Southern Acid & Sulphur Co., Inc. and Stauffer Chemical Co., Inc., and having reversed the Commission's said order as to the respondent, R. Earl Demmon; and, thereafter, a stipulation having been entered into by the Commission, with the petitioning respondents only, that the Commission's said order of July 24, 1942, should be modified to the extent that the language "cooperating in any common course of action" appearing in the Commission's said order to cease and desist entered on July 24, 1942, should be changed to read "cooperating in any agreed or planned common course of action," and, thereafter, decrees to this effect having been entered on February 21, 1944, with respect to the said petitioners only; and, thereafter, on June 8, 1944, the Commission having entered its order modifying its order to cease and desist entered on July 24, 1942, with respect to the petitioning respondents so as to conform to the decrees entered by the United States Circuit Court of Appeals for the Second Circuit; and, thereafter, on motion of the attorney for the Federal Trade Commission, the Commission, on July 5, 1944, having entered an order directing that a copy of said motion be served upon said respondents and requiring said respondents within twenty days after service upon them of said motion to show cause, if any, they could, in writing, why said order to cease and desist heretofore entered herein on July 24, 1942, should not be so modified, in accordance with said motion, to the extent that the language "cooperating in any common course of action" appearing in the Commission's said order to cease and desist entered on July 24, 1942, be changed to read "cooperating in any agreed or planned common course of action" as to all of said respondents, and, thereafter, the said period of twenty days within which said respondents were directed to show cause why said order should not be so modified in accordance with said motion having expired; now, therefore,

It is ordered, That in accordance with the provisions of Section 5(b) of the Federal Trade Commission Act, due notice having been served on said respondents, this matter be, and the same hereby is, reopened for the purpose only of modifying the order to cease and desist heretofore entered herein on July 24, 1942.

It is further ordered, That, as to the respondents, Agricultural Insecticide & Fungicide Association, the Acme White Lead and Color Works, The American Agricultural Chemical Co., The American Nicotine Co., Inc., The California Spray-Chemical Corporation, The Chipman Chemical Co., Inc., George W. Cole and Co., Inc., The Hercules Glue Co., Ltd. (a corporation, trading under the name of Colloidal Products Corporation). The Commercial Chemical Co., Derris, Inc., Dow Chemical Co., E. I. du Pont de Nemours & Co., Inc., The Latimer-Goodwin Chemical Co., The Niagara Sprayer & Chemical Co., Inc., The Nicotine Production Corporation, The Sherwin-Williams Co., Inc., The Tobacco By-Products & Chem-

ical Corporation, The J. W. Woolfolk Co., Ansbacher-Siegle Corporation, General Chemical Co., R. N. Chipman, L. S. Hitchner, June C. Heitzman, H. D. Whittlesey, H. P. Mansfield, J. B. Cary, J. H. Boyd, A. J. Flebut, G. F. Leonard, G. E. Riches, and J. M. Taylor, general partner, and E. P. Brown and E. W. Parker, special partners, trading as Taylor Chemical Works, Ltd., the Commission's said order to cease and desist heretofore entered on July 24, 1942, be, and the same hereby is, amended and modified to the extent that the language "cooperating in any common course of action" appearing therein be, and the same hereby is, changed so as to read "cooperating in any agreed or planned common course of action"; and

It is further ordered, That the Commission's said order to cease and desist, as entered herein on July 24, 1942, (and as modified on June 8, 1944) be, and the same hereby is, ratified and confirmed in all other respects save and except as herein modified.

It is further ordered, That the respondents upon whom this modified order is served are excused from the filing within 60 days of any new compliance reports, in view of the fact that they have previously filed reports of compliance with the broader form of order originally entered in the case on July 24, 1942.

Syllabus

IN THE MATTER OF

ED. W. ARNOLD COMPANY, A COMMON LAW TRUST
DOING BUSINESS UNDER THE TRADE NAMES, EDWARD
W. ARNOLD COMPANY AND EDW. W. ARNOLD COM-
PANY; AND ED. W. ARNOLD INDIVIDUALLY AND AS
SOLE TRUSTEECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4818. Complaint, Aug. 20, 1942—Decision, Dec. 20, 1944*

Where a common law trust and an individual, its sole trustee, engaged in the manufacture and interstate sale and distribution of (1) a bath cabinet in two models, for patients sitting or reclining, designated, respectively as the "Electro Vaporized Mineral Bath" and as the "New DeLuxe Multi Treatment" heated electrically through a device installed in the bottom known as a vaporizer or vapor generator, in which there might also be placed some volatile medicinal product such as mineral oil or pine needle extract, and of (2) a massaging device consisting of a wooden handle and 12 small rubber rollers; in advertisements of its said products in periodicals of national circulation and through circulars, pamphlets and other advertising material, directly or by implication—

- (a) Falsely represented that the use of their said bath cabinet constituted a cure or remedy and a competent and effective treatment for diabetes, high blood pressure, asthma, fevers, toxic or acid conditions, kidney trouble, blindness, gonorrhoea cancer, syphilis, paralytic insanity, colds, sore throat, catarrhal conditions, ulcers, tuberculosis of the bowels, rectal troubles, heart troubles, cramps, pains or tortures peculiar to women, weaknesses or worn down conditions, sleeping sickness, blood poison, poisons from bad teeth, or rheumatic fever, and various other ailments and conditions; and
- (b) Falsely represented that their said cabinet was a cure or remedy and a competent and effective treatment for rheumatism, lumbago, and neuritis, St. Vitus Dance, insomnia, and headaches;

The facts being that it possessed no therapeutic value in the treatment of said conditions except in so far as it might, through the application of heat, afford temporary relief for the pains accompanying rheumatism, lumbago and neuritis, temporary comfort and relaxation in the case of St. Vitus Dance, temporary soothing and relaxing in the case of insomnia, and upon the nerves in the case of nervous headache; and the therapeutic benefits afforded by the use of the cabinet were limited to such temporary benefits as might result from application of heat, substantially the same results being obtainable through an ordinary warm tub bath or, in certain cases, through a hot water bottle or electric pad;

- (c) Falsely represented that use of said cabinet would reduce obesity, build up underweight, restore vim and vigor, eliminate broken down tissues, increase vitality and liver activity, combat poisons, neutralize bacterial poisons, cell wastes and other undesirable matter, and eliminate them;
- (d) Falsely represented that use thereof would rejuvenate and vitalize the nervous system; cleanse and purify the blood, eliminate contraction of the blood capillaries, thin the blood, neutralize and eliminate toxins or poisons, increase oxidation and

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- "detoxinize" the body; and that such use constituted an effective method of health culture and health building, and of preventing disease; and that the cabinet contained healing elements, and aided in restoring perfect health to those diseased;
- (e) Falsely represented, through use of the word "mineral" in designating and describing their cabinet and through other statements as well, that the cabinet gave the user a mineral bath;

The facts being that while, as above noted, provision was made for the use of mineral oil or some other volatile oil in the cabinet, such oils are not minerals in the same sense as calcium, phosphorus, and others which have for a long time been associated with mineral baths, and their cabinet was incapable of affording the user a mineral bath within the correct and commonly accepted meaning of the term;

- (f) Falsely represented that said massaging device was a scientific instrument which produced a scientific massage, saved time and labor, would reduce fat spots and the waist line, and otherwise reduce the weight and recontour the body, and leave the flesh more firm, picking up and kneading it and oxidizing fatty deposits within the body; and
- (g) Falsely represented that said massaging device relieved constipation, promoted regularity, limbered up and relieved tension in sore, stiff or aching muscles, relieved insomnia and induced sleep, relieved nerve pressure or tension and afforded to the surface of the body benefits equivalent to those afforded by exercise;

With the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their products, and as a result 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 constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Mr. Charles H. Rowan, of Milwaukee, Wisc., 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 Ed. W. Arnold Co., a common law trust, doing business under the trade names Edward W. Arnold Co. and Edw. W. Arnold Co., and Ed. W. Arnold, individually, and as sole trustee of Ed. W. Arnold Co., a common law trust, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Ed. W. Arnold Co., is a common law trust, doing business under the trade names of Edward W. Arnold Co. and Edw. W. Arnold Co. Ed. W. Arnold, is an individual, and the sole trustee of Ed. W. Arnold Company, a common law trust. The principal place of business and post office address of said respondents is Logansport, Ind.

PAR. 2. The respondents are now and for several years last past have been engaged in the manufacture, sale and distribution of bath cabinets

designated as Arnold's Electro-Vaporized Mineral Bath and New Deluxe Multi-Treatment Cabinets and a mechanical device designed for use in massaging, and designated as Tu-Way Massager.

In the course and conduct of their said business respondents cause said bath cabinet and device, when sold, to be transported from their place of business in the State of Indiana to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said bath cabinet and 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 bath cabinet and device by United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated, and are now disseminating, and have caused, and are now causing the dissemination of false advertisements concerning their said bath cabinet and device by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said bath cabinet and device in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive statements, disseminated and caused to be disseminated as aforesaid, by United States mails, by insertion in newspapers and periodicals and by circulars, leaflets, pamphlets and other advertising literature, are the following:

With respect to Arnold's Electro-Vaporized Mineral Bath and New Deluxe Multi-Treatment Cabinets—

These vital life elements when supplemented with radiated moist heat usually soon restores that coveted vim and vigor of youth.

Consequently a great many common ailments, particularly colds, sore throats, neuritis and some fevers often disappear with one treatment.

REGULATED MOIST HEAT... NATURE'S OWN PRODUCER OF LIFE
* * * A Modern Thermal Therapeutic Triumph * * *

A Natural, Reasonable, Rational Method in Scientific Efficient Health Culture.

SCIENTIFIC RESEARCH IN THE FORD HOSPITAL and wherever FEVER THERAPY is used has produced permanent relief in some of the worst diseases when all other methods of treatment fail.

* * * a very scientific, natural and effective method of combatting the body poisons and almost every form of disease.

FOR THE PAST FIFTEEN YEARS ARNOLD'S ELECTRO THERMOTHERAPY CABINETS have been building a monument of living evidence to the supreme value of artificial fever in the treatment of the most dreaded disease to which man has fallen a prey.

They vitalize and rejuvenate the entire nervous system, * * *. They reduce obesity and build up those under weight. * * * Doctors stand amazed at the marvelous results that are being obtained and most especially in old chronic maladies after the case had been given up as incurable.

These eliminative energizing treatments not only aid nature in making one well but are a true natural means of preventing disease and are especially valuable in the treat-

ment of RHEUMATISM, NEURITIS, DIABETES, HIGH BLOOD PRESSURE, OBESITY, DROPSY, ASTHMA, INSOMNIA, FEVERS, TOXIC AND ACID CONDITIONS, DEPLETED NERVES, AND ALL FORMS OF SKIN ERUPTIONS AND BLOOD DISORDERS.

THESE VITALIZING VAPORIZED MINERALS AND OIL FUMES, aided by the relaxing medium of the moist warm air, act directly on the skin; neutralizing the bacterial poisons, toxins, cell wastes and morbid matter coming from broken down tissue and eliminating them from the body by setting up a normal functioning of the skin, increasing the liver activity and facilitating the work of the kidneys and other organs of elimination, thus cleansing and purifying the blood.

The SOOTHING, WARM VAPORS raise the temperature of the body, eliminating the contraction of the blood capillaries, warming up and thinning the blood; * * * increasing oxidation; * * * It is not uncommon for a severe cold, a sore throat, a case of neuritis, or a fever, to entirely disappear as a result of taking one of these simple treatments.

ELECTRO MINERAL BATHS are natural health builders. They detoxinize the body and rejuvenate the nerves. Those who take them usually soon feel their entire body surge with new life, vim and vigor.

. . . They promote that pleasant, youthful, buoyant feeling of increased vitality that is so ardently desired by both young and old. They neutralize and eliminate the toxins and broken down tissues.

Many chronic as well as acute ailments respond readily.

THE NEW DELUXE MULTI-TREATMENT RECLINING CABINETS are equipped with Ultra-Violet and Infra-Red Lamps to give the Sunray treatment and to give the artificial fever treatment and has become famous in the relief of chronic rheumatism, arthritis and other so-called incurable diseases.

Today scientists are using artificial fevers to cure many diseases previously considered incurable. Profiting frequently by curious accidents which are often forerunners of great discoveries, rheumatism, sleepy sickness, syphilis, arthritis, ulcers and a dozen other tortures of civilization have been entirely cured by artificial fevers produced at will.

The spread of crsipolas (sic) in a lunatic asylum left 30% of the paralytic insane cured when once its fever had subsided.

Multiple eye ulcers with adhesions have been cured in five treatments. Cysts in the breast have shrunk and disappeared without operation. Torn nerves have been regenerated. Racking cramps and pain and torture, so peculiar to some women, have vanished after a few treatments.

ARNOLD'S ELECTRO VAPORIZED MINERAL BATH is vastly different in action when compared with any other health bath, in that the patient is entirely surrounded by moist warm air and pure cleansing, vitalizing and invigorating electrically vaporized minerals and oils which surpass any and all mineral water baths.

A NATURAL BLOOD CLEANSER, NERVE VITALIZER, BODY INVIGORATOR, AND REJUVENATOR.

THE MINERALS AND OILS are principally an extract of mineralized vegetation and contain some of the greatest healing elements, combined with other health promoting plant and mineral products, secured from nature's own supply.

For six months I was troubled with headaches, rheumatism and neuritis. * * * The first four or five of Arnold's Electric Mineral Baths stopped all my pains * * *

I don't believe that there ever was a woman so near down and out with complications of diseases. * * * Dr. ——— was called to treat me. By his treatments, the Electro Vaporized Mineral Fume Baths, I was made well.

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For several years I had been nervous and worn out * * * in bed during the months of July and August with Intestinal Grippe. It left me in a very weakened condition. * * * After two courses of baths I never felt better.

* * * After being treated in Europe and by some of the best Specialists in this country for a discharge of the right ear, and head noises, with no results, I started taking your Electric Mineral Fume Baths. * * * One month treatment worked wonders in my case. * * *

The doctor made my diagnosis as T. B. of the Bowels. I also had kidney and rectal trouble. I took 22 of the Vaporized Mineral Fume Baths, * * * and the doctor said I was now O.K.

* * * have never found anything that has any place to be compared with your Electric Mineral Fume Bath. I think them most wonderful for rheumatism and obesity, which were my troubles.

When I had my teeth pulled the dentist broke one and left the root in. * * * A doctor said it had poisoned me. * * * I took the Mineral Baths. * * * I do think those Baths took the poison out when nothing else would. * * *

I was in a serious condition from blood poison in my leg. * * * I could not move about without help when I started taking Arnold's Electric Mineral Baths. * * * and now my leg is entirely well. * * *

* * * in some chronic degenerative diseases, especially multiple sclerosis, this form of treatment is most beneficial.

It's history how the Austrian doctor * * * changed fever from man's alleged enemy into a powerful friend—by daring to inoculate dangerous malaria microbes into nine doomed human derelicts, suffering from syphilis that had developed in the general paralysis of the insane. Malaria's fierce fever brought three of these doomed nine back to health. * * * They demonstrated finally that it wasn't malaria, as a disease, that fought the corkscrew microbe of syphilis. No, it was the fever, the heat stoked in the sufferers that did the trick. * * * A nine year old boy, blind from eye syphilis, * * * was cured. * * * The microbe causing gonorrhoea has also found its most formidable enemy in the fever machine. * * * For still other serious afflictions, machine fever brings hope. In treating St. Vitus Dance, violent rheumatic fever, "Intractable asthma," and certain serious eye infections.

We believe it is through this same absorbing process that ARNOLD'S ELECTRIC MINERAL FUME TREATMENTS produce their wonderful rejuvenating and nerve exhilarating action.

ELECTRO-VAPORIZED MINERAL FUME BATHS are very invigorating. They vitalize and rejuvenate the entire nervous system. They soften and beautify the skin. They reduce obesity and build up those under weight . . . They not only aid in making one well but are a true natural means of preventing disease . . .

EDWARD W. ARNOLD . . . for eight years was under medical treatment in the hands of several prominent physicians for a variety of so-called disease conditions; during which time he steadily grew more depleted, going down from bad to worse until his case was finally pronounced internal cancer . . . Discharging his medical advisers he took his case in his own hands and is today a living example of the value of his own methods. He has since passed a 100% medical examination with every trace of the disease banished from his body.

With respect to the Tu-Way Massager—

Women Everywhere Want This Amazing TU-WAY MASSAGER that Works Off Fat * * *

. . . you can show eager hundreds all around you how—with the aid of this amazing new invention—they can quickly work off fat spots on any part of the body.

THE TU-WAY METHOD OF REDUCING is founded on an exact scientific principle that will positively REDUCE the FAT SPOTS * * *.

SYSTEMATIC daily use of your TU-WAY MASSAGER will bring a gradual fat reduction.

Notice the scientific * * * construction of this * * * invention. When this Tu-Way Massager is rolled over the flesh, one set of rollers picks up and KNEADS the flesh, the other set smooths out the skin. It's the kneading action of the Tu-Way that tends to break down the surplus fat * * *.

The Tu-Way May Also Be Used: For—Relieving nerve pressure along the spine, nerve tension, fatigue and insomnia. * * * Relieving constipation and promoting regular bowel action. Limbering up and relieving tension in sore, stiff muscles. * * * soothing tired or sore feet.

The Tu-Way Massager gives you the practical surface value of violent exercise, increasing blood circulation in the parts of the body that through lack of exercise have accumulated an over-balance of fatty tissue.

A few minutes of massaging the spine before retiring usually can insure you going to sleep quickly. Sore, aching muscles, feet, legs and neck can usually be relieved in a few moments by simple application of the Massager.

Reduce the Waistline or Hips 2 to 6 Inches Within 30 to 60 days.

Scientific Massage. It is a sane and safe method to aid reducing. The efficacy of massage is in the kneading of the tissues. It is the kneading that tends to break down the fatty deposits, to be oxidized (burned up) within the body by oxygen carried by blood corpuscles. The residue is eliminated in the form of carbon dioxide exhaled by the lungs and also carried away by the blood stream; at the same time leaving the flesh more firm and solid.

The TU-WAY massager is built on an exact, scientific principle that will positively reduce fat spots, recontour * * * the body. * * * It saves time and labor. Its merits have been established beyond a vestige of doubt.

Four Inches Off Waistline in Four Weeks.

PAR. 4. By the use of the representations hereinabove set forth and others similar thereto, and not specifically set out herein respondents represent directly and by implication:

That use of its bath cabinet, designated Arnold's Electro-Vaporized Mineral Bath and New Deluxe Multi-Treatment Cabinet, constitutes a competent remedy or cure for rheumatism, neuritis, diabetes, high blood pressure and other blood disorders, dropsy, asthma, insomnia, fevers, toxic and acid conditions, sclerosis, kidney trouble, lumbago, blindness, St. Vitus Dance, gonorrhoea, cancer syphilis, paralytic insanity, colds, sore throat, catarrhal conditions, ulcers, erysipelas, eye ulcers, adhesions and infections, all kinds of skin eruptions, cysts, ear and head noises, tuberculosis of the bowels, rectal troubles, heart troubles, headaches, cramps, pains and tortures peculiar to women, complications of diseases, weaknesses and worn down conditions, general debility, sleepy sickness, blood poison, poisons from bad teeth, excess acid, rheumatic fever and toxic poisons; that the use of said cabinet will reduce obesity, build up underweight, restore vim and vigor, eliminate broken down tissues, increase vitality and liver activity, combat body poisons, neutralize bacterial poisons, cell wastes and other undesirable matter and eliminate them from the body; that it will set up a normal functioning of the skin, rejuvenate, regenerate and vitalize the nervous system; that it will clean and purify

the blood, eliminate contraction of the blood capillaries, warm and thin the blood, neutralize and eliminate toxins and toxic poisons and will increase oxidation and detoxinize the body; that the use of said bath cabinet constitutes an effective method of health culture, health building and combatting poisons and preventing diseases; that said bath cabinet surpasses all health mineral water baths, contains healing elements, gives relief in chronic maladies and diseases where other methods of treatment fail, in cases given up as incurable, and gives one a mineral bath and aids in restoring perfect health to those who are diseased. That its device designated Tu-Way Massager is a scientific instrument which produces a scientific massage and saves time and labor; that by its use one can work off fat, reduce fat spots, and reduce the waist line; that its use will leave the flesh more firm and solid and bring gradual weight reduction; that its use will pick up and knead the flesh and oxidize fatty deposits within the body; that its use will relieve constipation and promote regular bowel action, limber up and relieve tension in sore, stiff aching muscles, feet, legs and neck; that its use constitutes a reliable and effective treatment for charley horse, will soothe tired and sore feet, relieve insomnia and induce sleep, give practical surface value of violent exercise and will relieve nerve pressure, nerve tension, fatigue and recontour the body.

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, use of respondents' said bath cabinet designated as Electro-Vaporized Mineral Bath and New Deluxe Multi-Treatment Cabinet does not constitute a competent remedy or cure for—

Rheumatism, neuritis, diabetes, high blood pressure and other blood disorders, dropsy, asthma, insomnia, fevers, toxic and acid conditions; sclerosis, kidney trouble, lumbago, blindness, St. Vitus Dance, gonorrhoea, cancer, syphilis, paralytic insanity, colds, sore throat, catarrhal conditions, ulcers, erysipelas, eye ulcers, adhesions, and infections, all kinds of skin eruptions, cysts, ear and head noises, tuberculosis of the bowels, rectal troubles, heart troubles, headaches, cramps, pains and tortures peculiar to women, complications of diseases, weaknesses and worn down conditions, general debility, sleepy sickness, blood poison, poisons from bad teeth, excess acid, rheumatic fever and toxic poisons.

Its use will not reduce obesity, it will not build up underweight, it will not restore vim and vigor, it will not eliminate broken down tissues, it will not increase vitality and liver activity, it will not combat body poisons, it will not neutralize bacterial poisons, cell wastes and other undesirable matter and eliminate them from the body; it will not set up a normal functioning of the skin, it will not rejuvenate, regenerate and vitalize the nervous system; it will not clean and purify the blood, or eliminate contraction of the blood capillaries; it will not warm and thin the blood; it will not neutralize and eliminate toxins and toxic poisons and will not increase oxidation and detoxinize the body.

The use of said bath cabinet does not constitute an effective method of health culture, health building and combatting poisons and preventing diseases; said bath cabinet does not surpass all health mineral water baths, does not contain healing elements, does not give relief in chronic maladies and diseases where other methods of treatment fail, in cases given up as

incurable, does not give one a mineral bath, and does not aid in restoring perfect health to those who are diseased.

In fact, respondents' said bath cabinet has no therapeutic value whatever in the treatment of physical and mental disorders in excess of its ability to produce profuse sweating. And further, respondents' Tu-Way Massager is not a scientific instrument which produces a scientific massage and saves time and labor; by its use one cannot work off fat, reduce fat spots, or reduce the waist line; its use will not leave the flesh more firm and solid and bring gradual weight reduction; its use will not pick up and knead the flesh and oxidize fatty deposits within the body; it will not relieve constipation and promote regular bowel action, limber up and relieve tension in sore, stiff aching muscles, feet, legs and neck; its use does not constitute a reliable and effective treatment for charley horse; it will not sooth tired and sore feet, relieve insomnia and induce sleep; it will not give practical surface value of violent exercise, and will not relieve nerve pressure, nerve tension, fatigue and recontour the body.

PAR. 6. The use by respondents of the term "mineral bath" with reference to their said bath cabinet is further deceptive and misleading in that there is nothing in the chemical or mechanical make-up of the said bath cabinet which renders it possible for one to obtain a mineral bath by its use.

PAR. 7. The use by the respondents of the foregoing false, deceptive and misleading statements and advertisements, with respect to their said bath cabinet and device, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true, and induces a number of the purchasing public, because of said erroneous and mistaken belief, to purchase respondents' said bath cabinet and 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 August 20, 1942, issued and subsequently served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. No answers were filed by respondents to the complaint. Thereafter, testimony and other evidence in support of the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it (no evidence being offered by respondents), and such testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, 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 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, Ed. W. Arnold Co., is a common law trust, doing business under the trade names Edward W. Arnold Co. and Edw. W. Arnold Co. Respondent, Ed. W. Arnold, is an individual, and is the sole trustee of respondent, Ed. W. Arnold Co. Respondents' place of business is located in Logansport, Ind.

For a number of years last past respondents have been engaged in the manufacture, sale, and distribution of a bath cabinet and a mechanical device designed for use in massaging. The bath cabinet is manufactured in two models or types, one being designated by respondents as "Arnold's Electro-Vaporized Mineral Bath" and the other as "New Deluxe Multi-Treatment Cabinet." The massaging device is designated by respondents as "Tu-Way Massager."

PAR. 2. Respondents cause and have caused their products, when sold, to be transported from their place of business in the State of Indiana to purchasers thereof located in various other States of the United States. Respondents maintain and have maintained a course of trade in their products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business respondents have disseminated and have caused the dissemination of numerous advertisements concerning their products by means of the United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and have caused the dissemination of advertisements concerning their products by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Through the use of various statements and representations contained in such advertisements, disseminated and caused to be disseminated by the United States mails, by insertion in periodicals having national circulation, and by means of circulars, pamphlets, and other advertising material, the respondents have represented, directly or by implication:

That the use of their bath cabinet constitutes a cure or remedy and a competent and effective treatment for rheumatism, neuritis, diabetes, high blood pressure, blood disorders, dropsy, asthma, insomnia, fevers, toxic and acid conditions, sclerosis, kidney trouble, lumbago, blindness, St. Vitus's dance, gonorrhoea, cancer, syphilis, paralytic insanity, colds, sore throat, catarrhal conditions, ulcers, erysipelas, adhesions, all kinds of skin eruptions, cysts, ear discharges, head noises, tuberculosis of the bowels, rectal troubles, heart troubles, headaches, cramps, pains and tortures peculiar to women, weaknesses and worn down conditions; general debility, sleeping sickness, blood poison, poisons from bad teeth, excess acid, and rheumatic fever; that the use of the cabinet will reduce obesity, build

up underweight, restore vim and vigor, eliminate broken down tissues, increase vitality and liver activity, combat poisons, neutralize bacterial poisons, cell wastes and other undesirable matter and eliminate them from the body; that the use of the cabinet will rejuvenate and vitalize the nervous system; that the use of the cabinet will cleanse and purify the blood, eliminate contraction of the blood capillaries, thin the blood, neutralize and eliminate toxins or poisons, increase oxidation and "detoxinize" the body; that the use of the cabinet constitutes an effective method of health culture and health building, and of preventing diseases, and that the cabinet contains healing elements, and aids in restoring perfect health to those who are diseased.

That the massaging device is a scientific instrument which produces a scientific massage and saves time and labor; that through its use one can work off fat, reduce fat spots, and reduce the waist line; that its use will leave the flesh more firm and solid, bring gradual weight reduction, and recontour the body; that its use will pick up and knead the flesh and oxidize fatty deposits within the body; that its use will relieve constipation and promote regular bowel action, and will limber up and relieve tension in sore, stiff, aching muscles and in the feet, legs, and neck; that its use will relieve insomnia, induce sleep, and relieve nerve pressure and nerve tension; and that the benefits afforded to the surface of the body by its use are equivalent to those afforded by violent exercise.

PAR. 4. Respondents' bath cabinet is heated electrically. The principal feature of the cabinet is a device known as a vaporizer or vapor generator, which was designed by respondent, Arnold. The device is installed in the bottom of the cabinet. When the cabinet is in use, air is drawn into the generator, heated, and mixed with the water vapor. If the operator so desires, some volatile medicinal product such as mineral oil or pine needle extract may also be placed in the generator. The heated vapor mixture thus obtained passes into the cabinet through a perforated sheet of metal, and is distributed around the patient.

The principal difference between the two types or models of the cabinet is that one, the "Electro-Vaporized Mineral Bath" model, is an upright cabinet in which the patient occupies a sitting position, while in the other, the "New Deluxe Multi-Treatment" model, the patient reclines. The latter model is also equipped with certain additional features, including ultra-violet and infra-red lamps. There is, however, no appreciable difference in the method of operation of the two models, nor in the therapeutic effects produced by them.

PAR. 5. The expert testimony in the record establishes that the therapeutic benefits afforded by the use of the cabinet are limited to such temporary benefits as may result from the application of heat. Substantially the same results may be obtained through the use of an ordinary warm tub bath. The cabinet is wholly without therapeutic value in the treatment of diabetes, high blood pressure, blood disorders, dropsy, asthma, fevers, toxic or acid conditions, sclerosis, kidney trouble, blindness, gonorrhoea, cancer, syphilis, paralytic insanity, colds, sore throat, catarrhal conditions, ulcers, erysipelas, adhesions, skin eruptions, cysts, ear discharges, head noises, tuberculosis of the bowels, rectal troubles, heart troubles, cramps, pains or tortures peculiar to women, weaknesses or worn down conditions, general debility, sleeping sickness, blood poison, poison from bad teeth, or rheumatic fever.

As to rheumatism, which term is usually employed by the layman to denote any condition involving the joints, it is possible that in some types of arthritis the use of the cabinet might bring about a soothing and comforting effect. Such effect, however, would be only temporary, and would reach only the pain accompanying the disease, not the disease itself. The same is true as to neuritis and lumbago. The cabinet is not a cure or remedy for any of these conditions, and any therapeutic benefit afforded by it would be limited to that referred to above. In the case of insomnia, the cabinet, while not providing a cure, might afford some soothing and relaxing effect, just as might be obtained by a warm tub bath at bedtime. In the case of St. Vitus's dance, the use of the cabinet would likewise prove ineffectual except insofar as it might afford some comfort and relaxation by reason of the application of heat. Substantially the same result could be obtained by a tub bath, a hot water bottle, or an electric pad. The only type of headache which could be beneficially affected by the use of the cabinet is that type usually referred to as "nervous headache," in which case the heat produced by the cabinet might temporarily soothe and relax the nerves.

The cabinet is not an effective or dependable means of reducing obesity. It is incapable of building up underweight, restoring vim or vigor, eliminating broken down tissues, increasing vitality or the activity of the liver, combating poisons, neutralizing bacterial poisons, cell wastes or other undesirable matter, or eliminating such conditions from the body. The cabinet is likewise incapable of rejuvenating or vitalizing the nervous system, cleansing or purifying the blood, eliminating contraction of the blood capillaries, thinning the blood, neutralizing or eliminating toxins or poisons, increasing oxidation, or "detoxinizing" the body. Nor does the use of the cabinet constitute an effective method of health culture or health building, or of preventing diseases. The cabinet does not contain healing elements, nor aid in restoring health to those who are diseased.

PAR. 6. Respondents' massaging device consists of a wooden handle about fourteen inches long and twelve small rubber rollers, the rollers being attached to the handle midway between the two ends. The device is not a scientific instrument and will not produce a scientific massage. It does not save time or labor. Its use will not reduce fat spots, reduce the waistline, or otherwise reduce the weight or recontour the body. Nor will its use leave the flesh more firm or solid, pick up or knead the flesh, or oxidize fatty deposits within the body. The device is wholly incapable of relieving constipation or promoting regular bowel action. It will not limber up or relieve tension in sore, stiff, or aching muscles in the feet, legs, neck, or any other part of the body. It will not relieve insomnia nor induce sleep, nor will it relieve nerve pressure or nerve tension. Nor are the benefits afforded to the surface of the body by the use of the device equivalent to those afforded by exercise.

PAR. 7. The Commission, therefore finds, that the representations made by respondents with respect to their products, as set forth in paragraph 3 hereof, are erroneous and misleading and constitute false advertisements.

Respondents have also represented, through the use of the word "Mineral" in designating and describing their bath cabinet, and through other statements, as well, that the cabinet gives the user thereof a mineral bath. This representation is likewise erroneous and misleading, and constitutes a

false advertisement. While; as heretofore pointed out, provision is made for the use of mineral oil or some other volatile oil in the cabinet, such oils are not minerals in the same sense as calcium, phosphorous, and other minerals which have for a long period of time been associated with mineral baths. Respondents' cabinet is incapable of affording the user a mineral bath within the correct and commonly accepted meaning of the term.

PAR. 8. The use by the respondents of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the characteristics and therapeutic properties and value of respondents' products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such 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 (no answer having been filed by respondents), 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 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, Ed. W. Arnold Co., a common law trust, trading as Edward W. Arnold Co. and as Edw. W. Arnold Co., or trading under any other name, and Ed. W. Arnold, individually, and as sole trustee of Ed. W. Arnold Co., and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondents' bath cabinet designated "Arnold's Electro-Vaporized Mineral Bath" and "New Deluxe Multi-Treatment Cabinet" and respondents' massaging device designated "Tu-Way Massager," or any other articles or devices of substantially similar construction or possessing substantially similar properties, whether sold under the same names or any other 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 represents, directly or by implication:

(a) That respondents' bath cabinet is a cure or remedy for or possesses any therapeutic value in the treatment of diabetes, high blood pressure, blood disorders, dropsy, asthma, fevers, toxic or acid conditions, sclerosis, kidney trouble, blindness, gonorrhoea, cancer, syphilis, paralytic insanity, colds, sore throat, catarrhal conditions, ulcers, erysipelas, adhesions, skin

eruptions, cysts, ear discharges, head noises, tuberculosis of the bowels, rectal troubles, heart troubles, cramps, pains or tortures peculiar to women, weaknesses or worn down conditions, general debility, sleeping sickness, blood poison, poisons from bad teeth, or rheumatic fever.

(b) That said cabinet is a cure or remedy for rheumatism, lumbago, or neuritis; or that it possesses any therapeutic value in the treatment of such conditions except insofar as it may, through the application of heat, afford temporary relief for the pains accompanying such conditions.

(c) That said cabinet is a cure or remedy for St. Vitus's dance; or that it possesses any therapeutic value in the treatment of such condition except insofar as it may afford temporary comfort and relaxation through the application of heat.

(d) That said cabinet is a cure or remedy for insomnia; or that it possesses any therapeutic value in the treatment of such condition except insofar as it may afford temporary soothing and relaxing effects through the application of heat.

(e) That said cabinet is a cure or remedy for headaches; or that it possesses any therapeutic value in the treatment of headaches except insofar as it may, through the application of heat, afford temporary soothing and relaxing effects upon the nerves in the case of nervous headaches.

(f) That said cabinet will reduce obesity, build up underweight, restore vim or vigor, eliminate broken down tissues, increase vitality, increase the activity of the liver, or combat poisons; or that said cabinet will neutralize bacterial poisons, cell wastes, or other undesirable matter, or eliminate such conditions from the body.

(g) That said cabinet will rejuvenate or vitalize the nervous system, cleanse or purify the blood, eliminate contraction of the blood capillaries, thin the blood, increase oxidation, neutralize or eliminate toxins or poisons, or "detoxinize" the body.

(h) That said cabinet constitutes an effective method of health culture or health building, or of preventing disease.

(i) That said cabinet contains healing elements or aids in restoring health to those who are diseased.

(j) That said cabinet affords any therapeutic benefits in the treatment of any ailment or condition other than such temporary benefits as may result from the application of the heat generated by the cabinet.

(k) That respondents' massaging device is a scientific instrument or produces a scientific massage.

(l) That said device saves time or labor.

(m) That said device will reduce fat spots, reduce the waistline, or otherwise reduce the weight or recontour the body.

(n) That the use of said device leaves the flesh more firm or solid, picks up or kneads the flesh, or oxidizes fatty deposits within the body.

(o) That said device relieves constipation or promotes regular bowel action.

(p) That said device limbers up or relieves tension in sore, stiff, or aching muscles in the feet, legs, neck, or any other part of the body.

(q) That said device relieves insomnia or induces sleep.

(r) That said device relieves nerve pressure or nerve tension.

(s) That said device affords to the surface of the body benefits equivalent to those afforded by exercise.

or which advertisement

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(t) Uses the word "Mineral" to designate, describe, or refer to respondents' bath cabinet, or otherwise represents, directly or by implication, that a mineral bath may be obtained through the use of said cabinet.

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

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

Syllabus

IN THE MATTER OF
E. J. BRACH & SONS

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

Docket 4548. Complaint, July 28, 1941—Decision, Dec. 21, 1944

Where a corporation which (1) was engaged in the manufacture and competitive interstate sale and distribution of candy and confectionery products; (2) was one of the few large candy manufacturers with annual sales in excess of \$8,000,000; (3) sold many of its candies containing as much as 90 percent glucose, at but a few cents a pound, to large buyers such as chain and syndicate stores, who purchase for resale and buy from one manufacturer rather than another on the basis of a difference in price of a small fraction of a cent only; (4) purchased from various manufacturers, through its Director of Purchases, accurately informed, as in duty bound, as to prices, products and terms, about 30 million pounds or 315 railroad tank carloads of glucose annually, price of which since June 19, 1936, ranged between \$2.09 and \$3.59 per cwt., and, at any given time, was substantially the same in the case of all manufacturers, as was the quality of their glucose—relative cost of which product, in high glucose content candies, was of importance to competing manufacturers thereof in attracting patronage of aforesaid buyers, and in which a saving to said corporation of 10 cents per cwt. in cost amounted to from 5 to 10 percent of said corporation's annual profit—

- (a) Knowingly received benefit of discriminations in price from some of the manufacturers who were concerned in concurrent sales of glucose of like grade and quality to it and some of its competitors, and who charged and invoiced to it glucose at the price preceding its increase to the trade generally, including, as typical, 92 tank cars of about 95,000 pounds each, sold and delivered to it at \$2.29 per cwt. over a five month period, by a certain concern, during which time its prices to the trade generally varied between \$2.39 and \$2.64 per cwt.;
- (b) Knowingly received the benefit of discriminations in price in the purchase of glucose by deducting from the current prices at which some manufacturers invoiced glucose to it and to the trade generally, amounts sufficient in some instances, and almost sufficient in others, to make the cost to it equal to the discriminatory prices it was receiving from others including aforesaid concern, and received thereby, as typical, prices ranging from \$2.29 to \$2.39 on 85 tank cars through deducting 10 cents to 20 cents from prices ranging from \$2.39 to \$2.59, charged to and received from its competitors by the two manufacturers concerned, from whose said prices it made deductions as aforesaid;
- (c) Knowingly induced discrimination in prices in its favor by some of aforesaid various manufacturers by making deductions from their invoice prices in remitting, and informing them falsely that competing manufacturers were then selling to it at such lower price; continuing, as illustrative, after the refusal of the concern first referred to, to sell to it further at said discriminatory price, deductions predicated on said price on 150 tank cars of glucose, sold it by the two manufacturers, whom it led to believe, upon their objecting, that more than one manufacturer was selling to it for less;

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(d) Induced and received the benefit of price discriminations giving it an advantage over its competitors of from 15 cents to 90 cents per cwt. on 93 tank cars, and an advantage on a substantial number of said cars of 90 cents, through ordering from each of several manufacturers, following announcement of a general increase by all manufacturers and pursuant to the manufacturers' long established "booking" practice, quantities at the old price which, in the aggregate, were far in excess of its requirements and delivery of all of which it could not possibly have taken during such period; and—through neglecting or refusing to take shipment of all the glucose thus booked within the shipping period, and securing the shipment of the remaining portion after the expiration thereof, and informing some of the manufacturers that their competitors were so doing and that they would lose sales if they did not likewise continue to extend the old price on the orders thus placed—obtained the benefit of the old and lower price at a time when the trade generally was paying the new and higher price;

Effect of which discriminations in price—which violated the prohibitions of Section 2(a) of the Act against price discrimination and which said corporation did not seek to justify under said Act—knowingly induced and received by it—and receipt of which decreased the cost to it of one of the principal ingredients of its products as compared with the cost thereof to its competitors and might thereby give it a price advantage in their sale and afford it the financial power to further such sale by advertising and other forms of non-price competition—was substantially to lessen competition and tend to create a monopoly in some of said manufacturers by causing said corporation to purchase its large requirements of glucose from them and not from their competitors, and to tend to create a monopoly in it as well as to injure, destroy and prevent competition with it:

Held, That such acts and practices constituted violations of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. John L. Hornor*, trial examiner.

Mr. Frank Hier, *Mr. P. R. Layton* and *Mr. A. H. Forkner* for the Commission.

Ryan, Condon & Livingston and *Mr. Henry Junge*, of Chicago, Ill., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, *E. J. Brach & Sons*, is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, and has its office and principal place of business at 4600 West Kinzie Street, Chicago, Ill.

PAR. 2. Respondent is now, and since June 19, 1936 has been, engaged in the business of manufacturing, distributing, and selling candy and confectionery products, consisting principally of low and medium-priced bulk and boxed candies. Such products are manufactured by respondent

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in the State of Illinois, sold by it to purchasers located in the several States of the United States and in the District of Columbia, and as a result thereof are shipped and caused by respondent to be transported from the State of Illinois to such purchasers located in the State of Illinois and in other States.

PAR. 3. Respondent in the course and conduct of its business, as aforesaid, is now, and since June 19, 1936, has been, competitively engaged with other persons, firms and corporations who similarly manufacture, distribute and sell similar candy and confectionery products. Respondent, incorporated in 1916, commenced business, however, in 1904, and has grown until it is one of the few large candy manufacturers, with annual sales exceeding \$8,000,000, although the products manufactured and sold by it are of a type which may be readily manufactured by small, local plants.

PAR. 4. One of the principal ingredients of the candy manufactured by respondent and its competitors is corn syrup, unmixed, or glucose, which respondent has purchased from one or more of the several manufacturers thereof, among whom are Corn Products Refining Co. and Corn Products Sales Co., with plants located at Kansas City, Mo., and Argo, Ill.; American Maize-Products Co., with a plant located at Roby, Ind.; Union Starch & Refining Co. and the Union Sales Co., with a plant located at Granite City, Ill.; A. E. Staley Manufacturing Co. and The Staley Sales Corporation, with a plant located at Decatur, Ill.; Anheuser-Busch, Inc., with a plant located at St. Louis, Mo.; the Clinton Co. and the Clinton Sales Co., with a plant located at Clinton, Iowa; Penick & Ford, Ltd., Inc., with a plant located at Cedar Rapids, Iowa; and the Hubinger Co., with a plant located at Keokuk, Iowa.

Such syrup, when purchased, is shipped and caused to be transported by said syrup manufacturers from the State in which their respective plants are located to respondent's plant in the State of Illinois to be used as an ingredient up to approximately 90 percent of the weight of the finished candy manufactured by it and distributed and sold in interstate commerce as aforesaid.

Said corn syrup manufacturers also sell such corn syrup in interstate commerce to competitors of respondent who similarly use it as an ingredient in the manufacture of the candy which they make and sell.

Many of the candies manufactured by respondent which contain a large proportion of such syrup are sold by it at but a few cents per pound and large purchasers thereof for resale, especially chain and syndicate stores, buy such candies from one candy manufacturer rather than from another when there is a difference in price of only a small fraction of a cent per pound. The relative cost of such syrup to competing manufacturers of such high glucose content candies under such circumstances is of considerable importance in being able to attract the business of such large purchasers thereof.

Respondent's aggregate yearly purchases of such syrup from said manufacturers are approximately 30,000,000 pounds, or approximately one railroad tank car per day, each of which contains approximately 95,000 pounds of such syrup. The price of corn syrup, unmixed, f.o.b. Chicago, since June 19, 1936, has been from \$2.09 to \$3.59 per cwt. and a saving of 10¢ per cwt. in the cost thereof to respondent would amount approximately to from 5 percent to 10 percent of its net annual profits.

PAR. 5. Respondent, while engaged in commerce, and in the course of such commerce, since June 19, 1936, has knowingly induced some of said corn syrup manufacturers to discriminate in price in favor of respondent and has knowingly received the benefit of discriminations in price from some of said corn syrup manufacturers in concurrent sales by said manufacturers to respondent and some of its competitors of such corn syrup of like grade and quality purchased by them for use, consumption and resale within the several States of the United States and in the District of Columbia, in which concurrent sales either the sales to respondent or the sales to respondent's competitors, or both of such sales, were in interstate commerce.

PAR. 6. One method, among others, by which respondent knowingly received the benefit of discriminations in price, as alleged in paragraph 5, was that after an increase in the price per cwt. of such syrup, which increased price was charged by said syrup manufacturers to the trade generally, including respondent's competitors, some of said syrup manufacturers continued to charge and invoice such syrup to respondent at the price per cwt. prevailing before the increase.

Thus, for instance, beginning on or about July 1, 1940, and continuing until on or about November 30, 1940, the Clinton Co. and the Clinton Sales Co., sold and delivered to respondent approximately 92 tank cars of 43 degree corn syrup, unmixed, each car containing approximately 95,000 pounds, at an invoice price of \$2.29 per cwt. f.o.b. Chicago; whereas, said corn syrup manufacturer had not charged to, or received from, the trade generally, including respondents' competitors, as little as \$2.29 per cwt. f.o.b. Chicago for 43 degree corn syrup, unmixed, since on or about April 4, 1940, for delivery at that price until approximately April 25, 1940, after which dates said corn syrup manufacturer sold such syrup f.o.b. Chicago to the trade generally, including respondent's competitors, at \$2.39 per cwt., and such price fluctuated thereafter and until on or about November 30, 1940, between \$2.39 per cwt. and \$2.64 per cwt., all of which respondent well knew.

PAR. 7. Another method, among others, by which respondent knowingly received the benefit of discriminations in price, as alleged in paragraph 5, was that respondent did not remit to some of said syrup manufacturers the full invoice prices at which said manufacturers invoiced such syrup sold and delivered to respondent, which invoice prices said manufacturers were concurrently charging and receiving from the trade generally, including some of respondent's competitors; but respondent made unauthorized deductions from such invoice prices when remitting to said manufacturers, in some instances sufficient, and in other instances almost sufficient, to make the price to respondent equal to discriminatory prices concurrently being received by respondent from other syrup manufacturers.

Thus, for instance, after beginning to receive the discriminations in price alleged in paragraph 6, and during all the time which they were received, namely from on or about July 1, 1940, until on or about November 30, 1940, respondent, when remitting to the Hubinger Co. and to the A. E. Staley Manufacturing Co., deducted from 10¢ to 20¢ per cwt. from their invoice prices of from \$2.39 to \$2.59 per cwt., at which approximately 85 tank cars of such syrup were sold, delivered and invoiced to respondent

during said period by said two corn syrup manufacturers so as to make the price to respondent \$2.29 or \$2.39 per cwt., \$2.29 per cwt. being the discriminatory price then being received by respondent from the Clinton Co., a competitor of said two syrup manufacturers, as alleged in paragraph 6; and during all of which period competitors of respondent were being charged by and paying to said two syrup manufacturers prices equal to the prices at which respondent was invoiced. All of which respondent well knew.

PAR. 8. One method, among others, by which respondent knowingly induced some of said corn syrup manufacturers to discriminate in price in favor of respondent, as alleged in paragraph 5, was by making unauthorized deductions from the invoice prices of some of said manufacturers when remitting to them and by seeking to secure their concurrence in such action by informing them that competitive syrup manufacturers were then selling such syrup to the respondent at the price resulting after respondent had made the deductions, when in truth and in fact, such sales had not been made to respondent.

Thus, for instance, beginning on or about December 1, 1940, and continuing up to the present time, and after respondent was no longer purchasing corn syrup from the Clinton Co. and no longer receiving from it the benefit of the discriminations in price alleged in paragraph 6, respondent continued to make deductions similar or identical to the deductions resulting in the discriminations alleged in paragraph 7, in remitting to the Hubinger Co. and the A. E. Staley Manufacturing Co. for approximately 150 tank cars of such syrup, when competitors of respondent were being charged by and paying to said two syrup manufacturers prices equal to the prices at which respondent was invoiced by them.

When said two syrup manufacturers objected and protested such deductions, respondent led them to believe that the situation, which was alleged in paragraph 6, continued to exist, when it did not in fact, by assuring said two syrup manufacturers that more than one other corn syrup manufacturer was selling such syrup to respondent at less than the price at which each of them was invoicing such syrup to respondent. Said two syrup manufacturers requested respondent to furnish them with a written statement of any sales made to respondent at less than their respective invoice prices, which prices they were charging to and receiving from the trade generally, including competitors of respondent, but respondent refused.

Subsequent to the sales made to respondent, by the Clinton Co., as alleged in paragraph 6 above, the Clinton Co. attempted to secure further orders from respondent at the prices it was then selling such syrup to the trade generally, including competitors of respondent, and respondent refused to purchase unless said syrup manufacturer sold to respondent at a price which resulted after making said deductions from the invoices of the Hubinger Co. and the A. E. Staley Manufacturing Co., which deductions, as alleged in paragraph 7 above, were originally made by respondent on the basis of the Clinton Co.'s sales to respondent, as alleged in paragraph 6 above. All of which respondent well knew.

PAR. 9. For many years, and continuing since June 19, 1936, each of said syrup manufacturers has followed a long established trade practice, under which, after an increase in price, all purchasers of corn syrup are

permitted to enter orders at the old and lower price for a stated number of days, usually 5 or 10 days, after the date of the announcement of the increase for such a quantity of such syrup as the purchaser will require and receive shipment of within a stated number of days, usually 30 days, after the date of the announcement, after which time shipments are to be at the new and higher price. Although each corn syrup manufacturer may have a fairly accurate knowledge as to a purchaser's total requirements for the specified shipping period, it cannot know, unless informed by the purchaser, how much such purchaser has ordered from all said manufacturers.

Another method, among others, by which respondent knowingly induced some of said syrup manufacturers to discriminate in price in favor of respondent was that, after the announcement of a general increase in price by all of said syrup manufacturers in accordance with the terms of said trade practice above alleged, respondent ordered from each of several corn syrup manufacturers an amount of such syrup which respondent could well use within the stated shipping period, but which orders, in the aggregate, were for an amount of such syrup far in excess of respondent's requirements within such shipping period; and respondent neglected or refused to take shipment of all of the syrup so ordered from all said manufacturers within such shipping period. Respondent thereupon solicited those manufacturers from whom it had so neglected or refused to take shipment to continue shipments after the expiration of such shipping period, until completed under such orders, at the old and lower price, although said syrup manufacturers were then charging to and receiving from the trade generally, including respondent's competitors, the new and higher price on shipments made after the expiration of the stated shipping period. Some of said corn syrup manufacturers so solicited by respondent were prevailed upon to so continue such shipments upon being informed by respondent that competitors were so doing and that refusal would result in loss of sales.

Thus, for instance, on or about July 6, 1936, each of said corn syrup manufacturers announced an increase in the price of 43 degree corn syrup f.o.b. Chicago from \$2.44 per cwt. to \$2.59 per cwt. with the privilege of entering orders within the ensuing 5 to 10 days for delivery prior to on or about August 20, 1936. Thereupon, respondent entered orders for 93 tank cars, more or less, approximately three months' supply, with all of the corn syrup manufacturers at a price of \$2.44 per cwt. f.o.b. Chicago, the number of cars ordered from each of said corn syrup manufacturers, together with the date of the delivery of each car, being as follows:

American Maize-Products Co., 10 tank cars, delivered between approximately July 5 and July 11, 1936; Union Starch and Refining Co. and Union Sales Co., 8 tank cars, delivered between approximately July 11 and July 23, 1936; the Hubinger Co., 10 tank cars, delivered between approximately July 13 and July 28, 1936; A. E. Staley Manufacturing Co., 15 tank cars, delivered between July 20 and August 3, 1936; Anheuser-Busch, Inc., 10 tank cars, delivered between approximately July 20, and September 17, 1936; Corn Products Refining Co. and Corn Products Sales Co., 15 tank cars, delivered from approximately July 28 to October 17, 1936; the Clinton Co., 10 tank cars, delivered between approximately August 7 and September 21, 1936; and Penick & Ford, Ltd., Inc., 15 tank cars, delivered between approximately August 7 and October 17, 1936.

During the period after July 6, 1936, the prices charged by said corn syrup manufacturers to the trade generally, including respondent's competitors, within the terms of the trade practices hereinabove alleged, were increased from \$2.59 to \$2.79 per cwt. on or about July 17, 1936, to \$2.94 per cwt. on or about July 30, 1936, to \$3.14 per cwt. on or about August 3, 1936, to \$3.34 per cwt. on or about August 19, 1936, after which the price was reduced to \$3.19 per cwt. on or about August 25, 1936, to \$3.04 on or about October 5, 1936, which latter price remained until after on or about October 17, on which date respondent received the last of the tank cars ordered on or about July 6, 1936.

Such extensions of the time within which such shipments were made were accomplished by respondent as hereinabove alleged.

By this method, in this one instance alone, respondent induced and received the benefit of price discriminations giving it an advantage over its competitors of from 15¢ to 90¢ per cwt. on approximately 40 tank cars of corn syrup or on approximately 38,000 cwt., the advantage on a substantial number of such cars being 90¢ per cwt. All of which respondents well knew.

PAR. 10. The effect of said discriminations in price, knowingly induced and knowingly received by respondent in the manner and form, as hereinabove alleged, was substantially to lessen competition and tend to create a monopoly in some of said syrup manufacturers by causing respondent to purchase from them and not from their competitors the large requirements of respondent for corn syrup; and to lessen competition, tend to create a monopoly as well as to injure, destroy and prevent competition with respondent, who received the benefits of said discriminations by decreasing the cost to it of one of the principal ingredients of its said products which may give respondent a price advantage in the sale of said products, or some of them, and confer upon respondent a financial power to further the sale of its said products by advertising and other forms of non-price competition.

PAR. 11. Each of said corn syrup manufacturers, during all the times mentioned herein, continuously and regularly informed respondent by mail, telephone and personal visits of salesmen and brokers of the price at which each of them respectively was offering for sale and selling such corn syrup to the trade generally, including respondent's competitors.

Respondent also knew from the same sources the terms of sale of each of said manufacturers, particularly the trade practice of accepting orders from purchasers for five or ten days after the announcement of a price increase and the old and lower price for such syrup to be delivered within a stated period after the announcement, usually thirty days.

The quality of corn syrup, as manufactured by said syrup manufacturers is substantially the same, and candy manufacturers, including respondent and its competitors, purchase and use the corn syrup manufactured by each of said manufacturers interchangeably with the corn syrup manufactured by the others. As a result, the price of each of said manufacturers and their terms of sale are substantially the same. All of which respondent well knew.

Respondent has for many years and since June 19, 1936, employed a director of purchases who has had charge of all of the purchases of corn syrup made by respondent and whose duty it is to keep and who has kept

accurately and currently informed of the prices and terms of sale of such syrup; and all of the purchases of corn syrup herein referred to have been made by him or under his direction and with his knowledge.

PAR. 12. The foregoing alleged acts of said respondent. E. J. Brach & Sons, while engaged in interstate commerce, in knowingly inducing and in knowingly receiving in the course of such commerce, since June 19, 1936, discriminations in price prohibited by Section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. title 15, sec. 13), are in violation of Section 2 (f) of said Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by Act approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission on July 28, 1941, issued and subsequently served its complaint in this proceeding upon E. J. Brach & Sons, a corporation, charging it with violation of the provisions of subsection (f) of Section 2 of the said Clayton Act as amended in the purchase of glucose or corn sirup unmixed. After the issuance of said complaint and the filing of respondent's answer, at hearings before an examiner of the Commission theretofore duly designated by it, respondent withdrew its answer and admitted on the record certain allegations of the complaint, testimony and other evidence in support of and in opposition to the other allegations of said complaint were introduced and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint and the record, including testimony and other evidence (report of the trial examiner and 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, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, E. J. Brach & Sons, is a corporation, organized and existing under the laws of the State of Illinois, with its office and principal place of business located at 4600 West Kinzie Street, Chicago, Ill. It is now, and for many years last past has been, engaged in the manufacture, sale, and distribution of candy and confectionery products, consisting principally of low-priced and medium-priced bulk and boxed candy.

PAR. 2. (a) In the course and conduct of its aforesaid business, pursuant to sales made, respondent transports, or causes its said products to be transported, from its place of business in Illinois to purchasers thereof at their various locations in the several States of the United States and in the District of Columbia, and respondent thus maintains, and has maintained, a course of trade in said products in commerce among and between the several States of the United States.

(b) In the conduct of its business as aforesaid, respondent is now, and for many years last past has been, in competition with other persons, firms, and corporations similarly engaged in the manufacture, sale, and distribution of like candy and confectionery products.

PAR. 3. (a) Glucose or corn sirup unmixed is one of the principal ingredients of candy manufactured by respondent and its competitors. Respondent has purchased its supplies of glucose from various of the several manufacturers thereof, among whom are Corn Products Refining Co. and Corn Products Sales Co., with plants at Kansas City, Mo., and Argo, Ill.; American Maize-Products Co., with its plant at Roby, Ind.; Union Starch & Refining Co. and Union Sales Co., with a plant at Granite City, Ill.; A. E. Staley Manufacturing Co. and The Staley Sales Corporation, with a plant at Decatur, Ill.; Anheuser-Busch, Inc., with its plant at St. Louis, Mo.; Clinton Co. and Clinton Sales Co., with a plant at Clinton, Iowa; Penick & Ford, Limited, Inc., with its plant at Cedar Rapids, Iowa; and The Hubinger Co., with its plant at Keokuk, Iowa. When said glucose is purchased by respondent the manufacturers thereof transport, or cause it to be transported, from the State in which their respective plants are located to respondent's place of business in Chicago, Ill., where it is used as an ingredient in the candy manufactured and sold by respondent as aforesaid. Said glucose manufacturers also sell glucose in interstate commerce to competitors of respondent who similarly use it as an ingredient of candy which they manufacture, sell, and distribute.

(b) Many of the candies manufactured by respondent which contain a large proportion of glucose—in some cases up to 90 percent of the weight of the finished candy—are sold by respondent at but a few cents per pound. Large buyers of such candies who purchase for resale, especially chain and syndicate stores, buy such candies from one manufacturer rather than from another when there is a difference in price of only a small fraction of a cent per pound. The relative cost of the glucose to competing manufacturers of high-glucose-content candies is, under such circumstances, of considerable importance in attracting the patronage of such large buyers for resale.

(c) Respondent, although not incorporated until 1916, commenced business in 1904 and has grown until it is one of the few large candy manufacturers having annual sales in excess of \$8,000,000, although the products manufactured and sold by it are of a type which may be readily manufactured by small local plants. Respondent's aggregate yearly purchases of glucose from the manufacturers thereof amount to approximately 30,000,000 pounds, or about 315 railroad tank carloads of glucose annually. A tank carload of glucose amounts to about 95,000 pounds. The price of glucose or corn sirup unmixed, f.o.b. Chicago, since June 19, 1936, has ranged between \$2.09 and \$3.59 per hundredweight. A saving in the cost to respondent of 10¢ per hundredweight amounts to from 5 to 10 percent of its net annual profits.

PAR. 4. In the course of commerce as aforesaid, since June 19, 1936, respondent has knowingly induced some of the manufacturers of glucose heretofore named to discriminate in price in its favor and has knowingly received the benefit of discriminations in price from some of said manufacturers. These discriminations in price have occurred in concurrent sales of glucose of like grade and quality by said manufacturers to respondent

and to some of its competitors, and either the sales to respondent or the sales to respondent's competitors, or both of such sales, have been in interstate commerce. Said purchases of glucose by respondent and its competitors have been for use, consumption, and resale within the several States of the United States and in the District of Columbia.

PAR. 5. One of the methods through which respondent knowingly received the benefit of discriminations in price was that after an increase in the price of glucose, which increased price was charged by glucose manufacturers to the trade generally, including respondent's competitors, some of said manufacturers continued to charge and invoice such glucose to respondent at the price prevailing before the increase. For example, beginning about July 1, 1940, and continuing until about November 30, 1940, the Clinton Co. and the Clinton Sales Co. sold and delivered to respondent approximately 92 tank cars of 43° glucose, each car containing approximately 95,000 pounds of glucose, at an invoice price of \$2.29 per hundredweight, f.o.b. Chicago. The prices charged and received by said manufacturer from the trade generally, including respondent's competitors, from about April 25, 1940, to about November 30, 1940, varied between \$2.39 and \$2.64 per hundredweight, all of which respondent well knew.

PAR. 6. Another method through which respondent knowingly received the benefit of discriminations in price in the purchase of glucose was by making deductions from the prices at which some glucose manufacturers invoiced glucose to the respondent. The invoice prices by said manufacturers to respondent were those currently being charged and received from the trade generally, including some of respondent's competitors. Respondent made deductions from the prices at which glucose was invoiced to it by said manufacturers, which deductions in some instances were sufficient and in other instances almost sufficient to make the cost to respondent equal to the discriminatory prices it was receiving from other glucose manufacturers. For example, during the time respondent was receiving discriminations in price from the Clinton Co. and the Clinton Sales Co. as set out in the preceding paragraph, respondent in remitting to The Hubinger Co., and to the A. E. Staley Manufacturing Co. deducted from 10¢ to 20¢ per hundredweight from their invoice prices of from \$2.39 to \$2.59 per hundredweight. Such deductions were made on approximately 85 tank cars of glucose sold to respondent during said period by The Hubinger Co. and the A. E. Staley Manufacturing Co., and said deductions made the price to respondent \$2.29 to \$2.39 per hundredweight. The discriminatory price then being received by respondent from the Clinton Co. was \$2.29 per hundredweight. During the period from July 1, 1940, to November 30, 1940, The Hubinger Co. and the A. E. Staley Manufacturing Co., competitors of the Clinton Co., were charging and receiving from respondent's competitors prices equal to the prices at which they invoiced respondent. These facts were well known to respondent.

PAR. 7. Another method through which respondent knowingly induced discriminations in price in its favor by some of said manufacturers of glucose was by making deductions from the invoice prices of such manufacturers when remitting to them and seeking to secure their concurrence in such deductions by informing them that competitive manufacturers of glucose were then selling to respondent at a price equivalent to that proposed by respondent after the deductions made by it, when in truth and in

fact sales at such lower prices had not been made to respondent. For example, beginning about December 1, 1940, and continuing until July 1941 or thereafter, when respondent was no longer purchasing glucose from the Clinton Co. and was no longer receiving from it the benefit of the discriminations in price heretofore described, respondent in remitting to The Hubinger Co. and the A. E. Staley Manufacturing Co. for approximately 150 tank cars of glucose, continued to make deductions similar or identical to those which resulted in the discriminations set out in the preceding paragraph. The Hubinger Co. and the A. E. Staley Manufacturing Co. were concurrently charging and receiving from competitors of respondent prices equal to the full price at which they invoiced the respondent for its purchases of glucose before the deductions were made by it. When these two manufacturers of glucose objected and protested the deductions made by respondent, it led them to believe that more than one other glucose manufacturer was selling glucose to respondent at less than the price at which they were invoicing their glucose to respondent. These two manufacturers requested respondent to furnish them with a written statement of any sales made to it at less than their invoice prices, which prices they were charging to and receiving from the trade generally, including competitors of respondent, but respondent refused so to do. Subsequent to the sales made to respondent by the Clinton Co. as heretofore described, the Clinton Co. attempted to secure further orders from respondent at the prices it was then selling glucose to the trade generally, including competitors of respondent. Respondent refused to purchase unless the Clinton Co. sold to it at the price resulting from the deductions being made from the invoices of The Hubinger Co. and the A. E. Staley Manufacturing Co., which deductions were originally made by respondent on the basis of the Clinton Company's sales to respondent. Respondent was well aware of all these facts.

PAR. 8. (a) For many years last past glucose manufacturers have followed a long-established practice of permitting all purchasers of glucose, after an increase in the price thereof is announced, to enter orders at the old and lower price during a period of a few days following the announcement of such increase for the customers' requirements during a specified shipping period, usually 30 days. After the expiration of the shipping period for glucose "booked" pursuant to this practice, shipments are made at the new and higher price. Following the announcement of a general increase in price by all manufacturers of glucose, respondent, pursuant to the "booking" practice described, ordered from each of several manufacturers an amount of glucose which it could well use within the stated shipping period, but its orders in the aggregate were for an amount far in excess of its requirements during the shipping period granted. Respondent neglected or refused to take shipment of all the glucose thus "booked" with various manufacturers within the specified shipping period and secured shipment of the remaining portion of such "bookings" after the expiration of the shipping period and thus obtained the benefit of the old and lower price at a time when glucose manufacturers were charging to and receiving from the trade generally, including respondent's competitors, the new and higher price on shipments made after the expiration of the stated shipping period.

(b) An example of respondent's practice with respect to such "bookings" occurred about July 6, 1936, when all glucose manufacturers announced an increase in the price of 43° glucose f.o.b. Chicago from \$2.44 to \$2.59 per hundredweight, with the privilege of entering orders within the ensuing 5 to 10 days for delivery prior to about August 20, 1936. During the "booking" period thus allowed respondent entered orders with each of the several glucose manufacturers at the price of \$2.44 per hundredweight f.o.b. Chicago. None of these orders alone called for an excessive amount, but in the aggregate were excessive and amounted to approximately 93 tank cars of glucose. A manufacturer of glucose may know respondent's requirements of glucose, but cannot know, unless informed by respondent, the amount "booked" with other manufacturers by respondent. The quantities thus ordered by respondent from each of the several manufacturers and the approximate periods during which delivery actually made were as follows: American Maize-Products Co., 10 tank cars, delivered between July 5 and July 11, 1936; Union Starch & Refining Co. and Union Sales Co., 8 tank cars, delivered between July 11 and July 23, 1936; The Hubinger Co., 10 tank cars, delivered between July 13 and July 28, 1936; A. E. Staley Manufacturing Co., 15 tank cars, delivered between July 20 and September 3, 1936; Anheuser-Busch, Inc., 10 tank cars, delivered between July 20 and September 17, 1936; Corn Products Refining Co. and Corn Products Sales Co., 15 tank cars, delivered between July 28 and October 17, 1936; Clinton Co., 10 tank cars, delivered between August 7 and September 21, 1936; and Penick & Ford, Limited, Inc., 15 tank cars, delivered between August 7 and October 17, 1936. Following the increase to \$2.59 per hundredweight announced about July 6, 1936, the several manufacturers of glucose announced further changes in the price for glucose as follows: An increase on or about July 17, 1936, from \$2.59 to \$2.79 per hundredweight; about July 30, 1936, an increase from \$2.79 to \$2.94 per hundredweight; about August 3, 1936, an increase from \$2.94 to \$3.14 per hundredweight; about August 19, 1936, an increase from \$3.14 to \$3.34 per hundredweight; about August 25, 1936, a decrease from \$3.34 to \$3.19 per hundredweight; and about October 5, 1936, a decrease from \$3.19 to \$3.04 per hundredweight, which price remained in effect until after October 17, 1936, on which date respondent received the last of the tank cars ordered by it on or about July 6, 1936.

(c) At the time respondent entered the orders described above for 93 tank cars of glucose, its storage capacity was fully utilized and it could not possibly have taken delivery of all of the 93 tank cars within the shipping period specified in the "bookings" which it entered. Some of the manufacturers, upon being informed by respondent that their competitors were so doing and that they would lose sales if they did not, continued to make deliveries to respondent after the expiration of the specified shipping period and received therefor the price of \$2.44 per hundredweight. By this method, in this instance respondent induced and received the benefit of price discriminations giving it an advantage over its competitors of from 15¢ to 90¢ per hundredweight on approximately 40 tank cars of glucose and an advantage on a substantial number of such cars of 90¢ per hundred weight.

PAR. 9. The effect of the discriminations in price knowingly induced and knowingly received by respondent as hereinabove set forth was substan-

tially to lessen competition and tend to create a monopoly in some of said glucose manufacturers by causing respondent to purchase its large requirements of glucose from them and not from their competitors, and to lessen competition with and tend to create a monopoly in respondent, as well as to injure, destroy, and prevent competition with respondent. The receipt of the benefits of said discriminations in price decreased the cost to respondent of one of the principal ingredients of its products as compared with the cost of such ingredient to its competitors, which may give respondent a price advantage in the sale of its said products, or some of them, and afford respondent the financial power to further the sale of its products by advertising and other forms of nonprice competition.

PAR. 10. (a) Respondent has for many years and at all times since June 19, 1936, employed a director of purchases who has had charge of all the purchases of glucose made by respondent and who had the duty of keeping himself, and who has kept himself, accurately and currently informed of the prices and terms of sale for glucose. All of the purchases of glucose made by respondent as heretofore described have been made by such director of purchases or under his instructions and with his knowledge.

(b) Each of the manufacturers of glucose during all the times mentioned herein continuously and regularly informed respondent by mail, telephone, and personal visits of salesmen and brokers of the price at which each of them was offering and selling glucose to the trade generally, including respondent's competitors. Respondent also knew from the same sources the terms of sale of each of said manufacturers and was thoroughly familiar with the "booking" privileges granted by glucose manufacturers as heretofore described.

(c) The glucose produced by each of the manufacturers thereof heretofore mentioned is of substantially the same quality and candy manufacturers including the respondent and its competitors, purchased and used the glucose of one such manufacturer interchangeably with that produced by any other such manufacturer. At any given time the prices and terms of sale of all glucose manufacturers are substantially the same. These facts were well known to respondent.

PAR. 11. Respondent did not seek to show that the discriminatory prices received by it were not discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act as amended. The discriminations in price having been established and the competitive effects thereof shown, the Commission concludes, and therefore finds, that said discriminations in price are discriminations prohibited by subsection (a) of Section 2 of the said Clayton Act as amended.

CONCLUSION

The aforesaid acts and practices of respondent constitute violations of subsection (f) 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 Act approved June 19, 1936 (Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, admissions made on the record of certain allegations of the complaint, testimony and other evidence in support of and in opposition to certain other allegations of the complaint taken before an examiner theretofore duly designated by it (report of the trial examiner and 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 respondent E. J. Brach & Sons has violated the provisions of subsection (f) 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 Act approved June 19, 1936 (Robinson-Patman Act).

It is ordered, That respondent E. J. Brach & Sons, a corporation, its officers, representatives, agents, and employees, directly or indirectly, in or in connection with the purchase of glucose or corn sirup unmixed in commerce, as "commerce" is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from:

1. Knowingly purchasing from any seller at prices lower than the prices concurrently charged by such seller to the trade generally, including competitors of respondent, when the discriminations thus received are substantially similar to those described in the findings as to the facts herein.

2. Making deductions from the invoice price of any seller in remitting payment for the purpose of reducing such price on the basis of a discriminatory price actually being received or falsely represented as being received from another seller, when the invoice price from which deduction is made is known to be that concurrently charged by the seller to the trade generally, including competitors of respondent, and the discriminations obtained through such deductions are substantially similar to those described in the findings as to the facts herein.

3. Inducing the sale by or purchasing from any seller at prices known to be less than the prices concurrently charged by such seller to the trade generally, including competitors of respondent, through excess "bookings" or other manipulation of the "booking" privilege, when the discriminations thus obtained are substantially similar to those described in the findings as to the facts herein.

4. Knowingly inducing or receiving any discriminations in price prohibited by subsection (a) of Section 2 of the aforesaid Clayton Act as amended.

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

Syllabus

IN THE MATTER OF

SAMUEL L. COHN, ALSO KNOWN AS PAT CASEY, AND CHARLES C. COHN, ALSO KNOWN AS CHARLES CAHN, INDIVIDUALS AND COPARTNERS TRADING AS COLONIAL ALLOYS COMPANY, COLONIAL STOVE COMPANY AND BASE PRODUCTS COMPANY, AND EDWARD ENGEL

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

Docket 4943. Complaint, Apr. 15, 1943—Decision, Dec. 30, 1944

Where two partners, engaged in the competitive interstate purchase and resale of aluminum base alloys, which they purchased under the trade name "Colonial Stove Company" and, to a very minor extent, under the name "Base Products Company," and sold, after subjecting it assertedly to a secret process, as "Colalloy," and under the trade name "Colonial Alloys Company," making use of various assumed personal names in the conduct of their business, together with a third individual, variously represented as Chief Metallurgist, Chief Engineer, and Director of Engineering for Colonial Alloys Company, who cooperated with them in carrying out the acts and practices below described;

- (a) Misrepresented the history, nature, size and extent of their business, and the physical property owned, used or occupied thereby, and falsely represented themselves as manufacturers, with manufacturing facilities, through using such statements, on letterheads, envelopes, billheads and in other ways, as "COLONIAL ALLOYS COMPANY and Associated Companies Base Products Co. Colonial Stove Co. Since 1851 Colonial Philadelphia Bldg. East Somerset—Trenton Ave. and Martha Streets Philadelphia, Pa., U.S.A. * * * Since 1851 Researchers—Developers—Manufacturers Chemical—Metallurgical—Electro-chemical Processes and Electronics," and through such statements in connection with advertising, advertising depictions and correspondence as "Hundred of Dies and Tools are available to make many sizes of Industrial and Commercial Equipment" "GIANT TABLE-TOPS FABRICATED * * * of 11 gauge No. 93 COLALLOY," "BASE MILL PRICES COLALLOY FLAT STRIPS AND COILS" "* * * it is not in accordance with Company policy, to permit visitors or inspection at the mills" (to the British Air Commission), "Any patterns, jigs, dies, tools or other equipment which we construct for the purchaser will be used in connection with shop equipment and will be used exclusively for the manufacture of material for the purchaser," "A new COLALLOY floor system saved 750 tons of dead-weight and added another quarter century to the life of this bridge. It also saved the taxpayers a million and a half dollars," and others of the same tenor;
- The facts being that it was not until about 1936 that exploitation of said secret process, upon the asserted efficacy of which their said business was based, was undertaken, nor until about 1937—following the death of said partners' father who developed a method for treating aluminum in connection with his stove business—that the individuals concerned began to designate aluminum base alloys, said to have been subjected to their combined chemical and electrical treatment or process, by the trade name "Colalloy," and undertook an extensive and elaborate advertising campaign in its behalf, during which period, also, they registered the various assumed

names above set out; their place of business was a three story and basement brick building about 40 feet by 110 feet, of which they used one floor, though not exclusively, in connection with their said aluminum alloy business; a room occasionally referred to as a laboratory contained a few tools, Bunsen burners and containers but no equipment which would warrant its classification as such, while other equipment in a large room consisted of a panel switch board, a band saw and the vat used in treating the aluminum alloy by the secret process; their employees included two or three workmen, in addition to several women employed as office help; such phrases as "Sheet and Tube Division," "Metals Division," etc. were mere window dressing to give a false impression of the size and scope of their business; much of the advertising material used by them in the early phase of their elaborate advertising campaign, including pictures of numerous industrial and engineering installations, was plagiarized in whole or in part from the advertising, technical booklets and other material published by the Aluminum Company of America, in copying which they merely substituted the word "Colalloy" for the words "aluminum" or "alcoa"; and they bought from producers, distributors and users the aluminum-base products already fabricated into the form in which they sold them, had no facilities for producing, fabricating or processing such products other than the so-called secret process above referred to, and the various trade names employed by them represented the single business carried on as herein set out;

- (b) Represented through much advertising material and technical data which they circulated, that in relation to aluminum alloys of comparable composition "Colalloy," by reason of the aforesaid "electronizing" or "Colalloying" process, had increased mechanical and physical characteristics, possessed greater tensile strength and greater yield strength, was susceptible of faster machining, had better formability, higher corrosive resistance, greater durability, and would bend over sharper radii without cracking, and that the strength of aluminum-base alloys sold by them as "colalloy" in excess of the minimum specifications of other Army- and Navy-approved alloys was the result of the aforesaid process;

The facts being there are only two primary producers of aluminum and its alloys in this country, both of which concerns use arbitrary tables of symbols to designate their various alloys and the treatments given them, and symbols adopted by said individuals for their said Colalloy could be correlated with those of one of such two concerns; Army and Navy specifications for aluminum alloys correspond to the producers' guaranteed minimums, the typical properties of alloys described in such specifications being considerably higher than required and representing a margin of safety, on which differential said individuals traded by representing that their Colalloy alloys were about 10% stronger than other Army and Navy approved alloys; and evidence, including tests of the Bureau of Standards and expert opinion evidence of well qualified metallurgists, established that their claimed secret process did not in fact produce any significant effect upon aluminum base alloys; and

- (c) Represented that they could make quicker deliveries of said Colalloy—which they sold at much higher prices than those charged by the actual producers of comparable alloys—than could other sources of supply, through such statements, among others, as "'Colalloy' has favorable delivery situation. Furthermore, until such time as we are heavily booked with back-orders, as are the large present suppliers, we do represent a relatively fast source of supply on 'Colalloy' for Defense 'A' ratings * * *. 'Colalloy' deliveries represent a favorable consideration to take advantage of, during these unusual times. Delayed or broken delivery schedules result in added costs in doing business or economic losses * * *"; and through individual promises in particular cases;

The facts being that at the time such representations and promises of early delivery were made, said individuals well knew that they could not make earlier deliveries than the primary producers, and in fact could not make deliveries as promptly because after purchase by them the goods were shipped by the primary producer to their place of business in Philadelphia and thereafter re-shipped by them to their customers;

With the result that a number of the manufacturers who were producing materials for the War and Navy Departments, to whom time was of urgent importance, and with whom aluminum, a critical war material, was in heavy demand, were induced to place orders with said individuals for Colalloy, and as a consequence of said promises of early delivery which were not fulfilled, were caused unnecessary delays and difficulties;

Capacity, tendency and effect of which false and misleading statements and implications were to mislead and deceive members of the purchasing public into the erroneous belief that such representations were true and to cause a substantial portion of the purchasing public to purchase Colalloy because of such mistaken beliefs, whereby trade in commerce was unfairly diverted to them from their competitors, to the injury of said competitors and of the public:

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

As respects the question whether certain aluminum alloys, sold at higher prices on the basis of their asserted superior qualities as a result of having been subjected to the sellers' secret process, did in fact have such qualities, there was evidence—aside from tests by the Bureau of Standards, and expert opinion evidence of qualified mineralogists which established that the process produced no significant effect upon the aluminum base alloys involved, which the sellers necessarily bought from the only primary sources thereof—such as the sellers' instructions to such sources not to stencil or otherwise mark the boxes in which products were shipped or mark the products themselves or place inspection slips therein, the trifling purchases of chemicals made by said sellers, and the amount of electric current consumed by them for power, which tended to show that they did not subject all the alloys which they sold as "Colalloy" to the so-called secret process at all.

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

Mr. Daniel J. Murphy for the Commission.

Shapiro & Shapiro, of Philadelphia, Pa., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Samuel L. Cohn, also known as Pat Casey, and Charles C. Cohn, also known as Charles Cahn, individuals and copartners, trading as Colonial Alloys Co., Colonial Stove Co., and Base Products Co., and Edward Engel, an individual, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Samuel L. Cohn, also known as Pat Casey, and Charles C. Cohn, also known as Charles Cahn, are individuals and co-partners, trading under the fictitious names of Colonial Alloys Co., Colonial Stove Co. and Base Products Co., with their place of business located at 2154 East Somerset Street, Philadelphia, Pa. Respondent, Samuel L. Cohn, also known as Pat Casey, resides at 5239 Lebanon Ave., Philadelphia, Pa., and respondent, Charles Cohn, also known as Charles Cahn, resides at Cheltenham, Pa.

Respondent, Edward Engel, is an individual, and an associate of the above-named respondents with the title of chief engineer and metallurgist of Colonial Alloys Co. Said respondent resides at 133 West Widener Street, Philadelphia, Pa.

PAR. 2. Respondents for more than three years last past have been engaged in purchasing aluminum and aluminum alloys from manufacturers, jobbers and distributors located in the State of Pennsylvania and in other States of the United States and which products so purchased were shipped from points in the State of Pennsylvania and such other States to the respondents' place of business in Philadelphia, Pa., where such products, after being subjected to a so-called "electron-izing" treatment or process, were sold and distributed by the respondents under the trade name "Colalloy" in commerce among and between the various States of the United States and in the District of Columbia. Respondents now cause, and for more than three years last past have caused, Colalloy, when sold by them, to be transported from their place of business in Philadelphia, Pa., to the purchasers thereof, some located in said State and others located in the other States of the United States and in the District of Columbia, and there is now, and has been for more than three years last past, a constant current of trade and commerce conducted by said respondents in Colalloy between and among the various States of the United States and the District of Columbia. Respondents in the course and conduct of their business as aforesaid are in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of aluminum and aluminum alloys in commerce between and among the several States of the United States and in the District of Columbia. Among said competitors are many who do not in any manner misrepresent their business status or the nature, quality or characteristics of their products.

PAR. 3. Respondents represent that Colalloy—the Rust-Proof Lightweight Stainless Metal—is made in all forms, sizes and gauges of seamless pipe and tubing—fittings—valves—sheets—strips—circles—plates—floor plates—flats—coils—bars—angles—shapes—extrusions—corrugated roofing, siding and accessories—rods—wires—nails—washers—bolts—rivets and ingot.

PAR. 4. Colalloy is in reality aluminum and aluminum alloys, critical war materials, which respondents have purchased from recognized fabricators or jobbers or distributors thereof and caused to be delivered at their place of business in Philadelphia, Pa., where such products are subjected by the respondents to a so-called electron-izing treatment and then such products are sold and distributed by respondents under the trade name "Colalloy." Respondents' electron-izing treatment merely consists of placing aluminum and its alloys in a chemical bath through which an electric current is then passed; said treatment takes from three to nine minutes.

PAR. 5. In the course and conduct of their business, described in paragraph 2 hereof, and for the purpose of aiding and promoting the sale, by them, of Colalloy in the commerce aforesaid, respondents have disseminated and caused to be disseminated, by the United States mails, advertisements and other material in which they have represented and still represent, directly and by implication that Colalloy, because of such electronizing process or treatment, in comparison with aluminum alloys of a comparable composition has (a) increased mechanical and physical characteristics, (b) greater tensile strength, (c) greater yield strength, (d) faster machining ability, (e) better formability, (f) higher corrosive resistance, (g) greater durability, and (h) that Colalloy will obtain sharper radii of bending without cracking.

PAR. 6. In truth and in fact Colalloy, because of such electronizing treatment as above described, does not have: (1) Increased mechanical and physical characteristics, (2) greater tensile strength, (3) greater yield strength, (4) faster machinability, (5) better formability, (6) higher corrosive resistance, (7) greater durability nor (8) does Colalloy obtain sharper radii of bending without cracking. As a matter of fact the so-called electronizing process or treatment does not have any appreciable effect upon aluminum and aluminum alloys subjected thereto.

PAR. 7. In the course and conduct of their business, described in paragraph 2 hereof, and for the purpose of aiding and promoting the sale, by them, of Colalloy, in the commerce as aforesaid,

(a) Respondents represent on their letterheads, envelopes, bill heads, acknowledgements of orders and in other advertising media as follows:

COLONIAL ALLOYS COMPANY

And Associated Companies

Base Products Company—Colonial Stove Company

Since 1851

Colonial-Philadelphia Building

East Somerset-Trenton Ave. and Martha Sts.

Philadelphia, Pennsylvania, U.S.A.

(b) Respondents in letters, circulars and other advertising material refer to their "Sheet and Tube Division," "Metals Division," "Specialties Division" and "Treasury Division," etc.

(c) Respondents on their letterheads state, "Our 91st Year."

PAR. 8. In truth and in fact:

1. "Colonial Alloys Co." has not been in existence "since 1851" as it was not organized until some 75 years subsequent to that date.

2. "Base Products Co." has no apparent association or connection with respondents' business, as described in paragraph 2 hereof, other than to garnish respondents' literature.

3. "Colonial Stove Co." is associated with respondents' business, as described in paragraph 2 hereof, only to the extent that said name is sometimes used by respondents when making purchases of aluminum.

4. "Colonial-Philadelphia Building" is a warehouse numbered 2154 East Somerset Street, Philadelphia, Pa.

5. Respondents have not been engaged for 91 years in the business, as described in paragraph 2 hereof, but have only been so engaged for a comparatively few years.

6. Respondents' representations, as set forth in paragraph 7 hereof, have been made for the purpose of conveying false impressions as to the size, importance and character of the business, described in paragraph 2 hereof, engaged in by respondents.

PAR. 9. In the course and conduct of their business, described in paragraph 2 hereof, and for the purpose of aiding and promoting the sale, by them, of Colalloy, in the commerce as aforesaid, respondents represent, directly and by implication, that they own, operate or control mills or factories engaged in the manufacture of Colalloy.

In truth and in fact respondents do not own, operate or control any such mills or factories so engaged in such manufacturing. Respondents are not manufacturers of Colalloy; they only subject aluminum and its alloys to the so-called electron-izing process above described and call it Colalloy.

PAR. 10. In the course and conduct of their business, described in paragraph 2 hereof, and for the purpose of aiding and promoting the sale, by them, of Colalloy, in the commerce as aforesaid, respondents represent that "COLALLOY ALLOYS are approximately 10 percent stronger than the minimum specifications of other *Army and Navy approved Aluminum alloys.*"

Through the use of the aforesaid representation and others relating to respondents' electron-izing treatment or process, respondents import and imply that the strength of Colalloy in excess of the minimum specifications of "other Army and Navy approved aluminum alloys" is peculiar to Colalloy and is the result of the so-called electron-izing process or treatment used by the respondent.

In truth and in fact, any strength found in respondents' said Colalloy in excess of the minimum specifications of the Army or Navy is not peculiar to respondents' said product or the result of any process or treatment to which respondents subject said Colalloy. There is a practice among recognized fabricators of aluminum of using a minimum figure to indicate tensile strength, yield strength and elongation, which is from 10 percent to 15 percent below the actual strength of the aluminum alloy. This 10 percent to 15 percent of strength in excess of the minimum strength figure used is a "safety factor" to insure that, in practically every instance, aluminum alloy will more than meet specifications. Any strength in excess of the minimum specifications of the Army or Navy found in Colalloy, is the result of the aforesaid practice on the part of recognized fabricators of aluminum alloys.

PAR. 11. In the course and conduct of their business in said commerce as aforesaid, and for the purpose of aiding and promoting the sale by respondents of said Colalloy, respondents have represented to purchasers and prospective purchasers engaged in the production of material under contracts with the War and Navy Departments of the United States and with representatives of various other United Nations to whom time is of the essence that respondents can make deliveries of Colalloy faster and at an earlier date than can recognized fabricators of their aluminum and aluminum alloy products.

As a result of said representations many holders of such contracts purchased said Colalloy from the respondents instead of purchasing said alu-

minum and aluminum alloys from the fabricators thereof, and the respondents' deliveries were not made on the dates promised and in many instances no deliveries were made at all; and as a result substantial delays and impediments were caused by respondents to purchasers engaged in supplying material under said contracts. In some few instances respondents did make delivery of said product on the dates promised.

PAR. 12. In the course and conduct of their business of selling and distributing Colalloy, described in paragraph 2 hereof, respondents and their agents have prepared and distributed, among customers and prospective customers, large quantities of mimeographed and printed advertising material extolling the "qualities" of Colalloy and its "superiority" over comparable aluminum alloys and promising to such customers and prospective customers faster deliveries of Colalloy than such customers or prospective customers could obtain on aluminum and its alloys from recognized fabricators thereof. As a result many manufacturers engaged in the war effort and needing such critical and vital war material as aluminum and its alloys to fill high priority orders, were induced to place large and substantial orders for Colalloy with respondents, instead of with recognized fabricators of aluminum and its alloys, and at prices which ranged from 20 percent to 60 percent higher than the prices charged for comparable aluminum alloys by such recognized fabricators thereof.

PAR. 13. The acts, practices and methods of respondents in making and using the aforesaid false and misleading statements, representations and implications, have the capacity and tendency to, and do, mislead and deceive the purchasing public into the erroneous and mistaken belief that such statements representations and implications are true and to cause a substantial portion of the purchasing public to purchase Colalloy because of such erroneous and mistaken beliefs. As a result trade in commerce between and among the several States of the United States and in the District of Columbia has been unfairly diverted to the respondents from their competitors in said commerce, to the injury of said competitors and to the public.

PAR. 14. 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 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 15, 1943, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly

came on for final hearing before the Commission on the said complaint, answer, testimony and other evidence, report of the trial examiner and exceptions thereto, briefs in support of and in opposition to the complaint, and the oral arguments of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (a) Respondent, Samuel L. Cohn, is an individual, residing at 5239 Lebanon Avenue, Philadelphia, Pa. In the conduct of the business, hereinafter described, this respondent has used various assumed names, including Pat Casey, Ward Dewitt, Eric Biddle, L. Born, and S. L. or Sam Cahn.

(b) Respondent, Charles C. Cohn, is an individual, residing at Cheltenham, Pa. He is a brother of respondent, Samuel L. Cohn, and in the conduct of the business, hereinafter described has used various assumed names, including Joseph A. Steele, C. Fay, and Charles Cahn.

(c) Respondent, Edward Engel, is an individual, residing at 133 West Widener Street, Philadelphia, Pa. He has used other names, but declined to disclose them, and in the conduct of the business, hereinafter described, has used only the name Edward Engel or Edward W. Engel.

(d) Respondents, Samuel L. and Charles C. Cohn, are copartners, trading under the names Colonial Alloys Co., Colonial Stove Co., and Base Products Co., with their place of business located at 2154 East Somerset Street, Philadelphia, Pa. Respondent, Edward Engel, an employee or associate of the other respondents, has been variously represented as "chief metallurgist," "chief engineer," and "director of engineering" for Colonial Alloys Co. and has aided, assisted, and cooperated with the other respondents in carrying out the acts and practices hereinafter described. As a part of their business, respondents for several years last past have been engaged in the purchase and resale of aluminum-base alloys, and when resold by respondents such alloys were sold as and under the trade name "Colalloy."

PAR. 2. In the course and conduct of their aforesaid business, respondents have caused the aluminum-base alloys purchased by them to be shipped from points in other States to Philadelphia, Pa.; and, further, have caused such products, when sold by them, to be transported from their place of business in Philadelphia, Pa., to purchasers thereof at their several points of location in various other States of the United States. There has been for more than three years last past a constant current of trade and commerce conducted by respondents in said products among and between various States of the United States. In carrying on their said business, respondents are in competition with others engaged in the sale and distribution of aluminum and aluminum-base alloys in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 3. (a) The origin of the business of respondents, Samuel L. and Charles C. Cohn, in aluminum-base alloys is not shown with precision and there are numerous conflicts in and between the testimony of these respondents. Their father, Abraham Cohn, was engaged in the stove busi-

ness. This business was registered by Abraham Cohn and S. L. Cohn in September 1922 under the assumed trade name of Colonial Stove Co. Samuel L. Cohn testified that he became associated with his father in the stove business in 1914, at which time he was about 14 years of age. In March 1936, after the death of Abraham Cohn, respondents Samuel L. and Charles Cohn registered the assumed trade name of Colonial Stove Co., and in October 1938 S. L. and Charles C. Cohn registered the assumed name of Colonial Alloys Co. Base Products Co. is also an assumed name registered by these respondents in October 1936. These respondents testified that their father developed a method of treating aluminum by immersion in a chemical bath which was said to increase resistance to corrosion, and some time before 1922 an electrical treatment was combined with the chemical bath. Until about 1936 there was no exploitation of this claimed treatment for corrosion except such use as may have been made of it in connection with respondents' stove business. In 1936 these respondents employed Edward Engel, who claims to be a chemist and chemical engineer. Engel testified that after his preparatory work he attended Penn State College but did not get a degree there. He declined to state where he got the Bachelor of Science degree claimed and when directed to answer finally said he went to the Sorbonne University in 1930 and got his B. S. degree there. He does not claim to have any other degree, though the designation "Ph. D." has been used by him. Engel is said to have suggested to the Cohn brothers the possibility that the process for increasing resistance to corrosion might, through causing some molecular or atomic change, affect the internal structure of the metal and improve its physical and mechanical properties. About 1937 respondents began to designate aluminum-base alloys said to have been subjected to the combined chemical and electrical treatment by the trade name "Colalloy" and soon thereafter began an extensive and elaborate advertising campaign in behalf of Colalloy.

(b) The process said to be used in converting aluminum-base alloys into Colalloy is claimed to be a secret known only to the Cohn brothers, and they refused to state what chemicals are used or any details concerning the application of electric current. Their "chief metallurgist," "chief engineer," and "director of engineering," respondent Engel, testified that he has seen the process possibly 75 or 100 times since 1939 but that he does not know its secret. A representative of the War Production Board who was seeking a comparative test between aluminum-base alloys before and after treatment by the secret process testified that respondents told him that only three people knew the secret of the process—the Cohn brothers and a deaf and dumb workman.

(c) The claimed process has been variously designated as "electronizing" and "Colalloying." One respondent asserted that there was a difference in the time electrical current was supplied as between "electronizing" and "Colalloying." The record shows, however, that the result of the process by either name was called "Colalloy," and no distinction was made in claims for it because of any difference in treatment. In connection with the process claimed, it is noted that respondents' father had no technical training; respondent, Samuel L. Cohn, graduated from high school in 1918, attended the University of Pennsylvania about one semester, and had no other schooling; and respondent, Charles C. Cohn, graduated from

high school in 1920 and had no further schooling. Neither of these respondents is an engineer, chemist, or metallurgist.

(d) In general outline, the secret process consists of placing the aluminum alloy to be treated in a vat containing a liquid having the appearance of water but said to be a chemical solution. There is an electric panel or switchboard having a number of switches on it near the vat. Two cables, each ending in a clamp or electrode, lead from this panel and one of these is applied to the aluminum in the vat and the other to the metal side of the vat. By some manipulation of the switches on the panel, a current is said to be passed through this circuit for a short period of time variously described as from three to twenty minutes, depending upon the quantity of metal in the vat. On an occasion when this process was observed, immediately after the current was cut off the metal treated was removed from the vat by workmen with their bare hands and was found to be at room temperature.

(e) Respondents' place of business at 2154 East Somerset Street is a three-story-and-basement brick building about 40 by 110 feet, of which the respondents use one floor in connection with their aluminum-base alloy business, except that the same offices are used by Samuel L. Cohn in carrying on a real estate business. This floor is divided into a general office occupied by several women employees; an office for each of the Cohn brothers; a room occasionally referred to as a laboratory (but generally as the "slop room") which contains a few pliers and wrenches, some Bunsen burners, and containers, but no equipment which would warrant its classification as a laboratory; and a large room containing the panel switchboard, a bandsaw, and the vat for use in treating aluminum alloys by the secret process. Respondents also employ two or three workmen.

(f) Respondents used the name "Colonial Stove Co." in purchasing aluminum-base alloys for the stated reason that it has been in existence longer and its credit is better established. The name "Base Products Co." was used to a very minor extent in purchasing aluminum-base alloys and all sales of Aluminum-base alloys were made under the name "Colonial Alloys Co." Each of these fictitious names, however, represented merely a copartnership between the Cohn brothers.

PAR. 4. (a) In promoting the sale of Colalloy, respondents' advertised upon an ambitious scale. They used on their letterheads, envelopes, bill-heads, and in other ways:

COLONIAL ALLOYS COMPANY

and Associated Companies

Base Products Co. Colonial Stove Co.

Since 1851

Colonial Philadelphia Bldg.

East Somerset—Trenton Ave. and Martha Streets

Philadelphia, Pa., U. S. A.

* * * * *

Since 1851

Researchers—Developers—Manufacturers

Chemical—Metallurgical—Electro-Chemical

Processes and Electronics

Respondents have not been in business since 1851 and the dates of origin of the business represented by the several trade names are as heretofore stated. Respondents' letters, circulars, and other advertising material refer to "Sheet and Tube Division," "Metals Division," "Specialties Division," "Treasury Division," and "Technical Processes Division." These so-called divisions are mere window dressing calculated to give a false impression of the size and scope of their business.

(b) Respondents' advertising generally is calculated to convey the impression that they are manufacturers and, in addition, numerous specific representations are made which directly claim the possession of manufacturing facilities. For example, in connection with pictures of industrial installations, respondents represent:

Hundreds of Dies and Tools are available to make many sizes of Industrial and Commercial Equipment (Comm. Ex. 73).

In connection with a picture of fabricated products, respondents represent:

GIANT TABLE-TOPS FABRICATED FOR RICHARDSON AND ROBBINS CO., Dover, Delaware, of 11 guage No. 93 COLALLOY (Comm. Ex. 75).

In connection with price quotations, which are f.o.b. Philadelphia, respondents refer to:

BASE MILL PRICES COLALLOY FLAT STRIPS AND COILS (Comm. Ex. 83-A).

In writing to the British Air Commission, respondents stated in part:

As Mr. Mehm indicated, it is not in accordance with Company policy, to permit visitors or inspection at the mills (Comm. Ex. 105-A).

Respondents advertise that:

The Colonial Alloys Company, after many years of extensive research with numerous variations of formulae in aluminum base alloying elements, developed a total of 134 formulae. Of this total they chose the outstanding formulae to be marketed; * * * (Comm. Ex. 254-A).

In writing the Sperry Gyroscope Co., respondents stated in part:

Admittedly our price ranges are higher than those of the lower property alloys. This is readily justified, not alone in the higher costs of production, * * * (Comm. Ex. 145-A).

Respondents' terms with respect to orders included:

Any patterns, jigs, dies, tools or other equipment which we construct for the purchaser will be used in connection with shop equipment and will be used exclusively for the manufacture of material for the purchaser (Comm. Ex. 153-B).

Respondents do not produce aluminum or aluminum-base alloys or fabricate aluminum or its alloys. They buy from producers, distributors, and users the aluminum-base products already fabricated into the form in

which they sell them. They have no facilities for producing, fabricating, or processing such products other than the so-called secret process heretofore described.

(c) Much of the advertising material used by the respondents in the early phases of their elaborate advertising campaign was simply plagiarized in whole or in part from the advertising, technical booklets, and other material published by the Aluminum Co. of America. In this copying, respondents merely substituted the word "Colalloy" for the words "aluminum" or "Alcoa" used in the publications of the Aluminum Co. of America. Much use was made of the published technical data of the Aluminum Co. of America, including analyses, properties, chemical resistance, electrical conductivity, and other material concerning aluminum alloys. Respondents' copying included pictures of numerous industrial and engineering installations shown in the advertising material of the Aluminum Co. of America. As a result of this copying and the substitution of the word "Colalloy" for that of the aluminum product mentioned by the Aluminum Co. of America, such descriptions accompanying the pictures indicated that Colalloy had been used instead of the products of the Aluminum Co. of America. For example, in connection with the picture of a large bridge, respondents represented:

A new COLALLOY floor system saved 750 tons of dead-weight and added another quarter century to the life of this bridge. It also saved the taxpayers a million and a half dollars (Comm. Ex. 1178).

In connection with a picture of a large structure, respondents represented:

Structural detail showing COLALLOY sections used in constructing a botanical garden building (Comm. Ex. 1178).

In connection with a picture of a streamlined train, respondents represented:

Because of the availability of economical special shapes, COLALLOY lent itself unusually well to the construction of this light, but safe, streamlined train (Comm. Ex. 1178).

There are many other similar instances. When a representative of the Aluminum Co. of America called on respondents for the purpose of putting an end to this copying of his company's advertising material and technical data, there was a discussion of respondents' plan of operation and the higher prices which they obtained and intended to obtain on aluminum-base alloys purchased from the Aluminum Co. of America and others, and in the course of such discussion they agreed that "if you can buy material and resell it to the public under a different name and make them like it," then "Mr. Barnum was right."

PAR. 5. (a) Respondents issued and circulated much advertising material and technical data purporting to be descriptive of Colalloy, its uses, and the properties and characteristics of various types of Colalloy. Through these various statements, respondents represented that in relation to aluminum alloys of comparable composition Colalloy, by reason of the aforesaid "electronizing" or "Colalloying" process, has increased

mechanical and physical characteristics, possesses greater tensile strength and greater yield strength, that it is susceptible of faster machining, has better formability, higher corrosive resistance, greater durability, and will bend over sharper radii without cracking. Respondents further represented that the strength of aluminum-base alloys sold by them as "Colalloy" in excess of the minimum specifications of other Army- and Navy-approved alloys is the result of the aforesaid process.

(b) There are only two primary producers of aluminum and its alloys in this country—the Aluminum Co. of America and Reynolds Metals Co. Both of these companies use an arbitrary table of symbols to designate the various alloys and the treatment which has been given them. The different alloys contain differing quantities of one or more alloying elements such as copper, silicon, manganese, magnesium, zinc, nickel, chromium, lead, and bismuth, resulting in different characteristics in the alloys produced. Limiting consideration here to the wrought type, the different alloys are designated by numerals, each followed by the letter "S"; for example, 17S or 24S. The "S" signifies that the alloy is a wrought aluminum alloy. The addition of the letter "T," for example, 17S-T, means that the particular wrought aluminum alloy has been heat treated. The addition of the letter "R," for instance, 17S-RT, means that the wrought aluminum alloy, after heat treatment, has been cold worked to produce certain changes in its characteristics. The mechanical properties of such alloys are measured in certain recognized and standard ways. The tensile strength is expressed in the number of pounds required to break a cross section of one square inch. Yield strength is the number of pounds of force required to produce $\frac{2}{100}$ of 1 percent permanent set in a cross section of 1 square inch. Elongation is the percentage of increase in length before breaking. For particular purposes, other tests are used, including tests showing the hardness, the shearing strength, the fatigue endurance limit, and density in terms of pounds per cubic inch. There is a wide variation among the different wrought aluminum and aluminum-base alloys in the mechanical properties referred to. The typical yield strength ranges from 5,000 to 55,000 pounds, the typical tensile strength from 13,000 to 70,000 pounds, and the percentage of elongation from 4 to 35. There are other variations, depending upon whether the product is sheet, plate, wire, rods, bars, or other wrought product. Respondents established a different set of symbols to designate various aluminum alloy products, and these symbols can be correlated with the designations of the Aluminum Company of America. For example, Colalloy 301 apparently corresponds to Alcoa 24S-T and Colalloy 801 to Alcoa 17S-T.

(c) There are variations in the physical and mechanical properties of wrought aluminum products produced from the same ingot. Alloying materials are added to aluminum when it is in a molten state and though the alloy is homogeneous in its molten form, when poured into ingots and solidified a segregation of the alloying elements, particularly copper and magnesium, occurs. The rind of the ingot will have a different concentration of the alloying elements than may be found at some depth beneath the surface and the center may have still another or different concentration of such elements. Another factor causing a variation in the mechanical properties is the grain of the ingot, which may be fine on the outer surface, may be a columnar grain below that, and may be an equi-ax grain in the

center. When the ingot is processed to its final shape of sheet, rod, or other wrought product, the variations in concentration of the alloying elements and the grain variations persist and appear in the final product, resulting in variations in physical and mechanical properties. Variations in mechanical properties may also result from porosity in the ingot. The porosity may be eliminated during the processing but the resulting products will have lower strength than products processed from nonporous ingots. The inequalities in strength in products produced from the same ingot, or even within parts of the same product, find expression in the technical data published by Alcoa concerning its different alloys. Using 24S-T as an illustration, the minimum guaranteed tensile strength is 62,000 pounds, whereas the typical tensile strength is 68,000 pounds. This means that the greater percentage of tests of 24S-T range between 67,000 and 69,000 pounds tensile strength. While some 24S-T products may fall below this typical strength, others show considerably greater strength. The mechanical properties of aluminum alloys may also be affected by whether the products are drawn, extruded, or cold worked, and by the straightening process necessary after heat treatment. For example, cold working a 24S-T alloy will increase its tensile strength, and even straightening operations applied to a 24S-T rod have been known to raise the tensile and yield strength to the approximate strength and properties of 24S-RT. The tensile strength of 24S-T in extruded form has been known to go as high as 85,000 pounds, and yield strengths as high as 69,000 pounds have been found.

(d) The various alloys of aluminum also have widely varying characteristics in their resistance to corrosion and to chemicals, some being much more resistant than others. The publications of Alcoa describe the resistance properties of their various alloys and indicate which are most resistant to any particular type of attack.

PAR. 6. (a) In support of the claims of the superiority of Colalloy as compared with other aluminum-base alloys, as heretofore set out, respondents contend that the aluminum products they buy are processed by the so-called secret process and are thus given the superior characteristics claimed for them. In an effort to support these claims, respondents produced several witnesses who testified concerning tests or partial tests made of samples of aluminum-base alloys furnished directly or indirectly by respondents. So far as proving that respondents' so-called secret process increased the properties of the alloys, these tests are substantially worthless.

(b-1) The head of the Physical Testing Section of the Brewster Aeronautical Corporation tested a sample of what purported to be Colalloy 301 furnished to a Brewster official by respondents' New York representative. The results of this test indicated that the sample was better than Alcoa 24S-T and approximately in the range of Alcoa 24S-RT. So far as the witness knew, the product may have been 24S-RT, 17S-RT, or some other aluminum alloy.

(b-2) A mechanical engineer employed by Essex Wire Corporation made a test for corrosion resistance on a sample furnished by respondent and said to be Colalloy. This was not a comparative test but was merely to determine whether the product complied with respondents' claim concerning resistance to corrosion.

(b-3) A testing engineer for Sears, Roebuck & Company tested for resistance to lactic acid corrosion a sample furnished by respondents and said to be Colalloy. This test was made in comparison with another piece of aluminum and indicated a higher resistance by Colalloy. The witness did not know what kind of aluminum the comparative sample was or whether it was an alloy having high or low resistance to corrosion.

(b-4) An official of the Wilmington Provision Co. used some alloy sold to him by respondents as Colalloy in his packing plant as a substitute for wood and galvanized metal and found it better for his purposes in that it did not corrode. He had not before used any aluminum equipment in his plant.

(b-5) The chief engineer for Bastian-Blessing Co. tested a sample said to be Colalloy for resistance to carbonic acid in comparison with tin, stainless steel, and a piece of aluminum. The Colalloy sample was given him by an official of his company. He did not know what type of aluminum alloy the comparative aluminum sample was.

(b-6) The chief metallurgist for Bell & Howell Co. tested samples marked "Colalloy 700" and "Colalloy 403" for resistance to corrosion in comparison with Alcoa 17S-T and 11S-T3. The Colalloy samples were received from the Superintendent of Parts Production of the Bell & Howell Co. No analysis of the Colalloy samples was made and the witness does not know what type of aluminum alloys they were.

(b-7) The vice president of Sharp & Dohme testified that he wanted some metal pipe that would not corrode for use in processing blood plasma. He tried several types of metal, including a piece of aluminum pipe, all of which were unsatisfactory. A piece of Colalloy pipe was tried and it was found satisfactory. He did not know what kind of aluminum alloy he first tried nor the type of alloy furnished under the name Colalloy.

(b-8) A metallurgical engineer for the Locomotive Division of General Motors Corporation tested the mechanical properties of some samples received from respondents and said to be Colalloy. He made no analysis of the samples and did not know the nature or type of the alloys tested.

(b-9) The chief of the Testing Laboratories of the Glenn L. Martin Co. had tests made under his supervision of a sample said to be Colalloy 301. He did not know the source of the sample. The chemical analysis, microstructure, specific gravity, and corrosion resistance were similar to those of Alcoa 24S-T. The mechanical properties reported exceeded the typical 24S-T but were not beyond the range of known tests of 24S-T.

(b-10) Physical tests were made by the Philadelphia laboratory of the Tinius Olsen Testing Machine Co. of several samples of Colalloy furnished by respondents. Some of these tests purported to be comparative tests before and after application of respondents' secret process. The tests were not made in accordance with the accepted procedures of the American Society for Testing Materials, in most instances lacked impartial selection of samples, and the results were not particularly reliable.

(b-11) Tests were made for respondents by an Associate Professor of Mechanical Engineering at the Drexel Institute of Technology. These tests purported to be comparative of samples of aluminum alloys before and after treatment by respondents' secret process. These tests were not made by the accepted procedures of the American Society for Testing Materials and were limited to tests of mechanical characteristics. Because of

the testing procedure, the results, which purport to show slightly more favorable results for the treated as compared with the untreated material, are not particularly reliable.

(c) In connection with its control of the utilization of aluminum-base alloys as a critical war material, the War Production Board desired to ascertain respondents' proper position in the handling of such materials. It made arrangements with respondents for comparative tests and for this purpose employed Lucius Pitkin, Inc., one of the best known metallurgical laboratories. For testing purposes the War Production Board authorized a shipment of 2,500 pounds of aluminum alloy sheets to respondent from the Aluminum Company of America, which sheets were to be held in the shipping cases unopened. When S. A. Tour, consulting engineer and metallurgist and Vice President in Charge of Chemical and Metallurgical Engineering for Lucius Pitkin, Inc., and civilian director of the laboratory of the Frankford Arsenal, called at respondents' place of business at the appointed time, he was told by respondents that the shipment of material authorized by the War Production Board for testing purposes had not arrived. It is significant that while this statement was made on July 17, 1942, respondents had, by letter of July 8, 1942, advised the War Production Board of the arrival of the particular shipment. Mr. Tour was shown 32 aluminum alloy bars lying on the floor of respondents' place of business and was told that these could be used for testing purposes and that they were 17S-T. Though requested, no further identification of these products was supplied by respondents. Three samples were taken, and the remainder of the material was then put through the so-called secret process, after which six additional samples were taken. It is apparent from the variation in the size of the bars and from the spectographic and chemical analyses of the samples that the bars offered for testing were not all a part of the same original lot. The tests of mechanical properties showed erratic results. Mr. Tour concluded as a result of the tests made that the treatment by the so-called secret process produced "no chemical, spectographic, microscopic, or physical change in the metal."

(d) A representative of the Commission arranged for testing aluminum alloys before and after treatment by respondents' process. For this purpose, new material produced by the Aluminum Co. of America was purchased and taken to respondents' place of business, where respondents were given samples. A number of pieces of this material were then cut in half, and one half of each such piece of material was reserved untreated and each of the other halves was then put through respondents' process, and thereafter the treated and the untreated halves were submitted to the National Bureau of Standards for testing to determine whether the portions which had been processed by respondents were superior in any respect to the corresponding portions which were not processed. The materials for testing consisted of 8 aluminum alloy rod and 16 aluminum alloy sheet samples, 4 of the former and 8 of the latter having been processed. After testing by recognized and accepted procedures, the Bureau of Standards reported in part that:

The results of tensile tests and metallographic examinations of the 17ST and 24ST aluminum alloy exhibit rods and sheets indicated that there were no significant differences between corresponding specimens of the materials identified as "Alcoa" and "Colalloy" (Comm. Ex. 44-C).

and, further, that

Inasmuch as no differences were found in the tensile properties and microstructures it is our opinion that the materials marked "Alcoa" and "Colalloy" are essentially identical and consequently significant differences in such properties as machinability, "forming," "dimpling," "stamping," etc. would not be expected (Comm. Ex. 44-C).

(e) Paul B. Faragher, metallurgist with the Aluminum Company of America for the past 24 years; Robert M. Brick, Assistant Professor of Metallurgy of the Hammond Metallurgical Laboratory of Yale University; and William F. Roeser, Chief of the Section of Mechanical Metallurgists of the National Bureau of Standards, all well qualified metallurgists, gave opinion evidence as expert witnesses that respondents' secret process as heretofore described and as carried out at room temperature would not improve in any way the physical or mechanical properties of aluminum alloys.

(f) The Commission concludes from the record that respondents' claimed secret process will not, and does not in fact, produce any significant effect upon aluminum-base alloys.

PAR. 7. The difference between guaranteed and typical properties of aluminum alloys has already been pointed out. Army and Navy specifications for aluminum alloys correspond to the guaranteed minimums, while in fact the typical properties of alloys described in such specifications are considerably higher than the specifications require. This represents a margin of safety which tends to insure that there will not be individual failures to meet the specifications. Respondents traded on this differential by representing that Colalloy alloys are approximately 10 percent stronger than other Army- and Navy-approved alloys. Any additional strength of Colalloy in excess of Army and Navy specifications for aluminum alloys is due to the practice of manufacturers of aluminum alloys of providing the safety factor referred to above, and is not limited to or peculiar to Colalloy.

PAR. 8. (a) In purchasing aluminum-base alloy products from the Aluminum Co. of America and the Reynolds Metals Co., respondents frequently instructed these companies not to stencil or otherwise mark the boxes in which such products were shipped or mark the products themselves or place packing or inspection slips in the boxes, and sometimes respondents furnished their own shipping tags. In some cases respondents asked special marking of the products, such as "47A3C," or asked that the outside of the shipping boxes be marked only "col. Special." The Commission infers from the record, and therefore finds, that such instructions were given to aid respondents in concealing the source of the materials sold by them as Colalloy, and to allow respondents to reship the materials from their place of business in Philadelphia to their customers in the same boxes in which they were received.

(b) There is evidence in the record tending to show that respondents did not subject all the aluminum alloys which they sold as Colalloy to the so-called secret process. Among this evidence is respondents' practice of directing that packing or inspection slips be not put in the containers in which aluminum alloys were shipped to them by the manufacturers. If the alloys were to be removed from the packing cases and subjected to the secret process described, the inclusion of such slips in the containers would be immaterial. There is a showing indicating but trifling purchases of

chemicals by respondents. The amount of electric current used by respondents was so trivial as not to be consistent with any substantial use of the secret process. Respondents had only one source of electric power—the Philadelphia Electric Co. They had in their place of business three electric meters, one for measuring the current consumed in lighting the premises and two meters for measuring the current consumed for power purposes. The two power meters measured the consumption of two electric motors, one an elevator motor and the other driving a shaft, and also the current consumed in their processing of aluminum alloys. The Philadelphia Electric Co. billed respondents for the consumption shown by the power meters as a unit, but separately from the consumption shown on the light meter. During approximately the first six months of 1942 respondents handled about 300,000 pounds of aluminum alloy products through their place of business. During the same period the Philadelphia Electric Co. billed respondents for 1,828 kilowatts of electricity consumed for lighting purposes, an average of about 305 kilowatts per month. During the same period respondents were billed for the consumption shown by the two power meters for a total of 90 kilowatts of electricity, or about 15 kilowatts per month, approximately one-twentieth of the amount of current used in lighting respondents' premises.

(c) The aluminum-base alloys sold by respondents under the name "Colalloy" were sold at much higher prices than comparable aluminum alloys were sold by the actual producers and fabricators of such products. The increase in price varied considerably as between different products. During the 30 days ending April 8, 1942, respondents shipped to Jack & Heintz, Inc., 56,962 pounds of aluminum alloys which they purchased from the Aluminum Co. of America. Respondents' mark-up on these alloys ranged from a low of 10 percent to a high of 127 percent. The total price paid by respondents for these alloy products was \$16,882.13. In selling these particular products to Jack & Heintz, Inc., respondents added \$11,813.01 to the amount paid by them, or an average mark-up of about 69 percent. The mark-up on the sales to Jack & Heintz, Inc., appears to be reasonably representative of respondents' usual pricing practices.

PAR. 9. Aluminum has been a critical war material in heavy demand by manufacturers producing materials for the War and Navy Departments. Respondents have induced numbers of such manufacturers to whom time was of urgent importance to place orders for Colalloy upon the basis of representations by respondents that they could make quicker deliveries of the material ordered than could other sources of aluminum alloys. Among other representations, respondents stated in part:

"COLALLOY" HAS FAVORABLE DELIVERY SITUATION

Furthermore, until such time as we are heavily booked with back-orders, as are the large present suppliers, we do represent a relatively fast source of supply on "Colalloy" for Defense "A" ratings * * *

"Colalloy" deliveries represent a favorable consideration to take advantage of, during these unusual times. Delayed or broken delivery schedules result in added costs in doing business or economic losses. * * * (Comm. Ex. 266-L).

Respondents also made individual promises in particular cases. For example, in procuring orders from the Continental Screw Co., respondents

promised much prompter deliveries than were available to that concern from the Aluminum Co. of America. Another example occurred in the case of a sale to the Dickey-Grabler Co., where respondents promised deliveries within approximately half the time that deliveries could concurrently be procured from the Aluminum Co. of America. At the time such representations and promises of early delivery were being made by respondents they well knew that they could not make earlier deliveries than the primary producers, and in fact could not make deliveries as promptly because they could not secure delivery from primary producers more promptly than other purchasers from such sources, and after purchase by them the goods were shipped by the primary producer to respondents' place of business in Philadelphia and thereafter reshipped by respondents to their customers. In a number of instances the promises of early deliveries, which were not fulfilled, resulted in unnecessary delays and difficulties to manufacturers producing war materials. Respondents made their largest purchases of aluminum alloys from the Aluminum Co. of America and their purchases were shipped by that company from one of its plants variously located at Edgewater, N. J.; Massena, N. Y.; Detroit, Mich.; Lafayette, Ind.; New Kensington, Pa.; or Alcoa, Tenn., depending upon the type of product purchased. Although the exact extent of the additional delays resulting from shipment to Philadelphia and reshipment from that point cannot be readily determined, it is obvious, for instance, that substantial additional delays in delivery would result from shipping aluminum alloy products from Alcoa, Tenn., to Philadelphia, Pa., and reshipping such products from Philadelphia to Cleveland or Chicago, as compared with a direct shipment from Alcoa, Tenn., to Cleveland or Chicago.

PAR. 10. The use by respondents of the aforesaid false and misleading statements, representations, and implications has the capacity and tendency to, and does, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements, representations, and implications are true and to cause a substantial portion of the purchasing public to purchase Colalloy because of such erroneous and mistaken beliefs, and thereby trade in commerce between and among the several States of the United States has been unfairly diverted to respondents from their competitors to the injury of said competitors and of the public.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence taken before an examiner of the Commission

theretofore duly designated by it, report of the trial examiner and the exceptions thereto, briefs in support of and in opposition to the complaint, and the oral arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Samuel L. Cohn and Charles C. Cohn, copartners trading as Colonial Alloys Co., Colonial Stove Co., Base Products Co., or under any other name, jointly or severally, and respondent, Edward Engel, directly or through any corporate device, in connection with the offering for sale, sale, and distribution of aluminum and aluminum alloys or products thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondents manufacture or produce any aluminum or aluminum alloys, or manufacture or fabricate any aluminum or aluminum alloy products, or have any mills or factories for the manufacture or fabrication of any such products.

2. That respondents' business in aluminum and aluminum alloys, whether designated as Colonial Alloys Co., or by any other name, has been in existence for a longer period of time than is the fact.

3. That the nature, size, or extent of respondents' business, including physical properties owned, used, or occupied, is different from or greater than is the fact.

4. That respondents can make delivery of aluminum or aluminum alloys more quickly or with less delay than manufacturers or fabricators of such products, when in order to make the delivery offered respondents must, subsequent to receipt of orders, purchase such products from manufacturers or fabricators.

5. That the strength of aluminum alloys sold as Colalloy, or under any other name, in excess of minimum Army and Navy specifications for aluminum alloys is greater in any degree than that of other Army- and Navy-approved aluminum alloys.

6. That any aluminum or aluminum alloys offered for sale or sold by respondents under the name Colalloy, or under any other name, have greater tensile strength, greater yield strength, are susceptible of faster machining, have better formability, greater durability, will bend over sharper radii without cracking, or have other greater or better physical or mechanical characteristics than like aluminum and aluminum alloys offered for sale or sold by others.

7. That respondents' claimed secret process, whether under the name "Colalloying," "Electronizing," or any other name, is capable of increasing or improving, or does increase or improve, in any way the physical or mechanical characteristics of aluminum or aluminum alloys.

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

ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

WASHINGTON CIVILIAN INSTITUTE. Complaint, November 26, 1943.
Order, July 13, 1944. (Docket 5086.)

Charge: Misrepresenting business status, advantages or connections and misrepresenting directly or orally by self or representatives as to government and Civil Service Commission connection, jobs and employment, opportunities and refunds, scientific or relevant facts including draft deferment, and terms and conditions generally; and assuming or using misleading trade or corporate name as to correspondence school being an institute; in connection with the sale of courses of study and instruction.

Dismissed by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that the respondent corporation has forfeited its charter and is no longer in existence, and that it has not been in active operation since the issuance of the complaint, and the Commission having duly considered the matter and being now fully advised in the premises.

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

Mr. William L. Pencke for the Commission.

Mr. Hall Hammond, of Baltimore, Md., for Clayton W. Daneker, Receiver.

COLGATE-PALMOLIVE-PEET Co. Complaint, February 3, 1944. Order, September 1, 1944. (Docket 5126.)

Charge: Advertising falsely or misleadingly as to composition, qualities, properties or results, competitive products, comparative merits, and scientific or relevant facts, and unique status; and using misleading product name or title; in connection with the manufacture and sale of "Palmolive" soap, Colgate Dental Cream, Colgate Tooth Powder, "Palmolive Lather Cream," "Palmolive Brushless Shave Cream" and "Concentrated Super Suds."

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the respondent, Colgate-Palmolive-Peet Company, has entered into a stipulation as to the facts and an agreement to cease and desist from certain enumerated practices, which stipulation and agreement was, on August 16, 1944, approved by the Commission, and the Commission having duly considered the matter, and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint herein issued on February 3, 1944, be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts so warrant to reopen the same and resume proceedings therein in accordance with its regular procedure.

Mr. Randolph W. Branch for the Commission.

Mr. Henry Ward Beer, of New York City, and *Davies, Richberg, Beebe, Busick & Richardson*, of Washington, D. C., for respondent.

ETHEL J. CAYCE TRADING AS REJUVE NE MANUFACTURING CO. Complaint, December 2, 1941. Order, September 6, 1944. (Docket 4650.)

Charge: Advertising falsely or misleadingly, and assuming or using misleading trade and brand or product names as to qualities, properties or results of product; in connection with the preparation and sale of a certain cosmetic preparation containing drugs designated "Rejuvене."

Dismissed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission, and it appearing that the respondent, Ethel J. Cayce, is deceased.

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

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

Mr. Jesse D. Kash for the Commission.

Mr. Lloyd Cayne, of Berkeley, Calif., for respondent.

STANDARD BUSINESS INSTITUTE, INC. Complaint, September 20, 1943. Order, September 8, 1944. (Docket 5050.)

Charge: Assuming or using misleading trade or corporate name as to correspondence school being institute or institution; in connection with the sale of courses of study and instruction of accounting and business administration.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard upon the record and it appearing that the respondent corporation has been dissolved and is no longer in existence, 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* and *Mr. Andrew B. Duvall*, trial examiners.

Mr. William L. Pencke for the Commission.

Anderson & Roche, of Chicago, Ill., for respondent.

JOHN HANLEY. Complaint, February 24, 1942. Original findings and order, August 1, 1944.¹ (Docket 4714.) Order vacating and setting aside, September 22, 1944.

Charge: Advertising falsely or misleadingly as to history and qualities, properties or results of product; in connection with the sale of a device under the trade name of Whirlgas Supercharger.

Findings as to the facts and order to cease and desist in this case were vacated and set aside and case reopened for further hearings, by the following order:

This matter coming on to be heard by the Commission upon the request of respondent that the findings as to the facts and conclusion and order to cease and desist issued herein on August 1, 1944, be vacated and set aside and the case reopened for the taking of further testimony in support of and in opposition to the allegations of the complaint, and the Com-

¹ Not published.

mission having duly considered said request and the record, and being now fully advised in the premises.

It is ordered, That the findings as to the facts and conclusion and order to cease and desist issued herein on August 1, 1944, be, and the same hereby are, vacated and set aside, and that this case be, and the same hereby is, reopened for the taking of further testimony in support of and in opposition to the allegations of the complaint.

Before *Mr. Edward E. Reardon*, *Mr. John W. Addison* and *Mr. J. Earl Cox*, trial examiners.

Mr. S. Brogdyne Teu, II, *Mr. Merle P. Lyon* and *Mr. Clark Nichols* for the Commission.

Mr. K. Hanley, of Prospect, Ohio, and *Mr. Clyde V. Nutten*, of Detroit, Mich., for respondent.

I. J. Fox, Inc. Complaint, May 7, 1938. Order, September 25, 1944. (Docket 3411.)

Charge: Advertising falsely or misleadingly as to composition, and nature of product and dealer being manufacturer or maker; in connection with the sale of furs and fur products.

Dismissed, after answer, by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that respondent has observed the Trade Practice Rules of the Fur Industry as promulgated June 17, 1938, in accordance with its acceptance filed with the Commission on June 22, 1938, and the Commission having duly considered the matter, and being now fully advised in the premises.

It is ordered, That the complaint herein issued on May 7, 1938, be, and the same hereby is, dismissed, without prejudice to the right of the Commission to take such further action as future acts and circumstances may warrant.

Mr. Marshall Morgan for the Commission.

Hartman, Sheridan & Tekulsky, of New York City, for respondent.

L. & C. MAYERS Co., Inc. Complaint, December 10, 1941. Order, September 26, 1944. (Docket 4658.)

Charge: Advertising falsely or misleadingly as to dealer being importer and manufacturer and as to list or catalogue prices of products; in connection with the sale of jewelry, silverware, luggage, giftware and other merchandise of like character.

Dismissed, after answer, by the following order:

This matter coming on for consideration by the Commission upon the application of the respondent for dismissal of the complaint issued herein, and it appearing to the Commission that the respondent has expressed its intention, in writing, to be bound by the Trade Practice Conference Rules promulgated for the Catalog Jewelry and Giftware Industry on December 23, 1943, and has furnished satisfactory evidence of such intention in the form of its latest catalog and proposed corrections thereof, and the Commission having duly considered said application, and the record herein, and being fully advised in the premises.

It is ordered, That the complaint herein issued on December 10, 1941, be, and the same hereby is, dismissed, without prejudice to the right of the Commission to institute further proceedings in the matter.

Mr. W. T. Chantland and Mr. William M. King for the Commission.
Mr. Milton Handler and Myers & Sherwin, of New York City, for respondent.

CHELF CHEMICAL Co. Complaint, January 30, 1943.¹ Order, September 29, 1944. (Docket 4850.)

Charge: Advertising falsely or misleadingly as to composition, qualities, properties or results, safety, and success, use or standing of product; in connection with the manufacture and sale of a medicinal preparation known and designated variously as "C. C. Compound," "C.C.C.C." and "4 C's."

Dismissed by the following order:

This matter coming on to be heard by the Commission upon the amended complaint and answer, and it appearing that the respondent corporation has been regularly dissolved by order of the State Corporation Commission of the Commonwealth of Virginia, the State of its incorporation, and the Commission having duly considered the matter, and being now fully advised in the premises.

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

Mr. Robt. N. McMillen for the Commission.

PHILIP GOLDBERG, TRADING AS EDEN Co. Complaint, September 21, 1944. Order, October 23, 1944. (Docket 5220.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results, indorsement, sponsorship of approval of product, and scientific or relevant facts and ailments; in connection with the sale of a vitamin preparation designated "Eden Perles."

Dismissed by the following order:

This matter coming on to be heard by the Commission upon the record and it appearing that the individual respondent died on or about July 6, 1944, and the Commission having only considered the matter and being now fully advised in the premises.

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

Mr. William L. Pencke for the Commission.

Mr. George Landesman, of New York City, for respondent.

BENNETT BROTHERS, INC. Complaint, November 21, 1941. Order, November 22, 1944. (Docket 4640.)

Charge: Advertising falsely or misleadingly as to retailer being distributor or wholesaler and wholesale or "list" prices, or prices of product; in connection with the sale of jewelry, silverware, luggage, giftware and other merchandise of like character.

Dismissed, after answer, by the following order:

This matter coming on for consideration by the Commission upon the motion of the respondent for dismissal of the complaint issued herein, and it appearing to the Commission that the respondent has expressed its intention, in writing, to be bound by the Trade Practice Conference Rules

¹ Amended.

promulgated for the Catalog Jewelry and Giftware Industry on December 23, 1943, and has furnished satisfactory evidence of such intention in the form of its latest catalog, and the Commission having duly considered said motion and the record herein, and being fully advised in the premises.

It is ordered, That the complaint herein issued on November 21, 1941, be, and the same hereby is, dismissed, without prejudice to the right of the Commission to institute further proceedings in the matter.

Mr. William T. Chantland and Mr. William M. King for the Commission.

Lipper, Shinn & Keeley, of New York City, for respondent.

WOODVILLE LIME PRODUCTS Co. Complaint, February 27, 1942. Order, December 9, 1944. (Docket 4717.)

Charge: Advertising falsely or misleadingly and disparaging or misrepresenting competitors or their products as to comparative merits, composition, prices, qualities, properties or results, and scientific or relevant facts, and misrepresenting unique nature of its own product; in connection with the manufacture and sale of a lime and fertilizer product designated "4-All Farmlyme Basic Fertilizer."

Dismissed by the following order:

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony and other evidence 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 duly considered the matter and being of the opinion that the testimony and other evidence introduced in support of and in opposition to the allegations of the complaint are not sufficient to support a finding as to the facts.

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings in the matter.

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

Mr. Jesse D. Kash for the Commission.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., and *Marshall, Melhorn, Wall & Block*, of Toledo, Ohio, for respondent.

FRANK & MEYER NECKWEAR Co. Complaint, October 3, 1944. Order, December 11, 1944. (Docket 5229.)

Charge: Advertising falsely or misleadingly, misbranding or mislabeling and furnishing means and instrumentalities of misrepresentation and deception as to composition, quality and nature of manufacture of product; in connection with the manufacture and sale of men's "home spun" neckties.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that a stipulation of facts¹ signed by the respondent in this matter has been approved by the Commission, and the Commission having duly considered the matter and being now fully advised in the premises.

¹ See *infra*, p. 629.

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same and resume trial thereof in accordance with its regular procedure.

Mr. DeWitt T. Puckett and Mr. G. M. Martin for the Commission.
King & Nordlinger, of Washington, D. C., for respondent.

M. J. FRIEDLANDER, SAMUEL B. MARKS AND HORTENSE MARKS DOING BUSINESS AS SUSQUEHANNA WOOLEN MILLS. Complaint, November 1, 1943. Order, December 18, 1944. (Docket 5074.)

Charge: Misbranding or mislabeling, and neglecting, unfairly or deceptively, to make material disclosure as to composition of product in violation of Wool Products Labeling Act, and the Federal Trade Commission Act; in connection with the manufacture and sale of blankets.

Dismissed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that during the period covered by the complaint herein it was the policy of the Navy Department to require that the individual blankets procured by it bear no marks, tags, or means of identification other than a legend "U. S. Navy," "U.S.N.," or "U.S.N. MEDICAL," as specified, 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. DeWitt T. Puckett and Mr. G. M. Martin for the Commission.
Mr. Leo Kaplan, of New York City, for respondents.

F. AD. RICHTER & Co., INC. AND H. W. KASTOR & SONS ADVERTISING Co. Complaint, April 28, 1943. Order, December 19, 1944. (Docket 4955.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results of product; in connection with the manufacture and sale of a medicinal preparation known as "Anchor Pain Expeller."

Dismissed, after answers and trial, by the following order:

This matter coming on to be heard by the Commission upon the motion of the respondents that the complaint herein be dismissed, and the Commission having duly considered the matter and being now fully advised in the premises.

It is ordered, That said motion be granted and that the complaint herein be, and it hereby is, dismissed.

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

Mr. DeWitt T. Puckett and Mr. R. A. McOuat for the Commission.
Mr. Isaac W. Digges, of New York City, and *Mr. Henry A. Spelman,* of Brooklyn, N. Y., for F. Ad. Richter & Co., Inc.
Mr. B. Blakeney Harris, of Chicago, Ill., for H. W. Kastor & Sons Advertising Co.

STIPULATIONS¹

DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST²

2415.³ Toilet Goods, Cosmetics, Medicinal Preparations, Luck Charms, Etc.—Qualities, Safety, Origin, Free, Success, Guarantee, Special Offers, Earnings, Etc.—The Commission directed that Stipulation 2415, entered into by the respondent named below, be amended by striking therefrom inhibition (f) that appeared thereon and substituting the following, so that the stipulation now reads as follows:

Keystone Laboratories, Inc., a Tennessee corporation, with its principal place of business in Memphis, Tenn., operates and has operated under its corporate name and also under the various trade names of Memphis Mail Order House, Curio Products Co. and White Line, engaged in the sale and distribution of toilet goods, cosmetics, medicinal preparations, luck charms and numerous other kinds of merchandise, in interstate commerce in competition with other corporations, individuals, firms and partnerships, likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Keystone Laboratories, Inc., in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed that it will cease and desist from:

(a) Representing that Poreen Ointment, La Jac Lovin Pink Cream for Dark Skins, La Jac Orange Beauty Glow Cream, or any similar preparation is a skin food or a skin whitener; or has the capacity to remove, free the skin of, cause to vanish, or otherwise do away with imperfections, blackheads, eczema, tetter, pimples, ringworms, eczemic itch, rash, bumps, dark or flabby or blemished skin, or acid condition of the skin; or brightens or lightens dark skin unless limited to a temporary lightening thereof; or makes the skin smooth or soft, or gorgeous or ravishing, or lovely, radiant or beautiful, instantly or at all.

(b) Representing that La Jac Massage Cream, Rite Now Miracle Bleach and Facial Pack, Jean Noel Turtle Oil Tissue Cream, Hi-Hat Tur-

¹ For false and misleading advertising stipulations effected through the Commission's radio and periodical division, see p. 649 et seq.

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely July 1, 1944, to December 31, 1944, inclusive. Digests of previous stipulations of this character accepted by the Commission may be found in vols. 10 to 38 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 Amended. See 28 F.T.C. 1780.

tle Oil Tissue Cream, Darboux 3-Way Youth Cream, Darboux Skin and Tissue Cream, or any similar preparation eliminates, rubs out, removes, ends, banishes, prevents, keeps away, builds up, closes or fills out wrinkles, lines, crow's feet, bumps, sagging skin, aged skin, droopy contours, coarse or gaping pores; or tones, invigorates, penetrates, nourishes or works beneath the skin; or builds up underlying or broken skin tissues; or gives the face, throat, neck or cheeks a youthful contour; or gives the skin a lasting beauty, or a beauty that will not wear off or wash off; or makes the skin fairer, softer or fairy smooth; or that turtle oil keeps the skin youthful.

(c) The use of the words "Tissue Cream," either independently or in connection with the words "Jean Noel," "Hi-Hat," "Turtle Oil," "Darboux," or any other words, as descriptive of its products; or of any similar term, designation or expression the effect of which is to import or imply that such a product builds up or otherwise beneficially affects the tissues of the skin.

(d) Representing that La Jac Brite Skin Bleach or any similar product will overnight, or in any stated time, make the skin five shades lighter, or any number of shades lighter; or is "nature's gift" to take from the skin "all that is ugly and unattractive," or leaves "only the beautiful, the radiant and the lovely."

(e) Representing that Roreen, Keystone Combination Pressing Oil Compound and Hair Grower, Keystone Mange & Scalp Treatment, F. M. Hair Restorer, Wang, La Jac Temple Oil, La Jac White Hair Dressing Pomade, Hi-Hat Combination Pressing Oil Compound Straightener and Hair Grower, Hi-Hat Nu-Life Hair Grower Mange and Scalp Treatment, Hi-Hat Jockey & Jickey Nu Gloss Four Way Hair Dressing Pomade, or any similar preparation

Grows hair, soft lustrous hair, longer hair, hair longer, short hair longer, or hair on temples, thin spots or bald spots; lengthens hair, thickens thin hair, or promotes new growth of hair; strengthens, enlivens or revitalizes the hair; gives every hair new life and vitality, or glamorous new life to harsh, dull hair; or causes the life force of the hair to resume its work.

Restores gray and faded hair to its natural color, or gray lifeless hair to youthful color, luxuriousness and vitality. ❖❖❖

Work both outside and inside the hair shaft, or from hair roots to hair ends, or beneath the scalp; or tones the scalp; or makes the scalp healthy or scale-free, without regard to underlying causes.

Ends dandruff, or removes the cause of dandruff; or works in the worst cases of dandruff; or stops hair from falling out; or, inferentially or otherwise, is a competent treatment for dandruff, tetter or eczema.

Removes the handicap of short, skimpy hair; insures a head of healthy hair; or gives lavish beauty to the hair.

Is a sensational preparation or a cure; or accomplishes any of the foregoing results "actually," "instantly," "almost instantly," "quicker," "faster," "in record-breaking time," or at all.

(f) The use of the words "Hair Grower" or "Hair Restorer," either independently or in connection with the words "Keystone," "Hi-Hat," "Nu-Life," "F. M." or any other words, as descriptive of its products; or of any similar term, designation or expression the effect of which is to import or imply that such a product will cause hair to grow or will restore a growth of hair.

(g) Representing that Biff An Inhalent, Flu-Go, Cu-Bo One Night Healing Salve or any similar preparation will cure colds or sore throats,

or is a competent treatment or effective remedy for such conditions or for bronchitis, flu or pneumonia.

(h) Representing that pneumonia, tuberculosis and other serious pulmonary complications frequently follow common colds, irritating coughs or sore throats.

(i) Representing that Keystone Rx 4344 or any similar preparation will cure, remove the cause of, or is a competent treatment or an effective remedy for kidney, bladder or liver ailments, rheumatism or backache; or that K & B Rx 4344 is a stimulant for the kidneys or exerts antiseptic action upon the kidneys or urinary tract.

(j) Representing that Germ-Ex or any similar preparation kills germs instantly or prevents all germicidal infections; or inferentially or otherwise, that its use as a douche will prevent venereal disease or other communicable infections.

(k) Representing that Ansan Powder or any similar preparation corrects the tendencies of female organs toward diseases or infections; or, inferentially or otherwise, that it is a dependable protection against the contracting of venereal disease; or that it is the prescription of a renowned women's doctor, when such is not the fact.

(l) Representing that Velvene or any similar preparation is a germ killer, or that germs can't live in it or with it; or that it invigorates weak, puny hair.

(m) Representing that BWI Tonic or any similar preparation is a competent treatment or an effective remedy for pimples, sores and other skin diseases due to bad blood, or that it corrects all these troubles.

(n) Representing that Fe-Tone or any similar preparation is an effective treatment or a competent remedy for any form of female troubles, or is a women's tonic, or regulates or alleviates painful menstrual periods or the discomforts incident thereto.

(o) Representing by inference or otherwise, that its medicines are "guaranteed" to insure one's health and happiness, or to make one well and keep him well, strong, healthy, and at his best all the time; or from the use of the word "guaranteed" or the word "guarantee" unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith, of exactly what is actually offered by way of security, as for example, refund of purchase price.

(p) Representing, by the use of expressions such as "The answer to modern woman's demand for safety," "Are you ready for the expense and responsibilities babies demand," "The dangers and tribulations of child birth," "The coming of babies a menace to health," "Protection," "Better be safe than sorry," "Be free from worry at all times," "Harmless preventives," "Absolutely safe," "100% effective," or otherwise, that Safetee-Vags or any similar preparation is a safe or dependable contraceptive or can be relied upon to prevent pregnancy.

(q) Representing that Keystone Nux and Iron (Make Man) Tablets or any similar preparation is a powerful tonic or invigorator; makes vigorous and robust men and women out of weaklings without regard to age, or at all; is an effective remedy for run-down conditions, lack of vitality or general debility however caused, or at all; or, by the use of expressions such as "Restore youthful courage, virility and ambition," "Make life worth living and love worth having," "They produce for you just the results you have in mind—safely and without delay," "Do their work quickly and effectively," or otherwise, that such a preparation is an aphrodisiac or is a competent, quick or efficient aid to the pursuit of venery.

(*r*) Representing that the possession or use of Lucky Mojo Good Luck Incense, Hindu Mystic Love Perfume, Lucky Mojo Sweetheart Drops O'Love, Lucky Love Sachet Powder, Holy Oil with Live Loadstone, High John the Conqueror Root, or any similar article or product brings good luck or keeps out bad luck; or brings to the possessor love, romance, power, life, inspiration, easy money, popularity, irresistibility, attraction, fidelity of spouse or sweetheart, and/or success in games, business "and everything"; or will in any way affect one's fortunes or the attainability of his desires.

(*s*) Representing that a perfume is of "Hindu" or other foreign origin when such is not the fact; or that said perfume was used by the princes and princesses of India to gain love, power or romance.

(*t*) Representing that any article of merchandise is "free," "given free" or without cost to the recipient when such article is not a gratuity, and the prospective recipient is required as a consideration to purchase some other article or articles or render some service in order to obtain the same.

(*u*) Representing that an agent's outfit or selling kit has a value in excess of the actual cash value of the various items therein contained.

(*v*) Representing that it sets up any dealers in business on its own capital; or that such business will not cost the dealer one penny; or that such dealer takes no risk of loss; or ever fails, or that his success is guaranteed; when such are not the facts.

(*w*) Representing that an offer is "special" or limited in any way when in fact such offer is the usual and customary proposition made to all inquirers.

(*x*) Advertising products as being those of "Dr. Menke" or any other fictitious person.

(*y*) Making unmodified representations or claims of earnings in excess of the average earnings of its active full-time salespersons or dealers achieved under normal conditions in the due course of business.

(*z*) Representing that its salespersons or dealers will have the chance or opportunity of earning any amount which is in excess of amounts theretofore actually earned by one or more of its salespersons or dealers under normal conditions in the due course of business. (Sept. 6, 1944.)

2427.¹ **Cosmetics and Hair Preparations—Qualities, Value, Special Price, Free, Guarantee, Special Offers, Earnings and Business Status.**—The Commission directed that Stipulation 2427, entered into by the respondent named below, be amended by striking therefrom inhibition (*g*) that appeared thereon and substituting the following, so that the stipulation now reads as follows:

Three Dreams Laboratories, Inc., a corporation, Golce B. Bryant, the sole owner and secretary-treasurer of said corporation and conducting its business, engaged in the sale and distribution of cosmetics and hair preparations in interstate commerce, in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Three Dreams Laboratories, Inc., and Golce B. Bryant agreed, and each of them agreed, in connection with the sale and distribution of their products in commerce as defined by the act, to cease and desist from:

¹ Amended. See 28 F. T. C. 1790.

(a) Representing that the products offered and sold under the "Three Dreams" brand, or any similar preparations, are efficacious or of value for beauty troubles generally, or will make a person lovely all the time or keep one lovely all the time or bring love, romance, admiration or popularity to the user.

(b) Representing that such products are the great sensation of the age or that thousands have used and praised them or that any persons in excess of the actual number have so used or acclaimed them.

(c) The use of the words "Hair Grower" or of any similar term, designation or expression, or of any statement, the effect of which is to import or imply that such a product will cause hair to grow, or to grow long or beautiful or lustrous or wavy; or that such preparation is a hair growing treatment of the highest power or of any power.

(d) Representing that the preparations heretofore sold as "Three Dreams Hair Grower" or "Three Dreams Special Hair Grower" or any similar preparation, is a competent treatment or an effective remedy for dandruff, tetter, eczema, falling hair, or dry, itchy scalp, every time or at all.

(e) Representing that Three Dreams Turtle Oil Bleach Cream or any similar preparation is nourishing to the skin or will rid any person of an ugly, muddy skin or works quickly or works three times faster or is not "just another cream."

(f) Quoting a figure purporting to be the "value" of an article or a group of articles which is in excess of that for which said article or group of articles is sold or can be obtained in the usual course of business; or representing that a price named for an article is "Special" when it is in fact the regular and customary price for which said article is sold.

(g) Representing that any article of merchandise is "free," "given free" or without cost to the recipient when such article is not a gratuity, and the prospective recipient is required as a consideration to purchase some other article or articles or render some service in order to obtain the same.

(h) Use of the word "Guarantee" unless whenever used clear and unequivocal disclosure be made in direct connection therewith, of exactly what is offered by way of security, as for example, refund of purchase price.

(i) Representing that the regular offer made to agents is a "Special Offer" or that such agents pay half price for their goods, or double their money three times faster or make three times more money or any more money whatsoever than other agents, when such are not the facts.

(j) The making of any unmodified representations or claims of earnings or profits made by sales persons or distributors in excess of the average earnings or profits achieved under normal conditions in the due course of business.

(k) The use of the word "Laboratories" as part of the corporate or trade name under which they carry on their business; and from the use of the word "Laboratories" in any way which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that said company owns, and operates or directly and absolutely controls a laboratory, plant or factory in which the products which it sells are made, manufactured or compounded, when such is not the fact. (Sept. 21, 1944.)

2454.¹ **Novelties and Push Cards—Free, Composition, Prices, Lottery Schemes and Devices and Earnings.**—The Commission directed that Stipulation 2454, entered into by the respondent named below, be amended by striking therefrom inhibition (a) that appeared thereon and substituting the following, so that the stipulation now reads as follows:

Grund Art & Novelty Co., Inc., a corporation, engaged in sale and distribution of novelties and push cards in interstate commerce, in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Grund Art & Novelty Co., Inc., in connection with its sale and distribution of merchandise in commerce as defined by said act, agreed to cease and desist from:

(a) Representing that any article of merchandise is “free,” “given free” or without cost to the recipient when such article is not a gratuity, and the prospective recipient is required as a consideration to purchase some other article or articles or render some service in order to obtain the same.

(b) The use of the term “Genuine Pig Grained” or of words, phrases, statements or representations of similar import as descriptive of a product not composed of pig skin; or the quoting of a fictitious price or figure as the alleged value of an article which is in excess of the price for which such article is available to the public in the due course of business.

(c) Supplying to, or placing in the hands of others, push or pull cards, punchboards or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

(d) Mailing, shipping or transporting to agents or to distributors or members of the public push or pull cards, punchboards or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

(e) Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards or other lottery devices.

(f) 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 earnings or profits consistently made by its active, full-time agents, salesmen, representatives or distributors in the ordinary course of business and under normal conditions and circumstances.

(g) 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 by such agent, salesman, representative or distributor, in the ordinary course of business and under normal conditions and circumstances. (Sept. 19, 1944.)

2458.² **Pianos and Furniture—Free and Special Prices.**—The Commission directed that Stipulation 2458, entered into by the respondent named below, be amended by striking therefrom inhibition (a) that appeared thereon and substituting the following, so that the stipulation now reads as follows:

Sterchi Brothers Stores, Inc., a corporation, engaged in the retail furniture business in a number of cities in various southern States and in the sale and distribution of such furniture, including pianos, in interstate com-

¹ Amended. See 28 F. T. C. 1807.

² Amended. See 28 F. T. C. 1810.

merce, in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Sterchi Brothers Stores, Inc., in connection with its sale and distribution of pianos or other merchandise in commerce as defined by said act, agreed to cease and desist from

(a) Representing that any article is loaned, given or delivered "free" or without cost when receipt of such article is contingent upon any consideration, terms or conditions, as payment of money, purchase of other articles or rendering of services, in order to obtain the same.

(b) Representing that the prices quoted for any merchandise are at reduced figures, when such is not the fact; or that such prices are "Special" or "Extra Special," when they are the usual and customary prices for which said merchandise is sold; or that they are an "Extra Special bargain" when such figures are equal to or in excess of those for which the same or similar merchandise is available to the public in the due course of business.

(c) The use of statements such as "Ordered Sold," "Must be sold or moved to stop expense of storage," or representations of similar import, with the capacity and tendency to convey the belief to purchasers that a particular sale of merchandise is due to unusual and necessitous circumstances or is being made at sacrifice prices, when such are not the facts.

(d) Representing that the purchaser can "save money" by buying direct from the warehouse when in fact the shipment advertised is all sold from the warehouse and no other prices are quoted. (Sept. 6, 1944.)

2550.¹ **Electric Shavers—Prices, Qualities, Guarantee, Free Product, Earnings or Profits, and Lottery Schemes and Devices.**—The Commission directed that Stipulation 2550, entered into by the respondent named below, be amended by striking therefrom inhibition (d) that appeared thereon and substituting the following, so that the stipulation now reads as follows:

Bernard Cohen, sole trader, operating under the assumed names of Plymouth Electric Dry Shaver and Plymouth Electric Supply Co., engaged in a mail order business of selling and distributing cheap electric dry shavers in interstate commerce, in competition with other individuals and with firms, partnerships and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Bernard Cohen, in connection with his sale and distribution of electric shavers in commerce as defined by said act, agreed to cease and desist from:

(a) Representing that the instrument sold by him is a \$15.00 electric shaver or is a regular \$15.00 value or is of any value whatsoever in excess of the price for which the same or similar instruments may be available in the retail market in the usual course of business.

(b) Representing that it has any of the merits of or is in any way comparable to the high grade or first class electric shavers on the market; or that this shaver is a health item, or contains startling news developments, or assures a smooth, clean shave or an effective vigorous massage, or gives the same performance as appliances selling at many times its price; or that such instrument has either efficiency, economy, convenience, or durability.

¹ Amended. See 29 F. T. C. 1473.

(c) Representing that said instrument is "fully guaranteed"; or use of the words "guarantee" or "guaranteed" unless whenever used clear and unequivocal disclosure be made in direct connection therewith of exactly what is offered by way of security.

(d) Representing that the 8½ cent cigarette lighter included in his offer is separately sold for 45 cents; or that this or any other article is "free," given free or without cost to the recipient when such article is not a gratuity, and the prospective recipient is required as a consideration to purchase some other article or articles or render some service in order to obtain the same.

(e) Representing that fortunes, huge profits or any other exaggerated or unusual earnings may be expected or anticipated by sales persons or distributors of his merchandise; or directly or indirectly promising any returns in excess of the average earnings and profits that have actually been achieved by his dealers under normal conditions in the due course of business.

(f) Supplying to, or placing in the hands of others, push or pull cards, punchboards, or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

(g) Mailing, shipping, or transporting to agents or to distributors or members of the public push or pull cards, punchboards or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

(h) Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards or other lottery devices. (Sept. 19, 1944.)

2701.¹ **Book Matches—Prices, Quality, Free Product, Etc.**—The Commission directed that Stipulation 2701, entered into by the respondent named below, be amended by striking therefrom inhibition (e) that appeared thereon and substituting the following, so that the stipulation now reads as follows:

Fayette H. Lawson and William A. Lawson, individuals, or copartners, trading as Chicago Match Co. and as Book Match Co., engaged in the business of manufacturing book matches and in the sale and distribution thereof in commerce in competition with other individuals and partnerships and with corporations and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Fayette H. Lawson and William A. Lawson, in connection with the sale and distribution of their product in commerce as defined by said act, agreed to cease and desist from:

(a) Representing, directly or by implication, that they sell all their book matches at a price of \$7.95 per case of 2500 books or at any price other than the actual price at which such products are sold by them; or that no extra charge is made for "DeLuxe designs," "Three color covers," or any other style or styles, such as "union labels," and "special red, white and blue covers," when in fact extra charges are made therefor.

(b) Representing that they are "the Quality leader" in the book match industry or that the matches they manufacture and sell are of the "Highest Quality," when such are not the facts.

(c) Stating that their catalogs contain "over 865 Special Book Match cuts" or any other number thereof greater than is actually a fact.

¹ Amended. See 30 F. T. C. 1459.

(d) The use in their advertising of the term "three color covers," or of any other term, words or expression with the capacity, tendency or effect of creating the impression or conveying the belief to purchasers that the number of colors printed or otherwise inscribed upon the stock from which their book match covers are made is greater than actually is a fact.

(e) Representing that a sample sales outfit or any other article is "free," given free or without cost to the recipient when the same is not a gratuity, and the prospective recipient is required as a consideration to pay money or to purchase some other article or render some service in order to obtain the same.

(f) The use in their advertising or printed matter or in any other way of the words "Bronzing" or "Bronze," or words of similar meaning, as descriptive of their printed match book covers or other printed products so as to import or imply or the effect of which may be to convey the belief to purchasers that such printed product is the result of imparting a gold, silver or other metallic color by means of powders, painting or chemical process, when such is not a fact. (Sept. 21, 1944.)

2775.¹ **Corn and Callous Pads—History, Qualities, Comparative Data or Merits, Guaranteed, Opportunities, Earnings, Free Products, Etc.**—The Commission directed that Stipulation 2775, entered into by the respondent named below, be amended by striking therefrom inhibition (d) that appeared thereon and substituting the following, so that the stipulation now reads as follows:

Edna Foster, an individual, trading as American Royal Products Co., engaged in the sale and distribution of corn and callous pads in commerce between and among the various States of the United States, 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.

Edna Foster, in connection with her sale and distribution of corn pads or other commodities in commerce as defined by said act, agreed she will cease and desist from representing:

(a) That the "Riteway" Corn and Callous Remover or any product of similar composition is amazing, new, marvelous, sensational or different, or has outstanding or other features over all existing types; or that it stops pain in three seconds or removes corn by the roots in three days or other specified time; or in any way, by statement or inference representing that such preparation is actually superior to or will accomplish more than like products on the market.

(b) That the "Riteway" Corn and Callous Remover is "\$1,000 guaranteed"; or that sales thereof by dealers are guaranteed or "double money back" guaranteed; or in any other way, by statement or inference, representing that any money or bond in the sum of \$1,000 or other amount has been posted to secure the faithful performance of an undertaking in connection with the purchase or use of said commodity, or that there actually is any guaranty pertaining thereto.

(c) That the sale of said product is going like wildfire for agents, demonstrators or crew managers, or that an agent or vendor thereof can or may expect to turn \$1.00 into \$27.00, or make \$2.00 to \$3.00 an hour, or develop a steady and permanent big business in the marketing thereof; or otherwise representing, directly or by implication, that prospective agents,

¹ Amended. See 30 F. T. C. 1506.

salesmen, distributors, dealers or other representatives can make profits or earnings which are in excess of the average net profits or earnings theretofore consistently made by active full-time dealers or salesmen of said commodity in the ordinary and usual course of business and under normal conditions and circumstances.

(d) That the money making plan offered in connection with the sale of said product is either wonderful or secret, or that this or the athlete's foot prescription, the foot exercises or any other thing is given "free" or without cost to the prospective recipient when such commodity or article is not a gratuity, and the prospective recipient is required as a consideration to pay money or to purchase some other article or to render some service in order to obtain the same.

(e) That a charge of ten cents, or other amount, is intended merely "for mailing and handling" of a sample package when in fact such sum covers the full price for which said commodity is regularly sold and delivered; or representing that such package is worth twenty-five cents or any amount in excess of that for which it is usually sold; or that a commodity is given "with my compliments" where money has been paid therefor.

(f) That she has paid \$50.00 or any other sum for her athlete's foot prescription; or by designating it as a "\$50 Formula" or in other way, representing that such prescription is worth \$50.00 or other amount in excess of the actual cost thereof.

(g) That E. L. Fox is the President of American Royal Products Co.; or otherwise, by the use of fictitious names, titles or designations, representing that her business is incorporated or extensive in size and operation. (Sept. 19, 1944.)

2776.¹— Advertising Material and Corn and Callous Remover—Qualities, Guaranteed, Opportunities, Earnings or Profits, Free, Etc.—The Commission directed that Stipulation 2776, entered into by the respondent named below, be amended by striking therefrom inhibition (d) that appeared thereon and substituting the following, so that the stipulation now reads as follows:

Van de Mark Advertising, Inc., a corporation, and Claude Efnor, vice president of said corporation, and its representative, engaged in the sale and distribution, in interstate commerce, of advertising material consisting of cuts, mats and printed or other matter prepared for promoting the sale by others of divers and sundry goods and commodities, in competition with other corporations and individuals and with firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Van de Mark Advertising, Inc., and Claude Efnor, in connection with any promotional activities concerning or relating to the sale of goods or commodities in commerce as defined by said act, agreed, and each of them, agreed to cease and desist from distributing, placing for publication, or otherwise disseminating advertising matter or material which contains any statement or representation to the effect:

(a) That the "Riteway" Corn and Callous Remover or any product of similar composition is amazing, new, marvelous, sensational or different; or that it stops pain in three seconds or removes corn by the roots in three days, or other specified time; or in any way, by statement or inference

¹ Amended. See 30 F. T. C. 1507.

representing that such preparation is actually superior to or will accomplish more than like products on the market.

(b) That the "Riteway" Corn and Callous Remover is "\$1,000 Guaranteed"; or in any other way, by statement or inference, representing that any money or bond in the sum of \$1,000 or other amount has been posted to secure the faithful performance of an undertaking in connection with the purchase or use of said commodity, or that there actually is any guaranty thereof.

(c) That the sale of said product is "going like wildfire for agents, demonstrators, crew managers," or that an agent or vendor thereof can or may expect to "Turn \$1.00 into \$27.00"; or otherwise representing, directly or by implication, that prospective agents, salesmen, distributors, dealers or other representatives can make profits or earnings which are in excess of the average net profits or earnings theretofore consistently made by active full-time dealers or salesmen of said commodity in the ordinary and usual course of business and under normal conditions and circumstances.

(d) That the money making plan offered in connection with the sale of said product is either wonderful or secret, or that this or any other thing is given "free" or without cost to the recipient when such commodity or article is not a gratuity, and the prospective recipient is required as a consideration to pay money or to purchase some other article or to render some service in order to obtain the same.

(e) That a charge of ten cents, or other amount, is intended merely "for mailing and handling" of a sample package when in fact such sum covers the full price for which said commodity is regularly sold and delivered; or representing that such package is worth twenty-five cents or any amount in excess of that for which it is sold by the advertiser. (Sept. 19, 1944.)

2969.¹ **Jewelry—Free and Value.**—The Commission directed that Stipulation 2969, entered into by the respondent named below, be amended by striking therefrom inhibition (1) that appeared thereon and substituting the following, so that the stipulation now reads as follows:

Frank Milligan, an individual who traded originally as "Frank Milligan Co." but whose present trade name is "Empire Diamond Company," engaged in the business of selling jewelry by mail order in interstate commerce, in competition with other individuals and with firms, partnerships and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Frank Milligan, in connection with the sale and distribution of his articles of merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, agreed he will cease and desist from

1. The use of the word "free" or the words "given free" to describe or refer to goods offered as compensation for services rendered in selling or distributing his merchandise, when such goods are not a gratuity, and the prospective recipient is required as a consideration to purchase some other article or articles or render some service in order to obtain the same.

2. Stating or representing that merchandise offered for sale or sold by him, either alone or in connection with an alleged free gift or gratuity, is of or has a designated sales value, when in fact, such alleged valuation is

¹ Amended. See 31 F. T. C. 1708.

fititious or is in excess of the price for which such merchandise, or merchandise of similar quality or character, is customarily sold in the usual course of business. (Sept. 7, 1944.)

3235.¹ **Stamps and Philatelic Supplies—Free, Delivering Unordered Merchandise, Price, Value and Collection Agency.**—The Commission directed that Stipulation 3235, entered into by the respondent named below, be amended by striking therefrom inhibition (a) that appeared thereon and substituting the following, so that the stipulation now reads as follows:

Philip Goldstein, an individual, trading as Midwood Stamp Co., engaged in the sale and distribution in interstate commerce, of stamps and philatelic supplies, in competition with other individuals, and with corporations, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Philip Goldstein, in connection with the offering for sale, sale or distribution of stamps and philatelic supplies in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) Representing, directly or by implication, that any "approval" stamp or any stamp or selection of stamps for which a price is charged is given free; from the use of the word "free" or other term of similar meaning in any manner so as to import or imply that "approval" stamps are given free; and from the use of the word "free" or other term of like meaning as descriptive of or in connection with a product when such product is not a gratuity, and the prospective recipient is required as a consideration to purchase some other article or articles or render some service in order to obtain the same.

(b) Mailing, or otherwise distributing approval sheets of stamps or other merchandise to persons who have not requested same, and therewith or thereafter representing, either by direct assertion or by implication, that such recipient is under contract legally enforceable either to pay for such unsolicited merchandise or to return the same.

(c) Representing that the prices at which he offers for sale and sells his products constitute a discount to the purchaser or that such price or prices are special or reduced prices or are applicable for a limited time only, when in fact, such prices are the usual and customary prices at which he sells such products in the normal or usual course of business.

(d) Representing that the actual value of an assortment of stamps is the sum of the catalog nominal list prices of all of such stamps; applying the term "catalog Value" to a packet of stamps in a manner so as to import or imply or cause the belief that any figures so designated is the actual value thereof when in fact the actual value is less than the alleged "catalog value" or catalog list price; or otherwise quoting a figure purporting to be the actual or genuine value of a stamp, set of stamps or other merchandise which is in excess of the price for which such article or group of articles is sold or can be obtained in the usual course of business.

(e) The use of the name "Nat. Mercantile Agency" or any other fictitious name purporting to be that of an independent collection agency or credit bureau for the purpose of inducing the payment for or the return of "approval" stamps or for the purpose of collecting payments on his contracts or alleged contracts, when in fact no such agency exists or is employed by him. (Sept. 1, 1944.)

¹ Amended. See 33 F. T. C. 1704.

3701.¹ **Furs and Fur Garments—Nature.**—The Commission directed that Stipulation 3701, entered into by the respondent named below, be amended by striking therefrom inhibition (1) that appeared thereon and substituting the following, so that the stipulation now reads as follows:

Miller's Furs, Inc., a corporation, engaged in the sale and distribution of furs and fur garments in interstate commerce, in competition with other corporations, firms and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Miller's Furs, Inc., in connection with the sale and distribution of its furs or fur garments in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. Using the term "Civet Cat" or the word "Civet," or words or terms of like meaning, either alone or in connection or combination with any other word or words, to designate or describe furs or fur garments made of the peltries of the little spotted skunk or the little striped skunk, or of any peltries other than civet peltries.

2. Using the word "Mink" or other word or term of like meaning, either alone or in connection or combination with any other word or words, to designate, describe or refer to furs or fur garments made from rabbit peltries, muskrat peltries or any peltries other than mink peltries, unless such word or term is compounded with the word "dyed"; and, when so combined, is immediately followed in equally conspicuous type by the true name of the fur.

3. Using the word "Sable" or other word or term of like meaning, either alone or in connection or combination with any other word or words, to designate, describe or refer to furs or fur garments made from rabbit peltries, muskrat peltries or any peltries other than sable peltries, unless, such word or term is compounded with the word "dyed" and, when so compounded, is immediately followed in equally conspicuous type by the true name of the fur.

4. Using the word "Beaver" or other word or term of like meaning, either alone or in connection or combination with any other word or words, to designate, describe or refer to furs or fur garments made from rabbit peltries or any peltries other than beaver peltries, unless such word or term is compounded with the word "dyed" and, when so compounded, is immediately followed in equally conspicuous type by the true name of the fur.

5. Using the word or term "Caracul" or other word or term of like meaning, either alone or in connection or combination with any other word or words, to designate, describe or refer to furs or fur garments made from kid peltries, unless such word or term is compounded with the word "dyed" and, when so compounded, is immediately followed in equally conspicuous type by the true name of the fur.

6. Using the coined word or term "Marmink" or other word or term connoting mink, either alone or in connection or combination with any other word or words to designate, describe or refer to furs or fur garments made from marmot peltries or any peltries other than mink peltries, unless such word or term is compounded with the word "dyed" and, when so compounded, is immediately followed in equally conspicuous type by the true name of the fur.

¹ Amended. See 37 F. T. C. 697.

7. Using the word "Seal" or other word or term of like meaning, either alone or in connection or combination with any other word or words to designate, describe or refer to furs or fur garments made from rabbit peltries or any peltries other than seal peltries, unless such word or term is compounded with the word "dyed" and, when so compounded, is immediately followed in equally conspicuous type by the true name of the fur.

8. Designating or describing furs or fur garments in any manner other than by the use of the true name of the fur as the last word of the designation or description thereof; and, when any dye or process is used in simulating any other fur, the true name of the fur appearing as the last word of the description shall be immediately preceded in equally conspicuous type by the word "dyed" or the word "processed" compounded with the name of the simulated fur as, for example, "Seal-dyed Muskrat." (Sept. 7, 1944.)

3871. Birth Certificate Forms and Instructions—Nature of Product and Business, Size and Special and Limited Offers.—Robert Kaufman, a sole trader, operating as National Birth Certificate Advisory Service, with his place of business in Los Angeles, Calif., engaged in the sale and distribution of printed forms and sets of instructions intended for the use of persons seeking birth certificates in interstate commerce in competition with individuals, firms and corporations, likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Robert Kaufman, in connection with the offering for sale, sale and distribution of his printed forms and instructions in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from:

(a) Representing, either directly or inferentially, that he will obtain or help to obtain birth certificates for persons accepting his offer; or that the commodity sold by him is other than a set of blanks and printed instructions, to be used by a person desiring to procure a birth certificate for himself.

(b) Representing that all one has to do, to obtain his birth certificate, is to send in his name, address, State of birth and one dollar to "Birth Records," that is, to said Robert Kaufman; or the use of any other presentation which imports, implies or may cause the belief that no further action or no additional outlay of cash will be required of the prospective purchaser of his printed forms.

(c) Using the term "Birth Records" as a trade designation for his business, or any similar words or expressions indicative of a birth research service or a system of birth recordings.

(d) Designating, describing or referring to his business as a "national organization."

(e) In radio broadcasts, failing to specify, clearly and unambiguously, in each commercial reference thereto, the exact nature of the commodity or service offered for sale by him.

(f) Representing that the regular or customary offer made by him is "special" or "limited" when in fact no reduction in price or other trade advantage of exceptional nature is involved therein. (July 7, 1944.)

3872. Livestock Feeds—Composition, Qualities, Properties or Results and Testimonials.—Puritan Laboratories, Inc., an Iowa corporation, with its principal place of business in Des Moines, Iowa, engaged in the manufacture of alkalized feeds for livestock and in the sale and distribution

thereof in interstate commerce in competition with corporations, firms and individuals, likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Puritan Laboratories, Inc., in connection with the offering for sale, sale and 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 that it will forthwith cease and desist either directly or inferentially from:

(a) Designating or referring to Min-A-Lak or any product of like composition as a dry yeast culture feed or as a yeast supplement; or representing that the yeast therein contained will promote appetite, aid digestion, increase assimilation, protect the body from nerve disease or be conducive to normal reproduction.

(b) Signifying that Min-A-Lak provides all the benefits of yeast culture and mineral feeding; supplies the essential minerals and other aids to digestion and assimilation, the minerals necessary for complete digestion; assures better assimilation of other feeds, or favorably influences such assimilation or digestion; or is a combination that effectually aids normal health, more rapid growth and better productivity.

(c) Representing that Min-A-Lak, because of its following ingredients:
Hardwood ash—will be effective in toning up the system or in warding off disease;

Salt—aids digestion;

Sulphur—will act as a tonic or help tone up the system;

Iron, copper and manganese—can be depended upon to keep the blood stream healthy;

Iodine—will be effective in promoting health or heart action;

Milk whey—is effective in the prevention or cure of coccidiosis.

(d) Assertions that the feeding of Min-A-Lak to brood sows will help them produce bigger litters or tend to eliminate worms or negro; that fed to cattle, Min-A-Lak will prevent or help prevent or overcome bloating or scours, or favorably influence the digestion of steers; or, administered to dairy cows, that it will help them to conceive at the first service, prevent and overcome sterility, or prevent and correct scours in their calves.

(e) Statements to the effect that Min-A-Lak is an effective treatment or a dependable preventive for poultry afflictions such as digestive disturbances, coccidiosis, mycosis, paralysis, mycosia, worms or blackhead; that it is a reliable health builder for poultry; or that it can be depended upon to increase egg production of a hen from 48 up to 180 or 200 eggs per year or to secure any other definite increase of such egg production.

(f) Representations that Min-A-Lak administered to foxes serves to keep the digestive system clean and free from putrefaction and infection, or aids in the assimilation of food, producing more results.

Puritan Laboratories, Inc., further agreed not to publish any testimonial statements inconsistent with the terms and provisions of the foregoing agreement. (July 7, 1944.)

3873. "Anti-To-Bacco" Tablets—Scientific or Relevant Facts and Qualities, Properties or Results.—Allen W. Burget, a sole trader, operating as Allen W. Burget, distributor for Anti-To-Bacco with place of business in Kansas City, Mo., engaged in the sale and distribution of a preparation in tablet form under the trade designation Anti-To-Bacco in interstate commerce, in competition with individuals, firms and corporations,

likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Allen W. Burget, in connection with the sale and distribution of his 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 that he will forthwith cease and desist from:

(a) Asserting that tobacco may bring about trench mouth, inflame the middle ear, cause indigestion, damage the thyroid gland, seriously affect the heart, weaken or impair the sexual glands; or has a peculiarly great effect on the thyroid thereby bringing on goiter.

(b) Averring that tobacco often causes heart, stomach, liver and kidney degeneration, sexual weakness, the allaying of sexual desire, or the loss of energy—or that there is medical authority for such assertions.

(c) Featuring the total numbers of deaths and lifelong cripples from childbirth in any manner which imports, implies or suggests that any large proportion thereof resulted or may have resulted from tobacco smoking.

(d) Stating that of every ten men who die suddenly of heart disease, nine have been smokers or users of tobacco; or that if women continue smoking as at present there will be as many women as men dropping dead of heart disease or apoplexy; or in any other way, representing that tobacco is a prevalent or likely cause of sudden deaths by heart disease or apoplexy.

(e) Representing, by connotation, indirection or otherwise, that one-fourth of the deaths in the United States are of heart disease brought on by tobacco; or using any other specious figures or spurious presentations which exaggerate or overstate the dire effects of tobacco.

(f) Representing that the taking of the tablets heretofore sold as "Anti-To-Bacco," or any product of like composition, enables one to free himself of the tobacco habit or from the bondage of tobacco, to say good-bye to tobacco, to break the grip tobacco holds on him, or thereby to become or reasonably expect to become alert, alive, fit, a leader of men, a man of distinction or a man who stands out from the crowd.

(g) The use of the words or term "Anti-To-Bacco" as a trade designation for or as descriptive of his tablets; and from the use thereof, or of words of like meaning, in any way which tends or may tend to convey the impression or belief that such product is of actual value in the overcoming or cure of the tobacco habit. (July 7, 1944.)

3874. Correspondence School Courses of Instruction—Institute, Places of Business, Jobs and Employment, Opportunities, Earnings, Etc.—Universal Business Institute, Inc., trading also as Universal Institute, a Missouri corporation with its place of business in Kansas City, Mo., engaged in the sale and distribution of home study or correspondence school courses of instruction intended to assist students thereof in obtaining employment by departments or agencies of the United States Government and by other employees, in interstate commerce, in competition 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.

Universal Business Institute, Inc., in connection with the sale and distribution, in commerce as defined by the Federal Trade Commission Act, of its home study or correspondence school courses of instruction, agreed that it will forthwith cease and desist from:

1. The use of the word "Institute" as part of its corporate or trade name; and from the use of the word "Institute" or other word of like meaning either alone or in connection with any other word or words in any manner so as to import or imply that the business conducted by it is an organization for the promotion of learning such as philosophy, art or science and has equipment and faculty such as to entitle it to be designated an institute.

2. Representing, directly or by implication, that it maintains or operates a school in the District of Columbia, unless and until it actually does operate a school therein.

3. Representing, by direct statement or by reasonable inference, either in its advertising media, by statements by its sales agents or in any other manner:

(a) that students or graduates of its course or courses of instruction are assured of obtaining employment;

(b) that there is a vocation generally recognized or known as professional filing;

(c) that persons completing its course of instruction in filing will thereby be qualified or eligible for executive or supervisory positions;

(d) that a person completing its course of instruction in filing is assured of rising rapidly to the finest positions offered in the business world.

4. Representing as the earnings of file clerks any amounts in excess of the usual and customary amounts which actually are earned by file clerks generally.

5. The use of any statement or representation that conveys or tends to convey the belief or impression that the school conducted by it is one of the leading business training schools in America or that its home study instruction is identical with its resident school instruction.

6. Representing, directly or inferentially, that persons completing its course or courses of instruction are assured permanent employment, promotions, attractive futures, permanent or part time employment as desired, high salaried position or success as leaders or "money-makers."

7. Representing that it or the school conducted by it discovered that filing is a vocation for "educated girls" or women, that there was no adequate training to prepare for the vocation of filing until it developed its filing course, that its school is the only school teaching such course from a "Professional" or any other standpoint, or that its course, or courses, of instruction is the preferred method of education for those who wish to become successful leaders or "money-makers." (July 17, 1944.)

3875. **Fur Garments—Composition and Nature.**—B. Geller & Sons, Inc., a New York corporation, with its place of business in New York, N. Y., engaged in the sale and distribution of fur garments in interstate commerce, in competition 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.

B. Geller & Sons, Inc., in connection with the sale and distribution of its merchandise in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from the use of the term "North American Muskrat" as a designation for or as descriptive of fur products made or composed of southern muskrat peltries, and from the use of any statement or representation that conveys or tends to convey the belief or impression that any peltries other than those known to the trade and industry as "northern muskrat" are northern muskrat peltries. (July 17, 1944.)

3876. Mineral Waters—Qualities, Properties or Results.—Albert D. Jansik and Gracia Jansik, individuals, trading as Safety Harbor Sanatorium, with their place of business at Safety Harbor, Fla., engaged in the sale and distribution of mineral waters designated as "Espiritu Santo Springs" waters numbers 1, 2, 3 and 4, in interstate commerce, in competition with individuals, firms and corporations, likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Albert D. Jansik and Gracia Jansik, whether trading under their own names, as Safety Harbor Sanatorium, or any other trade name or style, 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 mineral waters designated as "Espiritu Santo Springs" waters numbers 1, 2, 3 and 4, or any other mineral or mineralized water consisting of substantially the same ingredients or possessing substantially the same properties, whether sold under such name or any other name or names, agreed that they and each of them will forthwith cease and desist from:

1. Representing, directly or inferentially, that any of said mineral waters, or a combination of any or all thereof, constitutes an effective treatment or remedy for or is indicated in the treatment of stomach disorders, eczema, psoriasis, skin eruptions, arthritis, neuritis, rheumatism, Bright's disease, dropsy, kidney stones, liver disorders or gall bladder disorders; or aids in alkalizing the intestinal tract.

2. The use of any statement or representation that tends or may tend to convey the belief or impression that any of said mineral waters or a combination thereof constitutes an effective treatment or remedy for diabetes or is indicated as a treatment therefor; or that the use of any of said waters or a combination thereof will make it possible for a diabetic to discontinue dieting and/or the use of insulin. (July 17, 1944.)

3877. Nut Trees—Qualities, Properties or Results.—Montgomery Ward & Co., an Illinois corporation, with its principal place of business in Chicago, Ill., engaged in the sale and distribution of various commodities including nut trees, in interstate commerce, in competition 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.

Montgomery Ward & Co., in connection with the sale and distribution of nut trees in commerce, as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from representing directly or inferentially:

1. That a seedling nut tree can be depended upon to be profitable or to produce valuable nuts; that a black walnut seedling can be depended upon to produce bushels of nuts or to produce well filled or fine flavored nuts; that shellbark hickory seedlings can be depended upon to produce deliciously flavored or thin shelled nuts; or that butternut seedlings can be depended upon to bear early or to produce large, long or well filled nuts.

2. That black walnut or shellbark hickory nut trees will grow everywhere; and from any other representation that tends or may tend to convey the belief or impression that said trees can be grown successfully everywhere in the United States or in any part of the world which in fact is not suitable for such growth.

3. That young nut trees need no special care or can be grown successfully without being accorded careful attention. (July 26, 1944.)

3878. Paint and Kindred Products—Slack Filling, Composition and Federal Specification Conformance.—Lasting Products Co., a Maryland corporation, having its principal place of business at Baltimore, Md., engaged in the manufacture of paint and kindred products, in interstate commerce, in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Lasting Products Co., in connection with the conduct of its business in commerce as commerce is defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from offering for sale or selling its paint or kindred products in cans or containers of one-gallon or any other recognized standard size, which said cans or containers contain less of the product than is indicated by the size of the can or container which is used, or which can or container contains a lesser amount of the product than is actually indicated by clear and conspicuous disclosure on the labeling affixed to the cans or containers.

The said corporation also agreed to cease and desist from representing, as by means of brands or labels, that the product offered for sale and sold by it is compounded or manufactured in accordance with "Fed. Spec. TT-P-36A Type 1 Class B," when in fact, said product is not so compounded or manufactured; and from the use of the said specifications, or any specifications, on the brands or labels of said product that do not correctly represent the constituent elements and/or the percentage or quantity of such elements composing said product, or the effect of which branding or labeling causes or tends to cause an erroneous impression or belief by purchasers or prospective purchasers with respect to the true constituent elements and/or the percentage or quantity of such elements composing said product. (Aug. 8, 1944.)

3879. Linoleum, Etc.—Maker, Quality and Free.—Royal Linoleum Co., a corporation, doing business under and by virtue of the laws of the District of Columbia, with its principal place of business in Washington, D. C., engaged as a distributor of various types of floor coverings including linoleum and so-called inlaid linoflor products which, for many years past, have been extensively sold under the name "Armstrong" and, through the use of said name, have become favorably known and identified by the purchasing public as floor coverings made or manufactured by the Armstrong Cork Co. of Lancaster, Pa. Royal Linoleum Co. has sold its various types of floor coverings in commerce, as commerce is defined by the Federal Trade Commission Act, within the District of Columbia and in nearby States, in competition with corporations, individuals, firms 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.

Royal Linoleum Co., in connection with the offering for sale and sale of its floor coverings in commerce, as defined by said act, agreed that it will cease and desist from:

(a) The use of the word "Armstrong" as descriptive of or in referring to such of said products as are not made or manufactured by the Armstrong Cork Co. of Lancaster, Pa., and from the use of the word "Armstrong" to in any way designate said products, the effect of which tends

or may tend to cause or convey the impression or belief, contrary to fact, that said products are products made or manufactured by the said Armstrong Cork Co.

(b) Stating or representing that Armstrong products, which are offered for sale or sold by the Royal Linoleum Co., are "the best grade" or the "heaviest grade" products made or manufactured by the Armstrong Cork Co. of Lancaster, Pa., when in fact, said products are not of the grade or purported value represented.

(c) The use of the word "free," or of any other word or words of similar meaning or import, as descriptive of or with reference to services to be performed in the installation of a floor covering that is offered for sale or sold, when in fact, the price charged for the floor covering includes not only the cost of the floor covering but also includes the cost of laying and cementing the same. (Aug. 8, 1944.)

3880. "Chem-X"—"Waterproofing" and Qualities, Properties or Results.—Lloyd L. Smith, a sole trader, operating as National Potteries Co. with place of business in Fergus Falls, Minn., engaged in the sale and distribution in interstate commerce of a water-resistant compound designated "Chem-X," in competition with individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Lloyd L. Smith, in connection with the offering for sale, sale and distribution of his products in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from:

(a) The use of the words "waterproof," "waterproofing" or terms or expressions of like import as a designation for, as descriptive of or with reference to any product which is not effective as a waterproofing agent under all conditions of use; *Provided, however,* that if such product is an efficacious waterproofer under certain conditions, then in that case such descriptive words whenever used shall be immediately accompanied, in equally conspicuous type, by words or statement definitely and truthfully disclosing the particular conditions under which it may be effective for the purposes named or indicated.

(b) The use of the term "chemical maximizer" to denote or describe the product Chem-X, or of other words or expressions indicative of the ultimate degree of efficiency with respect to said product.

(c) Representing that Chem-X or any similar product, without regard to pressure conditions of water, will stop leaky walls; or, without reference to seepage by capillary action or condensation of atmospheric moisture, can be relied upon or depended upon to render wet basements dry and livable. (July 13, 1944.)

3881. Calf Meal—Qualities, Properties or Results and Comparative Merits.—Blatchford Calf Meal Co., an Illinois corporation, with its principal place of business at Waukegan, Ill., engaged in the manufacture of specialty feed and in the sale and distribution thereof in interstate commerce in competition 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.

Blatchford Calf Meal Co., in connection with the offering for sale, sale and 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 that it will forthwith cease and desist from representing directly or inferentially:

(a) That when fed by the specified "gruel" method heretofore advertised and recommended, or with any other regimen which fails to include an adequate amount of milk, or of milk, grain and hay, Blatchford's Calf Meal provides

What-it-takes for thrifty, growthy calves;

The dependable nutrient values that calves need and thrive on;

The food values needed to make sound, well-developed calves, or to develop calves into strong constitutional, big bodied, productive cows;

Profitable calves, the best calves that could be raised, or better calves.

(b) That the milk content of the so-called gruel feeding regime advocated and publicized by said corporation is, or purports to be, the minimum requirement referred to by agricultural authorities as essential for the better growth, above-average weight, good gains or sufficient size and capacity of calves.

(c) Inferentially or otherwise, that beef-type calves or any other kind can be ideally or suitably fed on Blatchford's with an insufficiency of milk; or that Blatchford's blend can of itself do the job well, or at all, of developing sound frame-works or other foundations for future market toppers or show winners.

(d) Representing that Blatchford's Calf Meal if fed by the recommended gruel method contains the nutritive values eliminated from whole milk by the removal of butterfat; or more thereof than do other proper feed mixtures of ordinary grains.

(e) By statement or by inference, that the saving made by diversion of milk to market by means of "the Blatchford way"—the gruel method of feeding—is 12 to 16 cwt., or other excessive amount, of whole milk for every 100 pounds of Blatchford Calf Meal or Pellets fed; that the dairyman actually saves a difference of \$18.75 or any comparable figure on every 100 pounds of such product fed; or otherwise, that with the Blatchford meal or pellets dairymen make any notable net savings of money while concurrently providing the foods needed for strength, growth and early maturity of their calves. (Aug. 14, 1944.)

3882. "Hydro-Matic Vaporizer"—New, Qualities, Properties or Results, Etc.—Bernard T. Kotzin, an individual, trading as Hydro-Matic Vaporizer Co., with his place of business at Los Angeles, Calif., engaged in the sale and distribution of devices designated "Hydro-Matic Vaporizer" for use in humidifying tobacco, and food products, in interstate commerce, in competition with individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Bernard T. Kotzin, whether trading under his own name, as Hydro-Matic Vaporizer Co., or under any other trade name or style, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, of the device designated "Hydro-Matic Vaporizer" or any other device of substantially the same construction or possessing substantially the same properties, whether sold under such name or any other name or names, agreed that he will forthwith cease and desist from:

1. The use of the statement "The Hydro-Matic Vaporizer is a new and scientific moistener" or other statement or representation that conveys or tends to convey the belief or impression that such device represents any new scientific principle.

2. Representing, directly or inferentially, that such device:

(a) Will release the exact amount of moisture required to keep cigars at their best condition;

(b) That it can be depended upon adequately to humidify cigars or tobacco;

(c) That it will keep cigars at factory freshness or cause cigars to retain their natural aroma or flavor;

(d) That the moisture release thereof is controlled entirely by the condition of the tobacco; or

(e) That moisture is drawn from a tube from which vapor or moisture cannot escape; or that vapor or moisture cannot escape from a tube which does, in fact, permit the escape of moisture.

3. Representing that the moisture content of a tube 25 inches by $\frac{1}{8}$ of an inch in size is sufficient adequately to humidify cigars or tobacco in a twelve cubic foot display case for six weeks, or otherwise misrepresenting the humidifying qualities of such device.

4. The use of any statement or representation to the effect that such device is indicated for use in refrigerators; that it will deodorize refrigerators or other food receptacles; or that it is effective in keeping refrigerators sweet or fresh.

5. Representing, directly or inferentially that the use of such device in refrigerators or other food containers:

(a) Will restore, preserve or prolong the original freshness, taste or flavor of bread, rolls, pastries, meats, poultry, fish, vegetables, fruit or other food products;

(b) Will protect food against spoilage, or retard contamination or decay of meats, poultry, fish, fruit, vegetables or other foods; or

(c) Will air condition containers of bakery products. (Aug. 14, 1944.)

3883. **Telescopes—Qualities, Properties or Results, Quality and Value.**—L. J. Thomas, an individual, trading as Vogue Co., Vogue Telescope Co., American Co. and American Telescope Co., with his principal place of business in Chicago, Ill., engaged in the sale and distribution of various commodities, including telescopes, in interstate commerce, in competition with individuals, firms and corporations, likewise engaged, entered into the following agreement to cease and desist from the alleged unfair method of competition in commerce as set forth therein.

L. J. Thomas, whether trading under his own name, under the trade names Vogue Co., Vogue Telescope Co., American Co. or American Telescope Co., or under any other trade name or style, in connection with the sale and distribution of telescopes in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from:

1. The use of the statement "6 Power Telescope," "people 600 yards away appear as 100 yards distant" and "Brings objects 6 times closer" or any other statement of like meaning as descriptive of a telescope that does not have a magnification of six diameters; and from the use of any statement or representation that tends or may tend to convey the belief or impression that the magnification of a telescope is in excess of the true magnification thereof.

2. Representing that the telescope heretofore referred to as "6 Power Telescope" or any other telescope of like quality or value is "Perfect" or that the lens thereof is "scientifically ground"; and from the use of any representation that tends or may tend to exaggerate beyond the bounds of

truth the real quality or value of any telescope offered for sale by him. (Aug. 14, 1944.)

3884. Fur Garments—Nature.—Kruskal & Kruskal, Inc., a New York corporation, with its principal place of business at New York, N. Y., engaged in the sale and distribution of fur garments, in interstate commerce, in competition with corporations, firms and individuals, likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Kruskal & Kruskal, Inc., in connection with the sale and distribution of its fur garments in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. Using the term or words "Lapin" to designate or describe products made from rabbit peltries, unless such word or term is compounded with the word "dyed" or the word "processed," as the case may be, and when so compounded is immediately followed by the true common English name of the fur.

2. Using the term or words "Leopard Cat" or other words denoting leopard to designate or describe products made from the peltries of South American spotted cats or of any animals or species other than the true leopard (*felis pardus*).

3. Designating or describing furs or fur products in any manner other than by the use of the true name of the fur as the last name of the designation or description thereof; and, when any dye or process is used in simulating another fur, the true name of the fur appearing as the last word of the designation or description shall be immediately preceded in equally conspicuous type by the word "dyed" or the word "processed," as the case may be, compounded with the name of the simulated fur as, for example, "Seal-dyed Muskrat." (Aug. 18, 1944.)

3885. Livestock and Poultry Preparation—Comparative Merits, and Qualities, Properties or Results.—Joseph C. Winslow, Stephen R. Winslow, Diana S. Winslow and Anita A. Winslow, copartners, trading as Mutual Products Co., with their place of business at Minneapolis, Minn., engaged in the sale and distribution of a preparation designated "Mutual" for use as a livestock and poultry food, in interstate commerce, in competition with individuals, firms and corporations, likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Joseph C. Winslow, Stephen R. Winslow, Diana S. Winslow and Anita A. Winslow, whether trading under their own names, as Mutual Products Co., or under any other trade name or style, in connection with 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 livestock and poultry preparation designated "Mutual" or any other preparation consisting of substantially the same ingredients or possessing substantially the same properties, whether sold under such name or any other name or names, agreed that they, and each of them will forthwith cease and desist from:

1. The use of any statement, representation or comparison that tends or may tend to convey the belief or impression that 25 pounds of said preparation is equal in nutritive or feeding value to 1,200 pounds of whole milk, or that the feeding value of such preparation is in excess of the true feeding value thereof.

2. Representing, by the use of the statement "milk feeding results guaranteed" or other statement or representation of like meaning, that the results obtained by feeding such preparation to calves or other live-stock are equal to those obtained when suitable quantities of whole milk are fed.

3. The use of the statements "costs less than $\frac{1}{5}$ as much to feed as whole milk," "less than $\frac{1}{2}$ as much as skim," "on every calf you raise you save \$12 to \$15," "costs about 85% less than milk to feed," "A 250 pound hog raised on separated milk costs \$5.00 or more for milk-slop. A 250 pound hog raised the Mutual milk-food way costs only \$2.50 for milk-slop! Equal results guaranteed," or "Save your wife \$10.00 per ton by mixing her poultry mashes with Mutual milk-food compound"; and from the use of any other statement or representation of like import or meaning in any manner that tends or may tend to convey the belief or impression that by feeding such preparation in lieu of other foods a saving in feeding cost is effected when any such saving would be the result of using an insufficient or inadequate ration in lieu of that used for comparative purposes.

4. Representing that said preparation contains health ingredients that protect or help protect calves against scours or that its use is effective in the treatment of scours other than such as are occasioned by overfeeding.

5. Representing, directly or inferentially, that said preparation is a duplication or a close duplication of cow's milk; that the feeding results thereof are equal to those of cow's milk; or that it is equivalent in nutritive value to cow's milk.

6. Representing, directly or inferentially, that said preparation when fed to pigs keeps them free of worms or contains health ingredients which help build resistance to colds or worms; that it gives pigs skim milk feeding results, or that it can be depended upon to cause pigs to be thrifty or to obviate runts.

7. Representing that a pig feeding slop or ration composed of one-half pound of "Mutual," five gallons of water and one quart of ground feed, or a similar formula—

(a) will cause pigs to grow rapidly,

(b) will give pigs the right start, or

(c) will produce marketable pigs four to six weeks earlier or any earlier than will a ration made with a like quantity of separated milk and ground feed.

8. The use of any statement, representation or comparison to the effect that a pig feeding slop containing 25 pounds of said preparation, 250 gallons of water and middlings or ground feed, is equal in feeding value or digestive nutrients to a slop made of 250 gallons of skim milk and a like quantity of middlings or ground feed; or otherwise that the feeding value of such preparation is in excess of the true feeding value thereof.

9. Representing that a chick mash made with said preparation is "perfectly balanced" or "well-balanced," or that such a mash constitutes a balanced mash or ration for chicks, poultry or livestock generally.

10. Representing that the use of a mash made with such preparation will produce more rapid growth or weight increase in chicks than will feeds generally used; that such a mash serves to prevent or correct coccidiosis; that, when prepared without supplementing with cod liver oil or the equivalent thereof, it is effective in preventing rickets in poultry; or that it can be depended upon to keep chicks healthy or free from intestinal parasites.

The use of any statement or representation to the effect that mes made in accordance with their aforesaid formula or formulas will poultury in better condition or will result in greater egg production will mash es ordinarily fed to poultury.

2. Representing that the use of said preparation in poultury mash es produce results equivalent to those obtained when a milk product such skim milk, dried skim milk or dried buttermilk is added to the mash.

3. Representing that poultury mash es prepared with said preparation d fed as directed constitutes a satisfactory replacement for separated lk or milk derivatives commonly employed in feeding poultury.

14. The use of the words "milk-food compound," as a designation for as descriptive of such preparation, and from the use of any statement r representation that tends or may tend to convey the belief or impression hat said preparation consists wholly or in substantial part of milk or milk lerivatives or that it is the equivalent of or equal to milk or milk deriva- ives in livestock or poultury feeding value. (Aug. 18, 1944.)

3886. Artificial Limbs—Distributors, Places of Business and Member of Association.—C. H. Davies Co., Inc., a New Jersey corporation, with its place of business at Newark, N. J., and William F. Francis and Frederick Francis, copartners, trading as W. F. Francis Co., with their place of business at Newark, N. J., also at the same address as that of the aforesaid C. H. Davies Co., Inc.; said corporation and copartners have been engaged in the sale and distribution of artificial limbs in interstate commerce, in competition with corporations, firms and individuals, likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

C. H. Davies Co., Inc., and William F. Francis and Frederick Francis, 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 artificial limbs, agreed that they, and each of them will forthwith cease and desist from:

1. The use of the statement "Distributors in 52 cities in U. S. A.," and from the use of any representation that tends or may tend to convey the belief or impression that they have distributors in, or maintain, operate or conduct places of business in, 52 different cities or in any cities in which they do not actually have distributors or conduct places of business as represented;

2. The use of the insignia of the Association of Limb Manufacturers of America, and from the use of any representation that tends or may tend to convey the belief or impression that they are members of such Association, unless and until they actually are members of the Association and entitled to the use of the insignia thereof. (Aug. 18, 1944.)

3887. Peat—Nature of Product.—Colby Pioneer Peat Co., Inc., an Iowa corporation, with its principal place of business in Hanlontown, Iowa, engaged in the sale and distribution of peat, in interstate commerce, in competition with corporations, firms and individuals, likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Colby Pioneer Peat Co., Inc., in connection with the sale and distribution of its peat in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from using the words "moss peat," "Sphagnum moss" or any other words of similar import to designate or describe any peat not derived from Sphagnum moss; or other-

wise from representing, directly or by implication, that any peat is moss peat, when such peat is not derived from sphagnum moss. (Aug. 24, 1944.)

3888. **Pharmaceutical Preparations—Composition, Scientific or Relevant Facts, Qualities, Properties or Results, Etc.**—E. M. B. Ownen, an individual trading as Hi-Lo Products, with its place of business at St. Louis, Mo., engaged in the sale and distribution of pharmaceutical products including a preparation variously designated as “Hi-Lo All-in-One Balanced Vitamins and Minerals Tablets,” “All-in-One Balanced Vitamin and Mineral Wafers,” and “Hi-Lo Balanced Vitamin & Mineral Wafers,” hereinafter referred to as “All-in-One,” and a preparation variously designated as “Anti-Gray Hair Vitamin,” “Hi-Lo Anti-Gray Hair Vitamin Tablets,” “Hi-Lo Balanced Vitamins B-Complex Plus Tablets” and “Hi-Lo Balanced B Complex Plus Tablets,” hereinafter referred to as “Anti-Gray Hair Vitamin,” in interstate commerce in competition with individuals, firms and corporations, likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

E. M. B. Ownen, whether trading under his own name as Hi-Lo Products or under any other trade name or style, 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 as “Hi-Lo All-in-One Balanced Vitamins and Minerals Tablets,” “All-in-One Balanced Vitamin and Mineral Wafers,” and “Hi-Lo Balanced Vitamin & Mineral Wafers,” or of the preparation designated as “Anti-Gray Hair Vitamin,” “Hi-Lo Anti-Gray Hair Vitamin Tablets,” “Hi-Lo Balanced Vitamins B-Complex Plus Tablets” and “Hi-Lo Balanced B Complex Plus Tablets,” or any other preparation or preparations consisting of substantially the same ingredients or possessing substantially the same properties, agreed that he will forthwith cease and desist from:

1. Representing that the preparation herteofore referred to as “All-in-One” contains 34 mineral elements or substances or any number of mineral elements in excess of those actually contained therein.

2. Representing, directly or inferentially, that 34 minerals are needed by the human body or are essential in human nutrition; or that any number of mineral elements in excess of those actually required are essential in human nutrition.

3. Representing that the vitamin B complex consists of 28 factors; or that any number of factors in excess of those actually contained therein are recognized as constituting the vitamin B complex.

4. Representing that the preparation “All-in-One” contains “all known and unknown vitamins” or otherwise misrepresenting the vitamin content thereof.

5. Representing, directly or inferentially, that said preparations, or either thereof, can be depended upon to restore the vigorous health of youth, to assist in preventing most common ailments, to improve health or vigor, to insure a healthy body, or to assure good health.

6. The use of any statement or representation that tends or may tend to convey the belief or impression that users of the preparation “All-in-One” can be assured increased vigor or an increased joy of living.

7. Using any statement or representation that tends or may tend to convey the belief or impression that an adequate vitamin and/or mineral supplement will insure a healthy body or good health.

8. The use of the statement "a daily supply of vitamins is essential" or otherwise representing that it is essential that vitamins be taken each and every day in order to obtain the full vitamin requirements.

9. Representing, directly or inferentially, that:

(a) Vitamin A can be depended upon to protect the individual against infection or colds or that such vitamin makes one feel fit;

(b) Vitamin B₁ can be depended upon to steady the nerves, cause increased vigor, restore strength, promote or restore courage; or that such vitamin influences appetite other than in cases where loss of appetite arises from a deficiency of said vitamin;

(c) Vitamin C can be depended upon to keep the teeth and gums healthy or speed the healing of wounds or that it will keep one young and active;

(d) Vitamin D provides the benefit of sunlight;

(e) Vitamin E can be depended upon to make the muscles healthy, or that it corrects sterility or otherwise plays a significant role in human reproduction;

(f) Vitamin G is an important aid in keeping one young or vigorous.

10. Representing, directly or inferentially, that:

(a) Phosphorous is good for the nerves;

(b) Magnesium prevents convulsions or certain types of convulsions or helps regulate the heart;

(c) Zinc carries away or helps carry away the waste carbon dioxide from the blood;

(d) Iodine provides bodily or mental energy or helps prevent obesity; or that it is a preventative of all types of goiter;

(e) Bromide is important to the adrenal glands;

(f) Silicon keeps the skin elastic;

(g) Aluminum is stored in the brain;

(h) Cobalt is a blood builder;

(i) Sulphur prevents injurious effects of smoking or helps prevent diabetes;

(j) Potassium steadies the nerves or helps keep the nerves steady;

(k) Iron can be depended upon to ward off all types of anemia.

11. The use of any statement that tends or may tend to convey the belief or impression that it is impossible to obtain an adequate vitamin intake through the consumption of ordinary foods.

12. The use of any chart, depiction or other representation purported to show the distribution of vitamins and/or minerals throughout the human body in any manner that conveys or tends to convey the belief or impression that vitamins or nutritive substances have any specific effects on the various organs or parts of the body, when, in fact, such vitamins or nutritive substances do not have the effect indicated.

13. Representing, directly or inferentially, that the preparation referred to as "Anti-Gray Hair Vitamin" can be depended upon to banish gray hair, to restore the natural color to hair within six months or any other period of time, or to prevent hair from turning gray.

14. Representing that the vitamin method of restoring the natural color of hair has proven successful in 88 percent of the cases tested, or has proven successful in any other percentage or number of cases.

15. The use of the term "the gray hair vitamin" as descriptive of vitamin B complex plus calcium pantothenate and para-mine-benzoic acid.

16. Representing, directly or by implication, that the use of "Anti-Gray Hair Vitamin" for a period of 4 weeks or for any other period of time will make a person look 15 years younger or any younger.

17. The use of the words "Anti-Gray Hair Vitamin" or "Hi-Lo Anti-Gray Hair Vitamin Tablets" as designations for the preparation heretofore referred to as Anti-Gray Hair Vitamin; and from the use of the words "Anti-Gray Hair" either alone or in connection with any other word or words as a designation for or as descriptive of such preparation.

18. The use of any statement or representation that tends or may tend to cause the belief or impression that certain symptoms or conditions are the result of a vitamin B complex deficiency, when, in fact, such symptoms or conditions usually arise from conditions having no relationship to such deficiency.

19. Representing, directly or inferentially, that the administration of the preparation "Anti-Gray Hair Vitamin" as directed constitutes a competent treatment for symptoms that may arise from vitamin B complex deficiency.

20. The use of any statement or representation that tends or may tend to convey the belief or impression that the preparation, "Anti-Gray Hair Vitamin," can be depended upon to improve an individual's general health or physical condition, or that the use thereof will assure healthful benefits.

21. The use of the term "acid of life" or other term or words of like meaning as a designation for or as descriptive of pantothenic acid. (Sept. 1, 1944.)

3889. Nail Polish—Comparative Merits and Qualities, Properties or Results.—Glazo Co., Inc., a New York corporation with its place of business at Stamford, Conn., engaged in the sale and distribution of cosmetic preparations, including products designated "Glazo Nail Polish" and "Glazo Nail-Cote," in interstate commerce, in competition 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.

Glazo Co., Inc., in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, or the advertising by the means and in the manner above set forth, of cosmetic preparations, agreed that it will forthwith cease and desist from representing, directly or inferentially:

1. That the preparation designated "Glazo Nail Polish" or any other preparation of like composition or possessing substantially the same properties, whether sold under such name or any other name or names, is superior in wearing qualities to all nail polishes sold in competition therewith; that it will not chip, peel or fade; and that it "defies all fingernail hazards" or is effective in preventing damage to fingernails such as splitting, breaking or other hazards.

2. That the preparation designated "Glazo Nail-Cote" or any preparation of like composition or possessing substantially the same properties, whether sold under such name or any other name or names, "guards your nails against splitting, cracking or breaking," or will prevent fingernails from splitting, cracking or breaking. (Sept. 5, 1944.)

3890. "Betene" Preparation—Qualities, Properties or Results, Scientific or Relevant Facts, Indorsement or Approval and Free Goods.—L. H. Stewart Corporation, a New York corporation with its place of busi-

ness at Rochester, N. Y., engaged in the sale and distribution of a preparation designated "Betene," allegedly for use as a reducing agent and/or as a food supplement, in interstate commerce, in competition with corporations, firms and individuals likewise engaged; entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

L. H. Stewart Corporation, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, or the advertising by the means and in the manner above set forth, of its preparation designated "Betene" or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under such name or any other name or names, agreed that it will forthwith cease and desist from:

1. Representing, directly or inferentially, that said preparation has any reducing action, or that any loss in weight resulting from or occasioned by following the directions for the use thereof is other than naturally results from a restricted or reduced food intake.

2. The use of any statement or representation that tends or may tend to convey the belief or impression that by using such preparation in connection with a reducing diet, hunger will be prevented, or, when so used, that it is effective in preventing hunger or the pangs of hunger.

3. Representing that said preparation, when taken as recommended, provides the optimum or in excess of the optimum daily requirements of vitamins and minerals.

4. Representing that said preparation is extremely low in calories or that it is a low calory food.

5. The use of any statement or representation that tends or may tend to convey the belief or impression that malnutrition is the cause of overweight.

6. Representing, directly or inferentially, that said preparation is a dependable treatment for lowered resistance to disease, for stomach and intestinal disturbances, for nervousness or skin disturbances; or that such preparation is a competent or adequate treatment for such conditions.

7. Designating or describing such preparation as a "Health Drink," or otherwise representing that the preparation may be depended upon to promote health.

8. The use of the statement "adds years to joyous living," or otherwise representing that said preparation can be depended upon to promote longevity.

9. Representing that said preparation acts as a "pick-up" or aids in the recovery of persons who are overworked, easily tired, undernourished, feeling below par, irritable or have like symptoms.

10. Representing directly or inferentially that said preparation will enable an individual to ward off a cold or that it is effective as a cold preventative.

11. Using any statement or representation that tends or may tend to convey the belief or impression that said preparation has been approved or recommended by the American Medical Association for the purpose of reducing weight.

12. The use of the word "free," or other term or expression of like meaning, as descriptive of or in connection with a product, when such product is not given as a gratuity, and the prospective recipient is required as a consideration to purchase some other article or articles or to render some service in order to obtain the same. (Sept. 19, 1944.)

3891. Printed Educational Courses—Special or Reduced Prices, Limited Offers, History, Opportunities and Institute.—Harry C. Folea, an individual who, for a number of years past, operated from his principal place of business in Chicago, Ill., first under the name of Scientific Success Institute and, since about October 1941, as Educational Publications, engaged in the preparation of manuscripts and the sale thereof, in the form of so-called educational courses, in interstate commerce, in competition with other individuals and with corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Harry C. Folea, whether trading as "Educational Publications" or under any other name, agreed that, in connection with the sale and distribution of his manuscripts or printed so-called educational courses in commerce, as commerce is defined by the Federal Trade Commission Act, he will cease and desist from stating or representing in his advertising or printed matter, or in any other way, that the said manuscripts or printed courses, offered for sale and sold for \$20.00, formerly sold for \$60.00, or for any amount in excess of that for which they actually had been sold in the usual course of business, or that the price at which they are offered for sale and sold has recently been reduced, when such is not the fact, or that the price for which they are offered for sale and sold is a special or reduced price or a price that will be available to prospective buyers for a limited period of time only, when in fact such price is the customary price for which said courses may be purchased in the usual course of business without limitation as to time.

Said individual also agreed to cease and desist from stating or representing in his advertising or printed matter disseminated in commerce as aforesaid, that any of said courses is the result of 25 years of research in the secrets of the ages, or to otherwise attribute qualities or values to said courses, or any thereof, that are not in all respects true.

He further agreed to cease and desist from the use in said advertising or printed matter of any statement or representation concerning the said courses, the effect of which conveys or tends to cause the impression or belief that the said courses, or any thereof, are or is of such educational character or nature as will enable the student thereof to accomplish success in business, to become a great and famous writer, to send telepathic messages to friends far away, or to achieve success in any other indicated field of endeavor, the accomplishment of which is either beyond the scope of said courses or is not a factual probability. Said individual also agreed to cease and desist from the use of the word "Institute" either alone or in connection with the word "Scientific," or with any other word or words, as the trade name or as part of the trade name under which he conducts business, and from the use of the word "Institute" in any way, so as to import or imply or the effect of which tends or may tend to cause or convey the impression or belief that the business conducted by him is that of an institute or that the printed courses, which are offered for sale and sold by him or under the trade name "Educational Publications," have been prepared or produced by an institute or an organization engaged in the promotion of science, learning, philosophy, or arts. (Sept. 19, 1944.)

3892. Household Furniture—Manufacturer.—Big Rapids Furniture Co., Inc., a New York corporation with its principal place of business in New York, N. Y., engaged in the operation of a showroom where it has sold household furniture to consumer purchasers who had been referred

to it by interior decorators and dealers, in interstate commerce, in competition with other corporations and with individuals, partnerships or 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.

Big Rapids Furniture Co., Inc., in connection with the advertisement, offering for sale or distribution of its articles or merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that it will cease and desist forthwith from stating or representing, contrary to fact, that said articles of merchandise are "Creations of our own exclusive manufacture," and from the use of the word "manufacture" or of any other word or words of similar connotation, in any way, so as to import or imply or the effect of which tends or may tend to cause or convey the impression or belief that it makes or manufactures the products which it offers for sale and sells, or that it actually owns and operates or directly and absolutely controls the plant or factory in which said products are made. (Sept. 21, 1944.)

3893. Shoes—Doctor's Design or Supervision, Qualities, Properties or Results, Unique and Factory.—Satis-Factory Shoe Co., an Illinois corporation with its principal place of business in Chicago, Ill., engaged in the sale and distribution of shoes, in interstate commerce, in competition 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.

Satis-Factory Shoe Co., in connection with the offering for sale, sale and distribution of the above described footwear in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

(a) The use of the words "Dr. Edwards' Prescription Shoes" in connection with the marking, branding or advertising of the shoes herein specified; and from the use of the word "Doctor" or the abbreviation "Dr." either alone or in connection with a name or with any other words as a trade name, brand or designation for such merchandise, or in any manner importing, implying or having the capacity to convey the belief to purchasers that said shoes have been made in accordance with the design or under the supervision of a physician or contain special scientific, orthopedic or health features which are the result of medical determination or services.

(b) The use of the legend "foot health," or words or terms of similar import or meaning, in connection with such shoes; or the making of any representations which import, imply or suggest that they have special health ensuring properties or may be relied upon to create or maintain a healthy condition of the feet of the wearer.

(c) Representing that said shoes have "unique construction features" which by statement or inference are not to be found generally in standard shoes of comparable quality; that they are of extraordinary manufacture and especially made for defective feet, as connoted by representation that they are scientifically built as "the result of many years spent in orthopedic and foot research work and scientific designing"; or that, without having the outward appearance of corrective footwear, "they yet provide benefits which cannot be procured in ordinary shoes."

(d) The use of the term "Satis-Factory" or of the word "Factory" or other word or term of like meaning as part of its corporate or trade name

or as descriptive of its business, unless and until it actually owns and operates, or directly and absolutely controls a plant or factory wherein are made any and all products by it sold or offered for sale under such representation. (Sept. 21, 1944.)

3894. Textile Products—"Certified" and "Guaranteed."—Lamport Co., Inc., a New York Corporation with its place of business in New York, N. Y., engaged in the sale and distribution of textile products, including sheets and pillowcases, in interstate commerce, in competition 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.

Lamport Co., Inc., in connection with the sale and distribution of its textile products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. Representing, by the use of the word "Certified" or other word or words of like meaning in its advertising material or otherwise, that a product has been endorsed or attested as to wearability, durability or other stated quality by some governmental, scientific or other recognized agency qualified and empowered to certify as to such quality, unless such endorsement or attestation actually has been obtained.

2. Representing, by the use of the word "Guaranteed" or other word or words of like meaning in its advertising material or otherwise, that a product is guaranteed unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith of exactly what is offered by way of security as, for example, refund of purchase price. (Sept. 21, 1944.)

3895. Books or Publications—Indorsement and Approval and Incorporated.—Robert West, an individual trading as Rodin Publishing Co. and as Rodin Publishing Co., Inc., with his place of business at New York, N. Y., engaged in the sale and distribution of books or publications including a book entitled "The Rape of Radio," in interstate commerce, in competition with individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Robert West, whether trading under his own name, as Rodin Publishing Co., or under any other trade name or style, in connection with the sale and distribution of his books and publications in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from:

1. Representing that "Melville Miller, pres., National Association of Broadcasters," "Saturday Review of Literature," and "Clifton Fadiman, New Yorker" or either thereof, have stated that the publication entitled "The Rape of Radio" is "The most revealing book on radio since the advent of broadcasting," is "An inspiring work—constructive, helpful, worth its weight in gold" or that "No broadcaster or radio performer can afford to be without it"; or representing that said book or any other book or publication offered for sale or sold by him has received the approval, endorsement or opinion of any individual, association, organization or other entity, unless or until such approval, endorsement or opinion actually has been made or rendered as represented.

2. Using the term or initials "Inc." as part of or in connection with his trade name and from using the word "President" in connection with such trade name; and from the use of the words or terms "Inc." or "President"

or other word, term or expression of like meaning in any manner that tends or may tend to convey the belief or impression that his aforesaid business is incorporated or is conducted by a corporate entity. (Sept. 21, 1944.)

3893. Furs and Fur Garments—Nature of Product.—Grossman Furs, Inc., a New York corporation with its place of business at New York, N. Y., engaged in the sale and distribution of fur garments, in interstate commerce, in competition 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.

Grossman Furs, Inc., in connection with the sale and distribution of fur garments or furs in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. Using the words "Lynx," "Red Fox" or "Blue Fox" either alone or in connection, combination or conjunction with any other word or words, in advertisements, on invoices, stamped on furs, or in any other manner, to designate or describe furs or fur products made from other than lynx, red fox or blue fox peltries, respectively, unless such word or words are compounded with the word "dyed" or the word "processed," as the case may be, and when so compounded are immediately followed in equally conspicuous type by the true name of the fur.

2. Designating or describing furs or fur products in any manner other than by the use of the true name of the fur as the last word of the designation or description thereof; and, when any dye or process is used to simulate any other fur, the true name of the fur appearing as the last word of the designation or description shall be immediately preceded in equally conspicuous type by the word "dyed" or the word "processed," as the case may be, compounded with the name of the simulated fur as, for example, "Lynx-Dyed Lamb." (Oct. 3, 1944.)

3897. Furs and Fur Garments—Nature of Product.—J. & L. Furriers, Inc., a New York corporation with its place of business at New York, N. Y., engaged in the sale and distribution of fur garments, in interstate commerce, in competition 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.

J. & L. Furriers, Inc., in connection with the sale and distribution of fur garments and furs in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. Using the words "Lynx," "Red Fox" or "Blue Fox" either alone or in connection, combination or conjunction with any other word or words, in advertisements, on invoices, stamped on furs, or in any other manner, to designate or describe furs or fur products made from other than lynx, red fox or blue fox peltries, respectively, unless such word or words are compounded with the word "dyed" or the word "processed," as the case may be, and when so compounded are immediately followed in equally conspicuous type by the true name of the fur.

2. Designating or describing furs or fur products in any manner other than by the use of the true name of the fur as the last word of the designation or description thereof; and, when any dye or process is used to simulate any other fur, the true name of the fur appearing as the last word of the designation or description shall be immediately preceded in equally conspicuous type by the word "dyed" or the word "processed," as the case may be, compounded with the name of the simulated fur as, for example, "Lynx-Dyed Lamb." (Oct. 3, 1944.)

3898. Furs or Fur Garments—Nature of Product.—Sol Raphael, Inc., a New York corporation with its place of business at New York, N. Y., engaged in the sale and distribution of fur garments, in interstate commerce, in competition 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.

Sol Raphael, Inc., in connection with the sale and distribution of fur garments or furs in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. Using the words "Silver Foxes," "Silver Fox" or "Silvered Fox," either alone or in connection, combination or conjunction with any other word or words, to designate or describe furs or fur products made from any peltries other than silver fox peltries, unless such word or words are compounded with the word "dyed" or the word "processed," as the case may be, and when so compounded are immediately followed in equally conspicuous type by the true name of the fur.

2. Using the words "Lynx," "Red Fox" or "Blue Fox," either alone or in connection, combination or conjunction with any other word or words, in advertisements, on invoices, stamped on furs or in any other manner, to designate or describe furs or fur products made from other than lynx, red fox or blue fox peltries, respectively, unless such word or words are compounded with the word "dyed" or the word "processed," as the case may be, and when so compounded are immediately followed in equally conspicuous type by the true name of the fur.

3. Designating or describing furs or fur products in any manner other than by the use of the true name of the fur as the last word of the designation or description thereof; and, when any dye or process is used to simulate any other fur, the true name of the fur appearing as the last word of the designation or description shall be immediately preceded in equally conspicuous type by the word "dyed" or the word "processed," as the case may be, compounded with the name of the simulated fur as, for example, "Lynx-Dyed Lamb." (Oct. 3, 1944.)

3899. Wheat Germ Product—Comparative Merits, Composition, Qualities, Properties or Results and Scientific or Relevant Facts.—Life of Wheat Corporation, an Illinois corporation with its principal place of business at Monticello, Ill., engaged in the sale and distribution of a wheat germ product designated "Life of Wheat," in interstate commerce, in competition 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.

Life of Wheat Corporation, in connection with the sale and 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 that it will forthwith cease and desist from representing, directly or inferentially:

(a) That Life of Wheat has more B Vitamins than any other common food, is rich in B Complex Vitamins, the richest natural food in B Vitamins; or by statement or implication, that no other common food contains as much Vitamin B Complex, or more protein, more Vitamin B Complex or more iron for the calories it yields.

(b) That one ounce or 2 tablespoonfuls of Life of Wheat will provide more Vitamin B Complex than 4 slices of whole wheat bread or as much of the B Vitamins, protein and minerals of the wheat germ contained in 6

pounds thereof; or conversely, by connotation or otherwise, that 6 pounds of whole wheat bread contain but one ounce of wheat germ or that such wheat germ is the only source of these substances to be found in whole wheat bread.

(c) That 2 tablespoonfuls of Life of Wheat with its other food assures that a child will have the daily requirement of all the B Complex Vitamins; that by adding an ounce of Life of Wheat to the daily diet, one can "be sure," "make sure" or anticipate that there is "every likelihood" that a child will have all the B Complex Vitamins, protein and minerals needed to maintain health and growth; that Life of Wheat is "insurance" that the family will get the protective vitamins, minerals and protein likely to be lacking in the average diet; or by any other presentation, that there is any certainty or assurance that Life of Wheat will meet all such deficiencies.

(d) That an ounce of Life of Wheat is equal in food value to one and one-half ounces of meat.

(e) By statement or by connotation that the ordinary individual's resistance to infection can be significantly increased by increasing his protein intake, as by consumption of Life of Wheat.

(f) That Life of Wheat is richer in protein, ounce for ounce, than any other common food or than meat, eggs, fish, cheese or liver unless, in direct connection therewith, it be clearly indicated that these other foods are customarily consumed in quantities several times that recommended for Life of Wheat; that Life of Wheat is richer than meat or eggs with no qualifying statement limiting the comparison to a basis of equal weights; or in any other way, representing directly or inferentially that the recommended daily intake of Life of Wheat is a more adequate source of high quality protein than the much larger daily intake of such other foods.

(g) That the consumption of Life of Wheat will "safeguard" a child against the danger of insufficient B Vitamins, protein or minerals, or provide the child with the most effective means of promoting normal intestinal motility; or otherwise, that it may be depended upon or relied upon to assure such results.

(h) That no normal person need take any laxatives or worry about constipation if he takes 2 tablespoonfuls of Life of Wheat every day or takes three indicated steps "back to normal functioning," consisting of the drinking of plenty of water, the eating of leafy and root vegetables and the use of Life of Wheat germ in milk or cereal; that such "3 step plan" may be relied upon or depended upon to restore the intestinal tract to normal functioning or will enable one to "Stop Constipation Now," without regard to the underlying cause thereof.

(i) That symptoms such as listlessness, fatigue, a feeling of illness, finicky appetites, easy tiring, irritability or nervousness indicate or probably indicate lack of B Vitamins in the diet; or that Life of Wheat is an effective or adequate treatment or may be relied upon to correct any of such symptoms.

(j) That it is especially important for elderly people to take a natural Vitamin B Complex and protein food, such as Life of Wheat. (Oct. 13, 1944.)

3900. Toilet and Household Commodities, Medicines and Cosmetics—Qualities, Properties or Results, Scientific or Relevant Facts and Safety.—Keystone Laboratories, Inc., a Tennessee corporation with principal place of business at Memphis, Tenn., and Hilda S. Weinberg and Sol Kaplan, individuals, also of Memphis, Tenn., are or have been cooperatively

engaged with said corporation operating under the trade names Keystone The Reliable Co., Memphis Mail Order House, Four Star Products Co. and Real Herb Medicine Co., in the sale and distribution of sundry toilet and household commodities, medicines and cosmetics, in interstate commerce, in competition 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.

Keystone Laboratories, Inc., Hilda S. Weinberg and Sol Kaplan, in connection with the sale and distribution of their 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 that they and each of them will forthwith cease and desist from representing, directly or inferentially:

(a) That any of its preparations sold as Wildcat Brand Liniment & Carminitive, Egyptian Brand Liniment & Carminitive, Cherokee Brand Liniment, Keystone Old Famous Liniment and Four Star Home Liniment, respectively, is a suitable application for, a soothing dressing for, or an aid in the relief of burns or scalds of any type whatsoever.

(b) That the product sold as Keystone Cu-Bo Salve and Four Star All Seasons Salve relieves congestion of nasal passages due to head colds or otherwise; or by statement or inference, that such salve has favorable effect on the course of a head cold or other colds, including those which have invaded the throat and chest.

(c) That the product sold as Keystone Super Iron Tonic & Stomachic and Four Seasons Iron Tonic & Stomachic is a "super" iron tonic, or is an adequate or competent treatment for any type of anemia or for conditions manifested by symptoms such as weariness, tiredness, loss of pep or energy.

(d) That Egyptian Musteen Rub will relieve either the common cold or the misery associated with such condition.

(e) That Keystone Old Fashion White Base Rub Salve or Four Star Old Reliable White Base Rub Salve relieves nasal congestion; or directly or by implication, that such a preparation would have any favorable effect on the course of a simple cold.

(f) That the preparation variously sold as Keystone Compound for Malaria Chills & Fever, Four Star Quinine Laxative Compound for Malaria Chills & Fever, and Four Star Quinine Laxative Compound is an adequate treatment or an effective remedy for conditions resulting in tiredness, laziness, dizziness or trembling; or by statement or implication, that malaria is usually or often the cause of said symptoms.

(g) That the preparation variously sold as Four Star Laxative Cold Tablets, Keystone Laxative Analgesic Tablets and Four Star Laxative Analgesic Tablets is a "cold" tablet or has any fundamental effect on the course of the common cold; or by the use of expressions such as "for relief of temporary constipation due to common colds," representing that the common cold is usually or generally a cause of temporary constipation.

(h) That the product designated Egyptian Brand Urimo Tablets is a stimulant diuretic, a diuretic stimulant or a urinary antiseptic; or that it stimulates or promotes the natural flow of urine.

(i) By statements such as "Take at the first sign of a cold, Pure Aspirin that quickly relieves the above conditions," or otherwise, representing that its Keystone and Four Star Aspirin Tablets exert a therapeutic action against the common cold.

(j) That the preparation sold as Keystone BWI Iron Tonic and Four Star B.W.I. Iron Tonic & Nutritive is a competent or adequate treatment for simple anemic conditions, for the stimulating of digestion, or to bring about recovery from a run-down, sick or other subnormal condition of health.

(k) That Egyptian Brand Bildo Tablets is an iron tonic or that it may be relied upon or depended upon to increase or restore vitality or to correct a run-down or sluggish condition or lack of pep.

(l) That the preparation sold as Keystone Diuretic Rx 4344 and Four Seasons Diuretic is a urinary antiseptic, or a competent treatment or effective remedy for kidney diseases or disorders of any type, for the correction of too frequent urination, night-rising or burning urine, or for any other disease condition which saps the individual's strength or causes backache, leg ache, dizziness or loss of normal pep and energy.

(m) That its Keystone and Four Star nose and throat drops will shrink swollen membranes; and from the use of the descriptive terms "Pre-Vento" and "Chek-Kol" as part of the trade designations thereof or with reference thereto; or the use of any other word or expression of like import, connoting that such preparation will prevent or check a cold, or have some beneficial influence on the course thereof.

(n) That the product sold as Keystone Nu-Tone Tablets—Formula 169 and Four Star N.R.G. Tablets is an adequate remedy for lowered resistance due to dietary deficiency or to any other cause; that it may be relied upon to correct a weak or run-down condition; by the use of statements such as "watch your vitamins," "a vitamin remedy," "6 tablets daily alone exceed minimum requirements for the vitamins," or otherwise, representing directly or inferentially that said product provides all the different vitamins needed by man; and from the use of the initials "N.R.G." as part of the trade designation thereof or with reference thereto, or of any like term or expression which may cause the belief that the taking of said preparation will endow the individual with increased energy.

(o) That the product sold as Four Star Vegetable Compound and Fetane Vegetable Compound helps to build up vitality, strength or normal pep; aids digestion; aids in relieving female functional troubles in "trying times" or at all; or has any beneficial effect in connection with monthly periods of menstruation.

(p) That the product sold as Keystone Vim-O Tablets and Four Star Vimex Tablets is a stimulant giving added energy and pep, or is particularly adaptable to men over 40 years of age; or in any other way, by assertion or intimation, that it would have a rejuvenating or aphrodisiac effect on the user.

(q) That the product sold as Keystone Du-Rex Tablets, Four Star Du-Rec Diuretic and Laxative Tablets, and Four Star Diuretic Tablets, is a urinary antiseptic, is an adequate treatment for any type of kidney disease or disorder, or will prevent night rising caused by superficial sluggishness or otherwise.

(r) That Egyptian Brand Ointment aids in relief of "itching, burning eczema"; or the use of any similar expression connoting that it is a competent or adequate treatment for eczema.

(s) By statement or implication, that Hi-Hat Nu-Britener & Bleach Cream is an effective treatment for acne pimples or other pimples, black-heads, or many types of skin blemishes.

(t) That Hi-Hat Ointment & Brightener and La Jac Brite Skin Bleach Cream are efficacious in the treatment of many superficial blemishes, pimples or blackheads of external origin.

(u) That La Jac Over-Night Bleaching Cream is useful as a dressing for "certain superficial blemishes" or for any blemishes unless distinctly limited to such type thereof as may in truth be benefited by its application.

(v) That Roreen Ointment & Brightener is an effective dressing for "forms of itching such as psoriasis and acne"; or by any other manner of statement, that said preparation is an effective treatment for psoriasis or acne.

(w) That the High-Hat Lemon Odor Bleaching and Cold Cream is a "bleaching" cream, either by inclusion of such word in its trade designation or by other reference to the product.

Keystone Laboratories, Inc., also agreed to cease and desist from:

(x) Disseminating any advertisement or trade literature pertaining to its medicinal preparations which contain:

1. Acetanilid, which fails clearly to reveal that the prolonged or excessive administration of the preparation of which it is a part may lead to dependence on the drug, blood disturbances or collapse.

2. Powdered extract of Buchu, which fails clearly to reveal that the product should not be taken by individuals suffering from kidney irritation, and that prolonged administration of the preparation may irritate normal kidneys.

3. An irritant laxative, which fails clearly to reveal the potential danger thereof in the presence of nausea, vomiting, abdominal pain or other symptoms of appendicitis.

4. Zinc phosphide, which fails clearly to reveal that said ingredient may produce phosphorous poisoning.

Provided, however, that if the directions for the use of such preparation, whether they appear on the label, in the labeling, or in both label and labeling, contain an adequate warning of its potential danger to health as aforesaid, said advertisement need contain only the cautionary statement: CAUTION, Use Only as Directed.

Keystone Laboratories, Inc., further agreed to cease and desist from:

(y) The use, in warnings concerning the hazards of irritant laxative drugs in cases of nausea, vomiting, abdominal pain or other symptoms of appendicitis, of statements or expressions such as "should not take laxatives except under direction of a physician" or "do not use except on advice of your physician." (Oct. 13, 1944.)

3901. Furniture—"National Unclaimed Freight," Savings and Prices.—Morris Kratchman, Harry Kratchman and Alexander Kratchman, co-partners, trading as National Unclaimed Freight, with place of business at Kansas City, Mo., engaged in the sale and distribution of furniture and other merchandise, in interstate commerce, in competition with firms, individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Morris Kratchman, Harry Kratchman and Alexander Kratchman, whether trading in their own names or by any operating trade name, in connection with the offering for sale, sale and distribution of their merchandise in commerce, as defined by the Federal Trade Commission Act, agreed that they and each of them will forthwith cease and desist from:

(a) The use of the trade name "National Unclaimed Freight" as a designation for or as descriptive of their business, or in connection with the sale of any article of merchandise not actually shipped to a consignee who has failed or refused to accept delivery; and from the use of any other designation or representation which imports, implies or may cause the belief that merchandise obtained through the usual channels of trade has been procured in a manner that connotes substantial savings for their customers.

(b) Representing as the regular or customary price or value of any article of merchandise, a price or value which in fact is fictitious and in excess of the price at which such article is regularly and customarily offered for sale and sold in the normal and usual course of business. (Oct. 13, 1944.)

3902. Fabrics—Composition.—Crest Fabrics Corporation is a New York corporation with its principal place of business at New York, N. Y., engaged in the sale and distribution of fabrics in interstate commerce, in competition 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.

Crest Fabrics Corporation, in connection with the advertising for sale, sale and distribution of its fabrics in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

(a) Using the word "Alpaca," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe or refer to any product which is not composed entirely of the hair of the alpaca: *Provided, however,* that in the case of a product composed in part of the hair of the alpaca and in part of other fibers or materials, such word may be used as descriptive of the alpaca hair content, if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

(b) Advertising, branding, labeling, invoicing, selling or offering for sale products composed in whole or in part of rayon without clearly disclosing, by the use of the word "rayon," the fact that such products are composed of or contain rayon; and, when a product is composed in part of rayon and in part of fibers or material other than rayon, from failing to disclose, in immediate connection or conjunction with the word "rayon," and in equally conspicuous type, each constituent fiber of said product in the order of its predominance by weight beginning with the largest single constituent. (Oct. 16, 1944.)

3903. Chemical Asphalt Shingle Preparation—Qualities, Properties or Results, Comparative Merits and Guarantee.—Chemical Asphalt Roof Coating Corporation, a New York Corporation with its principal place of business at White Plains, N. Y., engaged in the business of selling wooden roof shingles and a preparation called Chemical Asphalt for use as a treatment for roofs made from such shingles and also for old wood shingle roofs, 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.

Chemical Asphalt Roof Coating Corporation, in connection with the offering for sale or sale of its so-called Chemical Asphalt preparation in commerce, as commerce is defined by the Federal Trade Commission Act,

agreed that it will cease and desist forthwith from representing, either directly or by inference, in its advertising or printed matter or in any other way, that the use or application of said preparation to wooden shingles would make such shingles an effective protection against or safe from or immune to fire hazard or would cause them to be practically as resistant to fire as a slate, tile or mineral roof, or that said treated shingles would retain such degree of fire-resistance for ten years or for any other period of time. Said corporation also agrees to cease and desist from representing, through the use of so-called guarantees or in any other way, that the use of said preparation as a treatment for wooden shingles will impart to such shingles a degree of fire-resistance or other properties in excess of what it is capable of accomplishing. (Oct. 16, 1944.)

3904. Fountain Pens—Introductory, Advertising, Special and Limited Offers, Guarantee, Qualities, Prices, Free and Money Back.—United Advertising Companies, Inc., an Illinois corporation with its principal place of business, at Chicago, Ill., engaged in the advertising business and also as a jobber or distributor of certain kinds of merchandise, including fountain pens, and in connection with its pen business, said corporation has advertised and designated itself as The Pen Man, and Martin P. King, also of Chicago, Ill., a sole trader engaged in the sale and distribution of fountain pens, operating by the trade designation Penman, have sold fountain pens in interstate commerce, in competition 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.

United Advertising Companies, Inc., and Martin P. King, and each of them, in connection with the offering for sale, sale and distribution of fountain pens or similar merchandise in commerce as defined by the Federal Trade Commission Act, agreed that they will forthwith cease and desist from:

(a) Representing that an offer at the customary price and on the usual terms for which an article has been sold by them in their regular course of business is either an introductory, an advertising, an introductory advertising, a very special or a special offer; that it is made possible by special arrangement with the manufacturer, is made for quick introduction, is limited, definitely limited, for a very limited time only, or for a limited number of days; that it constitutes absolutely the last chance, or the last chance, to obtain such article for the price and on the terms indicated, will not be repeated, is finally and absolutely being closed out, or is made for today only.

(b) Representing that the pens offered for sale and sold by them are made, introduced or guaranteed by a nationally known manufacturer, or by one of the nation's largest and most reputable pen manufacturers; or otherwise, by expressions of like import, that such pens are produced by, have the backing of, or have any connection whatsoever with any manufacturer of outstanding prominence or with a reputation for high quality products.

(c) The use of the word or name "Waltham" as part of or in connection with any trade designation of their business or their pens, in referring to the manufacturer of such merchandise, in denominating the sponsor of their advertising programs, or in any other manner whatsoever tending to confuse or mislead purchasers as to the true origin of said goods.

(d) Representing that such pens are guaranteed, are Waltham guaranteed, are guaranteed for life, for a life of service, to last a lifetime, or that they carry the same or exactly the same guarantee or responsible guarantee offered or given with high priced pens; designating as a guarantee, guaranty or warranty, any agreement which involves a service charge or calls for the payment of additional money; or using the words "guarantee," "guaranteed" or other terms of similar meaning in their trade publicity unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith of exactly what is offered by way of security.

(e) Representing, directly or inferentially, that said fountain pens are indestructible or that their barrels are everlasting or unbreakable.

(f) Representing that one might expect to pay \$2, \$3, \$4, \$5 or \$7 for a pen such as the one offered for sale; that it was made to sell for \$5, has all the modern features found only in high priced pens, the very same features as pens sold for \$3, \$4 and \$5, or that feature for feature, it compares with \$3, \$4, \$5 and \$7 pens; that mass production and direct sales methods enable the Penman to price a really high class fountain pen for 59 cents; that the purchase of this pen at such price is equivalent to slipping \$5 in your pocket; or in any other way, indicating prices or values in excess of those for which pens of similar design and comparable quality are customarily sold in the usual course of trade.

(g) The use of the words "Free," "Free of all costs," or terms or expressions of like import in connection with the imprinting of one's name when such lettering is not done as a gratuity but the recipient thereof is required as a consideration to purchase a pen or other article or to render some service in order to obtain the same.

(h) Offering a so-called "Double Your Money Back" agreement or similar inducement to purchasers unless all the terms thereof are clearly and unambiguously set forth and until all the security thus expressed or implied is promptly and unequivocally provided. (Oct. 10, 1944.)

3905. **Beer—Qualities, Properties or Results, Professional Approval or Indorsement and Comparative Merits.**—Minnesota Brewers Association, designation of a voluntary group of certain brewing companies, with its place of business at St. Paul, Minn., of which Herbert J. Charles is or has been the president, Frank Kiewel the vice president, John J. Farrell, Jr., the executive secretary, and Alvin C. Gluek the treasurer, have been engaged in developing a demand for and in promoting the sale and distribution of the beer products of its members in interstate commerce, also David, Incorporated, a Minnesota corporation with its principal place of business at St. Paul, Minn., engaged as an advertising agency, in preparing, distributing or causing to be distributed, advertisements and sales promotional material for vendors of various commodities, in competition with similar products and products for similar purposes, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Minnesota Brewers Association, Herbert J. Charles, Frank Kiewel, John J. Farrell, Jr., Alvin C. Gluek and David, Incorporated, in connection with the sale and distribution of beer 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 that they and each of them will forthwith cease and desist from representing that beer

(a) Is a valuable human fuel in today's high-speed war effort or for any other type of work; or that it is so recognized by medical authorities.

(b) Has the nutritional ingredients of bread; or otherwise, that it is comparable to or is the equivalent of bread in nutritional value.

(c) Furnishes that residue of energy needed to meet the demands for greater speed or longer hours of work; or otherwise, that it will enable one to work efficiently at higher speed or will endow him with greater endurance. (Oct. 23, 1944.)

3906. Beer—Qualities, Properties or Results, Professional Approval or Indorsement and Comparative Merits.—Duluth Brewing & Malting Co., a Minnesota corporation with its principal place of business at Duluth, Minn., engaged in the manufacture of beer and in the sale and distribution thereof in interstate commerce, in competition 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.

Duluth Brewing & Malting Co., in connection with its sale and distribution of beer 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 that it will forthwith cease and desist from representing that beer

(a) Is a valuable human fuel in today's high-speed war effort or for any other type of work; or that it is so recognized by medical authorities.

(b) Has the nutritional ingredients of bread; or otherwise, that it is comparable to or is the equivalent of bread in nutritional value.

(c) Furnishes that residue of energy needed to meet the demands for greater speed or longer hours of work; or otherwise, that it will enable one to work efficiently at higher speed or will endow him with greater endurance. (Oct. 23, 1944.)

3907. Beer—Qualities, Properties or Results, Professional Approval or Indorsement and Comparative Merits.—Fitger Brewing Co., a Minnesota corporation with its principal place of business at Duluth, Minn., engaged in the manufacture of beer and in the sale and distribution thereof in interstate commerce, in competition 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.

Fitger Brewing Co., in connection with its sale and distribution of beer 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 that it will forthwith cease and desist from representing that beer

(a) Is a valuable human fuel in today's high-speed war effort or for any other type of work; or that it is so recognized by medical authorities.

(b) Has the nutritional ingredients of bread; or otherwise, that it is comparable to or is the equivalent of bread in nutritional value.

(c) Furnishes that residue of energy needed to meet the demands for greater speed or longer hours of work; or otherwise, that it will enable one to work efficiently at higher speed or will endow him with greater endurance. (Oct. 23, 1944.)

3908. Beer—Qualities, Properties or Results, Professional Approval or Indorsement and Comparative Merits.—Peoples Brewing Co., a Minnesota corporation with its principal place of business at Duluth, Minn., engaged in the manufacture of beer and in the sale and distribution in interstate commerce, in competition 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.

Peoples Brewing Co., in connection with its sale and distribution of beer 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 that it will forthwith cease and desist from representing that beer

(a) Is a valuable human fuel in today's high-speed war effort or for any other type of work; or that it is so recognized by medical authorities.

(b) Has the nutritional ingredients of bread; or otherwise, that it is comparable to or is the equivalent of bread in nutritional value.

(c) Furnishes that residue of energy needed to meet the demands for greater speed or longer hours of work; or otherwise, that it will enable one to work efficiently at higher speed or will endow him with greater endurance. (Oct. 23, 1944.)

3909. Beer—Qualities, Properties or Results, Professional Approval or Indorsement and Comparative Merits.—Ernest Fleckenstein Brewing Co., a Minnesota corporation with its principal place of business at Faribault, Minn., engaged in the manufacture of beer and in the sale and distribution in interstate commerce, in competition 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.

Ernest Fleckenstein Brewing Co., in connection with its sale and distribution of beer 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 that it will forthwith cease and desist from representing that beer

(a) Is a valuable human fuel in today's high-speed war effort or for any other type of work; or that it is so recognized by medical authorities.

(b) Has the nutritional ingredients of bread; or otherwise, that it is comparable to or is the equivalent of bread in nutritional value.

(c) Furnishes that residue of energy needed to meet the demands for greater speed or longer hours of work; or otherwise, that it will enable one to work efficiently at higher speed or will endow him with greater endurance. (Oct. 23, 1944.)

3910. Beer—Qualities, Properties or Results, Professional Approval or Indorsement and Comparative Merits.—Schutz & Hilgers Jordan Brewery, Inc., a Minnesota corporation with its principal place of business in Jordan, Minn., engaged in the manufacture of beer and in the sale and distribution in interstate commerce, in competition 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.

Schutz & Hilgers Jordan Brewery, Inc., in connection with its sale and distribution of beer 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 that it will forthwith cease and desist from representing that beer

(a) Is a valuable human fuel in today's high-speed war effort or for any other type of work; or that it is so recognized by medical authorities.

(b) Has the nutritional ingredients of bread; or otherwise, that it is comparable to or is the equivalent of bread in nutritional value.

(c) Furnishes that residue of energy needed to meet the demands for greater speed or longer hours of work; or otherwise, that it will enable one to work efficiently at higher speed or will endow him with greater endurance. (Oct. 23, 1944.)

3911. Beer—Qualities, Properties or Results, Professional Approval or Indorsement and Comparative Merits.—Kiewel Brewing Co., a Minnesota corporation with its principal place of business at Little Falls, Minn., engaged in the manufacture of beer and in the sale and distribution in interstate commerce, in competition 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.

Kiewel Brewing Co., in connection with its sale and distribution of beer 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 that it will forthwith cease and desist from representing that beer

(a) Is a valuable human fuel in today's high-speed war effort or for any other type of work; or that it is so recognized by medical authorities.

(b) Has the nutritional ingredients of bread; or otherwise, that it is comparable to or is the equivalent of bread in nutritional value.

(c) Furnishes that residue of energy needed to meet the demands for greater speed or longer hours of work; or otherwise, that it will enable one to work efficiently at higher speed or will endow him with greater endurance. (Oct. 23, 1944.)

3912. Beer—Qualities, Properties or Results, Professional Approval or Indorsement and Comparative Merits.—Mankato Brewing Co., a Minnesota corporation with its principal place of business at Mankato, Minn., engaged in the manufacture of beer and in the sale and distribution in interstate commerce, in competition 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.

Mankato Brewing Co., in connection with its sale and distribution of beer 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 that it will forthwith cease and desist from representing that beer

(a) Is a valuable human fuel in today's high-speed war effort or for any other type of work; or that it is so recognized by medical authorities.

(b) Has the nutritional ingredients of bread; or otherwise, that it is comparable to or is the equivalent of bread in nutritional value.

(c) Furnishes that residue of energy needed to meet the demands for greater speed or longer hours of work; or otherwise, that it will enable one to work efficiently at higher speed or will endow him with greater endurance. (Oct. 23, 1944.)

3913. Beer—Qualities, Properties or Results, Professional Approval or Indorsement and Comparative Merits.—Gluek Brewing Co., a Minnesota corporation with its principal place of business at Minneapolis, Minn., engaged in the manufacture of beer and in the sale and distribution in interstate commerce, in competition 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.

Gluek Brewing Co., in connection with its sale and distribution of beer 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 that it will forthwith cease and desist from representing that beer

(a) Is a valuable human fuel in today's high-speed war effort or for any other type or work; or that it is so recognized by medical authorities.

(b) Has the nutritional ingredients of bread; or otherwise, that it is comparable to or is the equivalent of bread in nutritional value.

(c) Furnishes that residue of energy needed to meet the demands for greater speed or longer hours of work; or otherwise, that it will enable one to work efficiently at higher speed or will endow him with greater endurance. (Oct. 23, 1944.)

3914. Beer—Qualities, Properties or Results, Professional Approval or Indorsement and Comparative Merits.—Minneapolis Brewing Co., a Minnesota corporation with its principal place of business at Minneapolis, Minn., engaged in the manufacture of beer and in the sale and distribution in interstate commerce, in competition 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.

Minneapolis Brewing Co., in connection with its sale and distribution of beer 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 that it will forthwith cease and desist from representing that beer

(a) Is a valuable human fuel in today's high-speed war effort or for any other type of work; or that it is so recognized by medical authorities.

(b) Has the nutritional ingredients of bread; or otherwise, that it is comparable to or is the equivalent of bread in nutritional value.

(c) Furnishes that residue of energy needed to meet the demands for greater speed or longer hours of work; or otherwise, that it will enable one to work efficiently at higher speed or will endow him with greater endurance. (Oct. 23, 1944.)

3915. Beer—Qualities, Properties or Results, Professional Approval or Indorsement and Comparative Merits.—John Hauenstein Co., a Minnesota corporation with its principal place of business at New Ulm, Minn., engaged in the manufacture of beer and in the sale and distribution in interstate commerce, in competition 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.

John Hauenstein Co., in connection with its sale and distribution of beer 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 that it will forthwith cease and desist from representing that beer

(a) Is a valuable human fuel in today's high-speed war effort or for any other type of work; or that it is so recognized by medical authorities.

(b) Has the nutritional ingredients of bread; or otherwise, that it is comparable to or is the equivalent of bread in nutritional value.

(c) Furnishes that residue of energy needed to meet the demands for greater speed or longer hours of work; or otherwise, that it will enable one to work efficiently at higher speed or will endow him with greater endurance. (Oct. 23, 1944.)

3916. Beer—Qualities, Properties or Results, Professional Approval or Indorsement and Comparative Merits.—August Schell Brewing Co., a Minnesota corporation with its principal place of business at New Ulm, Minn., engaged in the manufacture of beer and in the sale and distribution in interstate commerce, in competition 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.

August Schell Brewing Co., in connection with its sale and distribution of beer 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 that it will forthwith cease and desist from representing that beer

(a) Is a valuable human fuel in today's high-speed war effort or for any other type of work; or that it is so recognized by medical authorities.

(b) Has the nutritional ingredients of bread; or otherwise, that it is comparable to or is the equivalent of bread in nutritional value.

(c) Furnishes that residue of energy needed to meet the demands for greater speed or longer hours of work; or otherwise, that it will enable one to work efficiently at higher speed or will endow him with greater endurance. (Oct. 23, 1944.)

3917. Beer—Qualities, Properties or Results, Professional Approval or Indorsement and Comparative Merits.—Theo. Hamm Brewing Co., a Minnesota corporation with its principal place of business at St. Paul, Minn., engaged in the manufacture of beer and in the sale and distribution in interstate commerce, in competition 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.

Theo. Hamm Brewing Co., in connection with its sale and distribution of beer 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 that it will forthwith cease and desist from representing that beer

(a) Is a valuable human fuel in today's high-speed war effort or for any other type of work; or that it is so recognized by medical authorities.

(b) Has the nutritional ingredients of bread; or otherwise, that it is comparable to or is the equivalent of bread in nutritional value.

(c) Furnishes that residue of energy needed to meet the demands for greater speed or longer hours of work; or otherwise, that it will enable one to work efficiently at higher speed or will endow him with greater endurance. (Oct. 23, 1944.)

3918. Beer—Qualities, Properties or Results, Professional Approval or Indorsement and Comparative Merits.—Jacob Schmidt Brewing Co., a Minnesota corporation with its principal place of business at St. Paul, Minn., engaged in the manufacture of beer and in the sale and distribution in interstate commerce, in competition with corporations, firms and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Jacob Schmidt Brewing Co., in connection with its sale and distribution of beer 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 that it will forthwith cease and desist from representing that beer

(a) Is a valuable human fuel in today's high-speed war effort or for any other type of work; or that it is so recognized by medical authorities.

(b) Has the nutritional ingredients of bread; or otherwise, that it is comparable to or is the equivalent of bread in nutritional value.

(c) Furnishes that residue of energy needed to meet the demands for greater speed or longer hours of work; or otherwise, that it will enable one to work efficiently at higher speed or will endow him with greater endurance. (Oct. 23, 1944.)

3919. Welding Product—Qualities, Properties or Results and Corporation.—M. Etherton, a sole trader operating as Sodrín Manufacturing Co. with its place of business at Kansas City, Mo., engaged in the sale and distribution of automobile repair items in interstate commerce, in competition with individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

M. Etherton, in connection with his offering for sale, sale and distribution of "Oxalum," or other products, in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from:

(a) Offering "Oxalum" or any product of like composition, as a welding agent or compound; representing that it produces a weld in cracked cylinders, water jackets, valve ports or other metals or metal parts; or that cold welding repairs, mechanical cold welding, a heat-harden weld or any type of welding may be effected by its use; and from the use of the terms "weld" or "welding" with reference to or as descriptive of such preparation or its properties.

(b) Representing directly or inferentially, by means of expressions such as "holds indefinitely" or otherwise, that any sealing or other repairs effected through or by the use of said product is of a degree of endurance comparable to that of a weld.

(c) Designating or referring to himself as "president" of Sodrín Manufacturing Co. or in any other way representing that his business is incorporated, unless and until the same may be a duly organized, registered and operating corporation. (Oct. 25, 1944.)

3920. Cheese—Coat of Arms, Emblems and Domestic as Imported.—J. S. Hoffman Co., Inc., a New York corporation with its principal place of business at New York, N. Y., engaged in the wholesale distribution of cheese and meat products in interstate commerce, in competition 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.

J. S. Hoffman Co., Inc., in connection with the sale and distribution of its commodities in commerce as defined by the Federal Trade Commission Act, or the advertising, branding or labeling thereof by the means or in the manner above set forth, agreed that it will forthwith cease and desist from:

(a) Using the coat of arms or other national emblem of Switzerland or other country, or any simulation thereof, as a trade-mark, commercial label, advertisement or insignia for any trade or commercial purpose.

(b) Designating as "White Cross Cured Swiss," any domestic or other cheese not actually made and cured in Switzerland; or using the words "White Cross," or other significant term or symbol indicative of Switzerland or its national emblem, in any way so as to import, imply or tend to cause the belief that a Swiss cheese made in America by American curing

methods is an imported commodity produced and cured in Switzerland, and/or has the properties and qualities of Swiss-cured Swiss cheese. (Oct. 31, 1944.)

3921. **Wool Batting**—"Mills."—Vermont Woolen Mills, Inc., a New York corporation having its principal place of business at New York, N. Y., engaged in the sale and distribution of wool batting 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.

Vermont Woolen Mills, Inc., agreed that it will cease and desist forthwith from the use of the word "Mills" as part of the corporate or trade name under which it conducts the business of offering for sale and selling its products in commerce, as commerce is defined by the Federal Trade Commission Act. It also agreed to cease and desist from representing, contrary to fact, that it has a mill at Springfield, Vermont. The said corporation further agreed to cease and desist from the use of the word "Mills" or "Mill" or of any other word or words of similar connotation, in any way, so as to import or imply or the effect of which tends or may tend to cause or convey the impression or belief that it actually owns and operates or directly and absolutely controls the mill or mills in which the products that it offers for sale and sells are made. (Nov. 2, 1944.)

3922. **Motor Oils**—Composition, Source or Origin, "Refinery," "Certified" and "Guaranteed."—Penfield Petroleum Products, Inc., a New York corporation with its place of business at New York, N. Y., engaged in the sale and distribution of motor oils in interstate commerce, in competition 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.

Penfield Petroleum Products, Inc., in connection with the sale and distribution of motor oils in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. Representing by the use of the phrases "100% Penna," "100% Pennsylvania Motor Oil" or other statement or representation of like meaning, that its motor oil consists wholly of Pennsylvania motor oil, unless and until any and all oil sold under such representation shall consist wholly of Pennsylvania oil.

2. The use of the word "Penfield" as part of the corporate and trade name under which it offers for sale and sells its oil, unless and until all oil sold under such corporate and trade name consists wholly of Pennsylvania oil.

3. The use of the seal of the Pennsylvania Crude Oil Association on containers or packaging or in any sales promotional material, unless and until it shall actually be a member of such Association and authorized by such Association to so use such seal.

4. Representing, by the use of the words "Refinery-Sealed," "Refinery" or other words of like meaning that it refines the oil or oils offered for sale and sold by it, unless and until it actually owns and operates or directly and absolutely controls a plant wherein are refined any and all oils by it sold or offered for sale under such representation.

5. Representing, by the use of the word "Certified" or other word or words of like meaning on its packaging, in its advertising material or otherwise, that a product has been indorsed or attested as to lubricating

properties, wearability or other qualities by some governmental, scientific or other recognized agency qualified and empowered to certify as to such quality, unless and until such indorsement or attestation actually has been obtained.

6. Representing, by the use of the word "Guaranteed" or other word or words of like meaning on its packaging, in its advertising material or otherwise, that a product is guaranteed unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith of exactly what is offered by way of security. (Nov. 2, 1944.)

3923. **Wigs, Hair Goods and Cosmetic Preparations—Size of Business, Composition, Quality, Qualities, Properties or Results, Testimonials and Safety.**—Elizabeth Esther Parham, a sole trader operating as National Beauty Supply Co. with place of business at New York, N. Y., engaged in the sale and distribution of wigs, hair goods and cosmetic preparations in interstate commerce, in competition with individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Elizabeth Esther Parham, whether trading under her own name, as National Beauty Supply Co., or by any other designation, in connection with the sale and distribution of her 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 that she will forthwith cease and desist from representing directly or inferentially:

(a) That the business conducted by her is the world's largest or the largest all-colored or all-negro hair goods company.

(b) That the hair pieces or creations offered for sale by her are composed of the very best quality of all human hair that is available, are of the best quality hair, or are of first quality hair; or in any other way, representing that such hair is of better grade or quality than may be verified by facts.

(c) That the product heretofore offered for sale as Esther's Miracle Vio-Sun-Ray Growth Promoter promotes or aids in promoting growth of hair, by stimulation of the scalp or otherwise; that it helps greatly or in any degree to stop or correct falling or breaking hair; that it is nourishing, contains food values for the scalp, or includes vitamin A; that it has caused or may be expected to cause hair to grow six inches within a few months or at all; and from the use of the terms "Vio-Sun-Ray" and "Growth Promoter" as part of the trade designation for or as descriptive of such product, or of any like expressions tending to convey the impression that growth of hair will be promoted or that all the benefits of exposure to the sun's rays will be conferred by the use thereof.

(d) That the product designated Esther's Miracle Sulphur Cream helps to promote the growth of hair or stops or otherwise corrects breaking or falling hair; that it is indicated as a treatment for "certain scalp disorders," or for any scalp disorders unless the types thereof for which it may be beneficial are clearly and distinctly specified; or in any way, that it is an aid for adequate treatment of dandruff or itching scalp or the underlying conditions causing same.

(e) That the product heretofore sold as Esther's Miracle Tar Growth Promoter promotes or aids in promoting growth of hair; that it helps greatly or to any extent in the relief of dandruff, or by statement or implication, that it has any therapeutic value for the underlying conditions

causing dandruff; and from the use of the term "Growth Promoter" as part of the trade designation for or as descriptive of such product.

(f) That the product designated Esther's Miracle Tar Oil for Hot Oil Treatments checks or prevents falling or breaking hair; is a great aid to scalp irritations, or affords any aid or benefit therefor beyond some palliative relief in minor cases; directly or inferentially, that it is an adequate treatment for the underlying conditions causing dandruff or scalp irritation; or otherwise, that it can afford more than a temporary relief from the discomfiture of itching, and in case of dandruff, that it could do any more than help to remove the loose scales thereof.

Elizabeth Esther Parham also agreed to cease and desist from:

(g) Publishing any testimonial statements not consistent with the terms and conditions of this agreement. ^s

(h) Disseminating any advertisement or trade literature pertaining to a hair dye preparation containing para-phenylenediamine or a closely related coal-tar derivative which fails clearly to reveal that said product contains ingredients which may cause skin irritations on certain individuals, that a preliminary test according to accompanying directions should first be made, that such product must not be used for dyeing the eyelashes or eyebrows, and that to do so may cause blindness. *Provided, however,* that if directions for use of said preparation, 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. (Nov. 1, 1944.)

3924. **Storage Boxes, Wardrobe Chests and Cabinets—Composition.**—Kerk Guild, Inc., a New York corporation with its principal place of business at Whitesboro, N. Y., engaged in the manufacture of various types of storage boxes and wardrobe chests and cabinets and in the sale and distribution thereof in interstate commerce, in competition 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.

Kerk Guild, Inc., in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist, in its advertising, brands and trade literature, from:

(a) Representing, by statement or by inference, that any product not in fact composed wholly of cedar material is made of genuine cedar board, cedar board or cedar.

(b) The use of terms such as "Cedar," "Genuine Cedar Board," "Cedar Board," "Genuine Cedarboard," "Cedarboard," "Cedar-Kraft," "Genuine Red Cedar Closet Boxes" or expressions of like import, as descriptive of or with reference to its products, the sides, tops and bottoms of which are of any material not full-cedar. If the material is composed in substantial part of cedar and in part of other components, and the word "cedar" is used to describe the cedar content only, thereof, then in such case, whenever the word "cedar" appears it shall be immediately accompanied by words in type of equal size and prominence clearly indicating that said material does not consist wholly of cedar. (Nov. 6, 1944.)

3925. **Pulpboard—Composition.**—United Paperboard Co., a New York corporation with its principal place of business at New York, N. Y., engaged in the manufacture of pulpboard which it sells and distributes in

sheets in interstate commerce, in competition 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.

United Paperboard Co., in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed that in its brands, labels, trade literature, invoices or otherwise, it will forthwith cease and desist from designating or describing as "Cedarboard," "Cedar Board" or by term of similar import, any product which is not in fact composed wholly of cedar material; or in any like manner, placing in the hands of others the means to make representation that such a product is cedar. If the product is composed in substantial part of cedar and in part of other materials, and the word "cedar" is used to describe the cedar content only, thereof, then in such case, whenever the word "cedar" appears, it shall be immediately accompanied by words in type of equal size and prominence clearly indicating that such product does not consist wholly of cedar. (Nov. 6, 1944.)

3926. Women's Coats—Composition.—Joseph Leon and Alfred Leon, copartners trading as Hollywood Fashions, as Leon Brothers or as Leon Bros., with their place of business at Los Angeles, Calif., engaged in the sale and distribution of merchandise including women's coats in interstate commerce, in competition with individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Joseph Leon and Alfred Leon, in connection with the sale and distribution of their merchandise in commerce as defined by the Federal Trade Commission Act, agreed that they and each of them will forthwith cease and desist from the use of the word "Wallaby" or any fictitious term or word simulating such word as a designation for or as descriptive of garments made of other than wallaby hair or fur; and from the use of any depiction, term, word, statement, or representation in any manner that conveys or tends to convey the belief or impression that such garments are made of wallaby hair or fur. (Nov. 7, 1944.)

3927. Furs and Fur Garments—Composition, "Seal," Guarantee, Inspected or Tested, Unique, Manufacturer, Etc.—Seymour S. Grean Furs, Inc., a New York corporation with its place of business at New York, N. Y.; Grean's, Inc., a wholly owned subsidiary of the aforesaid Seymour S. Grean Furs, Inc., a Virginia corporation with its retail sales outlet at Norfolk, Va., and with its business office at New York, N. Y., the same address as that of Seymour S. Grean Furs, Inc., and Seymour S. Grean, an individual with his principal place of business also at New York, N. Y., president of the aforesaid corporations, who controls and manages the business thereof, including any and all advertising or sales promotional activities pertaining thereto; said corporations and individual now are or have been engaged in the sale and distribution of merchandise including fur garments in interstate commerce, in competition 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.

Seymour S. Grean Furs, Inc., Grean's, Inc., and Seymour S. Grean, in connection with the sale and distribution of their merchandise in commerce as defined by the Federal Trade Commission Act, agreed that they, and each of them, will forthwith cease and desist from:

1. Advertising, branding, labeling, invoicing, selling or offering for sale products composed in whole or in part of rayon without clearly disclosing by the use of the word "rayon," the fact that such products are composed of or contain rayon; and, when a product is composed in part of rayon and in part of fibers or materials other than rayon, from failing to disclose each constituent fiber, in the order of its predominance by weight beginning with the largest single constituent, in immediate connection or conjunction with and in type equally conspicuous as the word "rayon."

2. Representing, directly or inferentially, that the Good Housekeeping "seal" or guarantee on the aforesaid furs or fur products is any assurance that purchasers of such products will receive new merchandise or a refund of purchase price if "not 100% satisfied" or if they are dissatisfied with their purchases.

3. The use of any statement or representation that tends or may tend to convey the belief or impression that furs or fur garments offered for sale and sold by them have been adequately inspected or tested by the Good Housekeeping Bureau of Standards as to quality, workmanship, styling and detailing.

4. Representing, directly or inferentially, that each fur or fur garment offered for sale or sold by them has been inspected by a representative of Good Housekeeping.

5. Representing, directly or inferentially, that their furs or fur garments are guaranteed by Good Housekeeping as to quality, workmanship, styling or detailing, unless and until such furs or garments actually are guaranteed as represented.

6. Representing, directly or by implication, that they are the only furriers that have been permitted to use the Good Housekeeping "seal" or guarantee.

7. Representing that their use of the Good Housekeeping seal "will make fur history" or is of such moment as to be recorded in a history of the fur business.

8. The use of any statement or representation that tends or may tend to convey the belief or impression that furs bearing the Good Housekeeping seal are superior to furs of like quality and value which do not bear such seal.

9. Representing, directly or by implication, that they manufacture the products offered for sale and sold by them, unless and until they actually own and operate or directly and absolutely control a factory wherein is made or manufactured any and all merchandise offered for sale and sold by them under such representation. (Nov. 7, 1944.)

3928. **Bread—Prize or Trophy Award.**—Stroehmann Brothers Co., a Pennsylvania corporation with its principal place of business at Williamsport, Pa., with bakeries at Williamsport, Altoona, Norristown and Harrisburg, Pa., and at Olean, N. Y., engaged in the sale and distribution of bread in interstate commerce, in competition 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.

Stroehmann Brothers Co., in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, or the advertising by the means and in the manner above set forth, of its bread, agreed that it will forthwith cease and desist from:

1. Representing, by the use of the words "Prize Winner Bread," by depiction of a trophy, or by any other statement, depiction or representation of like meaning, on or in its bread labels, newspaper advertisements or other sales promotional material, that any of its bakeries, other than its Williamsport bakery, has been awarded a prize or trophy for the quality or other feature of the bread produced by said bakeries; unless and until a prize and/or trophy shall have been awarded as represented. In case such representation or representations are made with reference to its Williamsport bakery, or such other bakery or bakeries as hereafter may be awarded a prize or trophy, then in that case the statement, depiction or other representation pertaining to such prize or trophy, wherever appearing, shall be immediately accompanied in equal conspicuousness by a statement indicating definitely the specific bakery or bakeries to which such representation or representations pertain.

2. Representing, directly or inferentially, that any prize or trophy awarded to any of its bakeries was awarded in a nation-wide contest or a national contest, unless and until such prize or trophy has been awarded in a contest generally participated in by the baking industry and of such scope as properly to be termed a nation-wide or national contest. (Nov. 8, 1944.)

3929. **Medicinal Preparation—Qualities, Properties or Results and Scientific or Relevant Facts.**—Normax Products, Inc., an Ohio corporation with its place of business at Cleveland, Ohio, engaged in the sale and distribution of a medicinal preparation designated "Normadex" in interstate commerce, in competition 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.

Normax Products, Inc., in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, or the advertising by the means and in the manner above set forth, of the preparation designated "Normadex," or of any other preparation of substantially the same composition or possessing substantially the same properties whether sold under such name or any other name or names, agreed that it will forthwith cease and desist from representing, directly or inferentially;

1. That said preparation is indicated as a remedy or effective treatment for uremia, dropsy, Bright's disease, diabetes, diseases of the liver or kidneys, gall stones or diseases of the gall bladder, jaundice, high blood pressure, obesity, rheumatism, arthritis, nephritis, gastritis or colitis.

2. That said preparation constitutes a cure or remedy or an effective treatment for chronic constipation, or that the efficacy thereof in connection with constipation exceeds that of affording temporary relief by causing a partial evacuation of the intestinal tract.

3. That uremia, dropsy, Bright's disease, diabetes, diseases of the liver or kidneys, gall stones or diseases of the gall bladder, jaundice, high blood pressure, obesity, rheumatism, arthritis, nephritis or gastritis are caused by constipation.

4. That diseases such as rheumatism, arthritis, nephritis, gall stones, high blood pressure, jaundice, colitis or gastritis result from so-called "auto-intoxication," or that constipation results in a poisonous or toxic condition of the blood stream or in a condition known as "auto-intoxication" or self-poisoning.

5. That adequate bowel function requires three evacuations or bowel discharges daily; or that any number of evacuations, in excess of the number actually required for proper elimination, is indicated or essential. (Nov. 6, 1944.)

3930. Battery Compound—Qualities, Properties or Results.—H. E. Ewart, a sole trader operating as Champion Co., with place of business at Los Angeles, Calif., engaged in the sale and distribution of a powdered compound designated "Champion Battery Service," intended for use in electric storage batteries, in interstate commerce in competition with individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

H. E. Ewart, in connection with the offering for sale, sale and distribution of his commodities in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from representing, directly or inferentially:

(a) That the use of the product designated "Champion Battery Service" or any compound of like constituents will make an electric storage battery last longer; enables one to start his car as often as he wishes without fear of battery trouble; permits the playing of an automobile or other radio as long as one cares to without battery failure; or otherwise, by statement or implication, that it will cause or may be depended upon to bring about longer battery life or unflinching or infallible battery performance or service.

(b) That said product when put in a battery gives greater power, hotter spark, or whiter or brighter lights; stops or prevents deterioration from sulphation or corrosion; eliminates heat, vapor or fumes in the fast charging or discharging of a battery; or in any other way, representing that the presence of such compound would materially alter the fundamental reactions occurring in storage batteries. (Nov. 14, 1944.)

3931. Ju Jitsu Books—Qualities, Properties or Results and Testimonials.—Vernon Peter DeFerrara, an individual trading as Nelson-Hall Co., with place of business at Chicago, Ill., engaged in the sale and distribution of books and publications, including sets of books which he designates or describes as "SUPER Ju Jitsu," in interstate commerce, in competition with individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Vernon Peter DeFerrara, whether trading under his own name, as Nelson-Hall Co., or under any other trade name or style, in connection with the sale and distribution of his books in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from:

1. The use of any statement or representation that tends or may tend to convey the belief or impression that a person can become proficient in jujitsu without personal instruction, without "exercises," or without actually practicing the various methods of attack and defense involved in jujitsu training.

2. Representing, directly or inferentially, that a person can become proficient in jujitsu within ten days or any other period of time less than that actually required by persons generally to become proficient therein.

3. Representing that as a result of reading his books entitled "SUPER Ju Jitsu" an individual can defeat persons twice his size with only his

bare hands; can defeat armed persons; will become the master of practically any situation that arises; will be helped mentally; can become a new man within ten days or any other period of time; will have sharper wits; will be without timidity, fear or hesitation; will have his will power strengthened; will be enabled to think clearly with split-second speed; or will be enabled to handle any emergency with absolute self-confidence.

4. Publishing any testimonials containing statements or assertions contrary to the terms of this agreement. (Nov. 17, 1944.)

3932. **Neckties—"Homespun."**—Frank & Meyer Neckwear Co., a Missouri corporation having its principal place of business at St. Louis, Mo., engaged in the manufacture of neckties and kindred products in interstate commerce, in competition with other corporations and with individuals, firms 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.

Frank & Meyer Neckwear Co., in connection with the offering for sale or sale of its neckties or kindred products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that it will cease and desist forthwith from the use of the word "homespun" as descriptive of products made from fabrics or yarns that are spun or woven in a mill or factory; and from the use in its advertising or printed matter or on labels affixed to products, or in any other way of the word "homespun" so as to import or imply or the effect of which tends or may tend to cause or convey the impression or belief that said products were made from fabrics or yarns spun or woven at home by hand or on a hand loom, when, in fact, they are not made from such homespun fabrics or yarns. (Nov. 22, 1944.)

3933. **"Life of Wheat"—Qualities, Properties or Results, Scientific or Relevant Facts, and Comparative Merits.**—VioBin Corporation, an Illinois corporation with principal place of business at Monticello, Ill., engaged in the manufacture of cereal products, including a defatted toasted wheat germ which it has sold and distributed under the trade designation "Life of Wheat," in interstate commerce in competition 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.

VioBin Corporation, in connection with the sale and 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 that it will forthwith cease and desist from representing, directly or inferentially:

(a) That two tablespoonfuls or any comparable amount of Life of Wheat provide all the Vitamin G or all the phosphorus required for one's daily needs.

(b) That overtiredness, nervousness or fidgetiness in children indicates or probably indicates Vitamin B deficiency in their diet; or that the feeding of Life of Wheat constitutes an adequate remedy for conditions manifesting such symptoms, or affords a competent treatment for a child unduly tired, irritable, nervous or fidgety.

(c) That the B Vitamins in Life of Wheat are the nerve protective vitamins; or that the consumption of Life of Wheat will give a child new vigor or pep.

(d) That the B Vitamins essential for the diet are easily supplied "by simply adding Life of Wheat to cereal, soup, milk or other foods"; or by

similar inference or suggestion, representing that the necessary B Vitamins for a daily diet are provided by Life of Wheat instead of by the foods themselves.

(e) That, without regard to the type and amount of food, one daily tablespoonful, or any comparable amount, of Life of Wheat with the ordinary foods eaten will provide all the B Vitamins a person needs.

(f) That constipation can be overcome or corrected by the use of Life of Wheat unless it be clearly indicated that such product would have no value in cases of constipation other than those resulting from Vitamin B deficiency; or that such product can be depended upon to keep the intestinal nerves fit or to correct intestinal sluggishness.

(g) That such product tones up the digestive system, protects the family against digestive disturbances, brings about a general improvement of well being, corrects gas on the stomach, or may be relied upon to stimulate growth or appetite in children or to keep the family nerves fit.

(h) That ill health of elderly people is very often due to the lack of the B Vitamins, or that Vitamin B₆ has been shown to be of value in the treatment of paralysis agitans or of chronic arthritis; or by connotation, or otherwise, that Life of Wheat would be efficacious in correcting the ill health of old people, the paralytic disease of old age or any arthritic conditions.

(i) That the B Vitamins as taken through Life of Wheat bring benefits in the body far more effective, or any more so, in the natural form than they would be in capsule form. (Nov. 20, 1944.)

3934. Pipes—Composition, Qualities, Properties or Results, Values, Prices, Quality, Manufacturer, Importer, Etc.—Sachs Cigars, Inc., a New York Corporation with its principal place of business at Brooklyn, N. Y., engaged in the sale and distribution of tobacco, pipes and cigars in interstate commerce, in competition 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.

Sachs Cigars, Inc., in connection with the advertising for sale, sale and distribution of its pipes, in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from representing, directly or inferentially:

(a) That the pipe offered for sale at \$1.95, or any pipe of similar quality and construction, is of genuine Algerian briar, is of the best briar obtainable, has a genuine meerschaum lined bowl, a duralumin radiator filter, or a hand-cut vulcanite bit made by master craftsmen; that said pipe never clogs; that it cools smoke below mouth temperature or smokes 85% cooler than any other pipe—or any cooler than numerous competitive makes; that it is the "proved" best smoking pipe in the world, is 100% efficient, or is similar to or the equal, in smoking qualities, workmanship or materials, with pipes sold in the market for \$12.50, \$5.00, \$7.50 or any other price in excess of that usually charged for products of like quality.

(b) That the smoking qualities of a pipe of the type offered for \$2.95 are the best obtainable in the world; that such pipe has been acclaimed by seasoned smokers, collectors or anyone else as the biggest value in pipedom regardless of price, or at all; or that shopping comparisons show similar pipes as high as \$12.50.

(c) That the pipe offered for sale at \$1.00 is of regular \$3.50-up quality, or that the price named represents a sacrifice to the vendor.

(d) That the pipe offered for sale at \$1.85 has been reduced in price from \$3.50, that this or any similar pipe is worth up to \$3.50, or that it is made of briars as flawless as perfect diamonds, or otherwise flawless.

(e) That the pipe offered for sale at \$4.90, or any pipe of like quality, is "block meerschaum," "genuine meerschaum" or "meerschaum"; is of regular \$7.50 value, a bargain at the price offered, represents the lowest price in pipe history, or that such price is low for the article offered; that similar pipes usually sell for not less than \$7.50, often as high as \$10.00, or for any amount in excess of the price actually charged therefor.

(f) That the prices named for its pipes are the result of carefully planned stock and distribution, or of the utmost science in working out design and methods of manufacturing and selling; or because thereof, or otherwise, that the pipes so advertised represent the finest quality at the lowest price.

(g) That said corporation is a pipe maker or has so been since 1887 or at all; or in any other way, representing that it manufactures or produces pipes unless and until it actually owns and operates or directly and absolutely controls a plant or factory in which are made any and all products offered for sale or sold by it under such representations.

(h) That said corporation imports or ever has imported meerschaum, briar or any other materials used in the making of pipes. (Oct. 16, 1944.)

3935. **Belts—Composition.**—Harry Ostrower, an individual trading as Yankee Leather Goods Co. with his place of business at New York, N. Y., engaged in the sale and distribution of various commodities including belts in interstate commerce, in competition with individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Harry Ostrower, whether trading under his own name, as Yankee Leather Goods Co., or under any other trade name or style, in connection with the sale and distribution of his commodities in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from the use of the words "Genuine Selected Cowhide" as a designation for or as descriptive of a product not made of top grain bovine leather; and from the use of the word "cowhide" or other word or words connoting leather in any manner that tends or may tend to convey the belief or impression that such product is made of top grain leather. (Nov. 13, 1944.)

3936. **Insect Powder—Manufacturer, "Laboratories," Comparative Merits, Qualities, Properties or Results, History and Success, Use or Standing.**—Joseph Schatzberg, a sole trader operating as Alvox Laboratories and also as Aborn Exterminating Co., with place of business at Newark, N. J., engaged in the sale and distribution of an insect powder under the trade brand or designation "Alvox Roach Powder" in interstate commerce, in competition with individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Joseph Schatzberg, whether operating under his own name, as Alvox Laboratories, as Aborn Exterminating Co., or by any other trade designation, in connection with his sale and distribution of Alvox Roach Powder, or any product of similar composition, agreed that he will forthwith cease and desist from:

(a) Representing that Alvox Roach Powder or any other product is manufactured by him, or otherwise, by statement or inference, that he owns and operates or directly and absolutely controls the plant or factory wherein such powder is made; and from the use of the word "Laboratories" as part of his trade designation or in any way so as to import or imply that he maintains a laboratory, that is to say, a place devoted to experimental study or for the compounding or manufacture of such powder or any other chemical product.

(b) Representing, directly or inferentially, that Alvox Roach Powder or any preparation of like composition has higher Peet Grady Rating than other exterminating powders, is superior to sodium fluoride, is odorless, kills roaches stone dead on their backs in 10 minutes or less, is one of the most important discoveries—or a new discovery at all—to exterminators in the past 25 years, or that under conditions of use it retains chemical stability at all times or will not deteriorate; or that hundreds of professional exterminators, or any number of persons exceeding the true total thereof, are using Alvox Roach Powder with miraculous or extraordinary success. (Dec. 6, 1944.)

3937. **Fire Extinguishing Products—Qualities, Properties or Results, "Approved" and Recommended.**—O. H. Adams, a sole trader operating as O. H. Adams Co., with place of business at Milwaukee, Wis., engaged in the manufacture of chemical specialties, including fire extinguishing products designated "Bomb-Quench" and "Adams' Dry Chemical Fire Extinguisher," and in the sale and distribution thereof in interstate commerce in competition with individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

O. H. Adams, in connection with the offering for sale, sale and distribution of his products in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from:

(a) Representing that the product sold as "Bomb-Quench" or any product of like composition snuffs or puts out incendiary bombs, is the easiest or safest extinguishing compound, contains only slight abrasive quality, or will not cause suffocating fumes.

(b) Featuring the word "APPROVED" on his labels or in his trade publicity; or using such word or similar term in any way as applied to a product the merit of which has not been duly determined and attested by a competent, authoritative, independent agency. If the word "approved" or similar expression be properly used to indicate that such product has been tested and passed by some independent authority, then, whenever used, said word or term shall be immediately accompanied, in type of equal size and prominence, by the name of the agency giving such approval.

(c) Representing that the product sold as "Adams' Dry Chemical Fire Extinguisher" or any product of like composition is recommended for or may be effectively used to put out fires resulting from incendiary bombs, or to extinguish types of fires commonly classified as industrial, marine, household or factory; that said product destroys such war gases as chlorine, phosgene or chloracetophenone; or by statement or inference, that under the conditions of use it affords any suitable protection against volatile gases which affect the lungs or cause tears. (Dec. 6, 1944.)

3938. **Furniture—Composition, "Heirloom," "Authentic," and Source or Origin.**—Colony House, Inc., a Maryland corporation, with its prin-

cial place of business at Washington, D. C., engaged in conducting a retail furniture store, selling and distributing such furniture in interstate commerce, in competition 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.

Colony House, Inc., in connection with the sale and distribution of its furniture or merchandise in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

(a) Designating or describing as "genuine solid mahogany" or "solid mahogany" any piece of furniture which is not of mahogany wood in its entirety. If the term "solid mahogany" be correctly used to describe the exposed parts only, of an article, then in such case, whenever the term appears it shall be immediately accompanied by words in type of equal size and prominence clearly indicating that said article is not composed entirely of mahogany wood.

(b) The use of the unqualified word "mahogany" to describe an article with mahogany veneer surface or composed in part of mahogany and in part of gumwood or other material, whether or not any explanation be added that such furniture is not in fact full mahogany.

(c) Advertising or referring to any furniture offered for sale as "true heirloom furniture" or "heirloom furniture" which has not been previously owned by some family for several generations and handed down to its descendants, as connoted and generally understood by the use of the term "heirloom"; or describing new pieces of furniture as "heirloom reproductions."

(d) Describing as "authentic" in design, styling, reproduction or recreation, any article of furniture which does not have a genuine origin of authority for the use of such expression.

(e) Representing, by statements such as "The beauty and charm of old Williamsburg are found at Colony House," "Re-discover old Williamsburg at Colony House . . . authentic reproductions." "Like a tour of Old Williamsburg, your visit to Colony House," "Colony House, reminiscent of Old Williamsburg," or otherwise, that its furniture is a true counterpart or reconstruction of the original or authentically reproduced eighteenth century furniture to be found in the homes of Williamsburg, Virginia. (Dec. 6, 1944.)

3939. **Welders' Garments—Manufacturer.**—Fred Jessar, a sole trader operating under his own name and also by the trade designation Welder's Saf-T Garment Co., with place of business at Philadelphia, Pa., engaged in the sale and distribution of leather garments for use by welders and mechanics in interstate commerce, in competition with individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Fred Jessar, whether operating under his own name, as Welder's Saf-T Garment Co., or by any other trade designation, in connection with his offering for sale, sale and distribution of welders' garments or other merchandise in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from representing that he makes or manufactures such products, or otherwise from representing that he owns and operates or directly and absolutely controls a plant or factory wherein such merchandise is made or manufactured. (Dec. 6, 1944.)

3940. **Flags—Composition.**—Herald Publishing Co., a Kansas corporation with its place of business at Newton, Kans., engaged in the sale and distribution of merchandise, including flags, in interstate commerce, in competition 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.

Herald Publishing Co., in connection with the sale and distribution of its flags or other merchandise in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. The use of the word "silk" 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 fibers other than silk, and the word "silk" or a word connoting silk is used properly to indicate the silk content only, then such word, whenever used, shall be immediately accompanied in equally conspicuous type by the name of each fiber other than silk, so that each constituent fiber of which the product is composed will be accurately designated and disclosed in the order of predominance by weight, beginning with the largest single constituent as, for example, "Silk, Rayon and Cotton," for a product composed of silk, rayon and cotton and containing silk in greater proportion than either rayon or cotton and containing rayon in greater proportion than cotton.

2. Advertising, branding, labeling, invoicing, selling or offering for sale products composed in whole or in part of rayon without clearly disclosing, by the use of the word "rayon," the fact that such products are composed of or contain rayon; and, when a product is composed in part of rayon and in part of fibers or material other than rayon, from failing to disclose, in immediate connection or conjunction with the word "rayon," and in equally conspicuous type, each constituent fiber of said product in the order of its predominance by weight beginning with the largest single constituent. (Dec. 6, 1944.)

3941. **Flags—Composition.**—The National Flag Co., an Ohio corporation with its place of business at Cincinnati, Ohio, engaged in the sale and distribution of flags and other merchandise in interstate commerce, in competition 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.

The National Flag Co., in connection with the sale and distribution of its flags or other merchandise in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. The use of the words "silk" or "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 fibers other than silk, and the word "silk" or a word connoting silk is used properly to indicate the silk content only, then such word, whenever used, shall be immediately accompanied in equally conspicuous type by the name of each fiber other than silk, so that each constituent fiber of which the product is composed will be accurately designated and disclosed in the order of predominance by weight, beginning with the largest single constituent as, for example, "Silk, Rayon and Cotton," for a product composed of silk, rayon and cotton and containing silk in greater proportion than either rayon or cotton and containing rayon in greater proportion than cotton. If the word "taffeta" or word or words of like

meaning be used properly to describe the weave or construction of a product containing fiber other than silk, then such word or words, whenever used, shall be immediately accompanied in equally conspicuous type by a word or words truthfully designating and disclosing the constituent fiber as, for example, "rayon taffeta" for a rayon product of taffeta weave or construction.

2. Advertising, branding, labeling, invoicing, selling or offering for sale products composed in whole or in part of rayon without clearly disclosing, by the use of the word "rayon," the fact that such products are composed of or contain rayon; and, when a product is composed in part of rayon and in part of fibers or material other than rayon, from failing to disclose, in immediate connection or conjunction with the word "rayon," and in equally conspicuous type, each constituent fiber of said product in the order of its predominance by weight beginning with the largest single constituent. (Dec. 6, 1944.)

3942. **Clothing, Hats and Furs or Fur Products—Worn, Second-Hand as New, Composition, Nature, Source or Origin and "Slightly Used."**—Manhattan Bargain House, Inc., trading also as Broadway Mail Order House, a New York corporation with its place of business at New York, N. Y., engaged in the sale or distribution of old, worn, second-hand or previously used clothing or wearing apparel, in interstate commerce, in competition 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.

Manhattan Bargain House, Inc., whether trading under such name, as Broadway Mail Order House, or under any other trade name or style, in connection with the sale and distribution of its merchandise in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. Advertising, labeling, invoicing, selling or offering for sale any worn, second-hand or previously used article of clothing unless there be securely attached to the exposed surface thereof with sufficient permanency to remain thereon in a conspicuous, clear, distinct and plainly legible condition throughout the sale or resale, distribution and handling incident thereto, a tag or label bearing the conspicuous statement that such article of clothing is second-hand or has been previously used or worn.

2. The use of any fiber designation in connection with the advertising, labeling, invoicing, selling or offering for sale of any of its merchandise unless such designation truthfully discloses each constituent fiber thereof in the order of predominance by weight, beginning with the largest single constituent, and also unless tags or labels bearing in conspicuous and legible terms such correct and specific fiber content designation be securely attached or affixed to the exposed surface of the article so offered for sale.

3. Advertising, labeling, invoicing, selling or offering for sale any used or second-hand hats or hats composed in whole or in part of used or second-hand materials unless the sweatbands of such hats be stamped on the exposed surfaces thereof, in conspicuous and legible terms which cannot be removed or obliterated without mutilating the sweatbands, with a statement that such products are second-hand or used or are composed of second-hand or used materials; provided, that if sweatbands are not affixed to such hats, then such stamping must appear on the exposed surface of the inside of the bodies of such hats in conspicuous and legible terms which cannot be removed or obliterated without mutilating said hat bodies.

4. Designating or describing furs or fur products in any manner other than by the use of the true name of the fur as the last word of the designation or description thereof; and, when any dye or process is used to simulate any other fur, the true name of the fur appearing as the last word of the designation or description shall be immediately preceded in equally conspicuous type by the word "dyed" or the word "processed," as the case may be, compounded with the name of the simulated fur as, for example, "Seal-dyed Muskrat."

5. Representing, directly or inferentially, that its merchandise generally or any item thereof has been obtained from auction lots, manufacturers' surplus or bankrupt sales, unless each and every item to which such representation pertains actually has been obtained from lots sold at auction, from manufacturers' surplus stocks or from bankrupt sales, as the case may be; or otherwise from representing the source of its merchandise as other than the true source thereof.

6. The use of the words "slightly used" or the word "slightly" or other word or words of like meaning in any manner the effect of which tends or may tend to convey the belief or impression that the previous use or wear of such products is slight or negligible when, in fact, the extent, degree or nature of such use or wear is such as to be improperly designated or referred to as "slightly" or "slight." (Dec. 6, 1944.)

3943. **Knitted Fabrics—Composition.**—Roth-Getzoff & Co., Inc., a New York corporation with its principal place of business at New York, N. Y., engaged in the sale and distribution of knitted fabrics in interstate commerce, in competition 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.

Roth-Getzoff & Co., Inc., in connection with its sale and distribution of fabrics or other goods in commerce as defined by the Federal Trade Commission Act, agreed it will forthwith cease and desist from 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; or, 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 the word "rayon," and in equally conspicuous type, each constituent fiber of said product in the order of its predominance by weight, beginning with the largest single constituent. (Dec. 6, 1944.)

3944. **Dresses—Composition.**—Rosette Gowns, Inc., a New York corporation with its principal place of business at New York, N. Y., engaged in the manufacture of ladies' dresses and in sale and distribution thereof in interstate commerce, in competition 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.

Rosette Gowns, Inc., in connection with the sale and distribution of its dresses or other products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from 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; or, 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 the word "rayon," and in equally conspicuous type, each constituent fiber of said product in the order of its predominance by weight beginning with the largest single constituent. (Dec. 6, 1944.)

3945. **Handkerchiefs—Size.**—Lou D. Friedland and Julius H. Goldstein, copartners trading as Lee Products Company with their place of business at Atlanta, Ga., engaged in the sale and distribution of merchandise, including handkerchiefs, in interstate commerce, in competition with individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Lou D. Friedland and Julius H. Goldstein, whether trading under their own names, as Lee Products Company, or under any other trade name or style, in connection with the sale and distribution of their merchandise in commerce as defined by the Federal Trade Commission Act, agreed that they and each of them, individually and as copartners, will forthwith cease and desist from the use of the words "MEN'S HANDKERCHIEF" as a designation for or as descriptive of any handkerchief the dimensions of which are less than 17 inches in length by 17 inches in width; and from the use of any representation that tends or may tend to convey the belief or impression that handkerchiefs less than 17 inches square are men's handkerchiefs. (Dec. 6, 1944.)

3946. **Concrete Preparations—Qualities, Properties or Results.**—Acqua-Pruf, Inc., a New Jersey corporation with its place of business at Newark, N. J., engaged in the sale and distribution of various commodities for use as an additive in the preparation of concrete or as an application on concrete, including products designated as "Acqua-Pruf," "Gran-It," "Anti-Freeze," and "Acqua-Seal," in interstate commerce, in competition 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.

Acqua-Pruf, Inc., in connection with the sale and distribution in commerce, as defined by the Federal Trade Commission Act, of its products designated "Acqua-Pruf," "Gran-It," "Anti-Freeze" and "Anti-Seal," or any other product of substantially the same composition or possessing substantially the same properties, whether sold under such names or any other name or names, agreed that it will forthwith cease and desist from:

1. The use of the words or expressions "waterproof," "waterproofer," "waterproofing" or "positive water repelling substance" or other words or expressions of like meaning as designations for, as descriptive of, or with reference to a product which is not effective as a waterproofing agency under all conditions of use; *Provided, however,* that if such product actually is an efficacious waterproofer under certain conditions, then in that case such words or expressions, whenever used, shall be immediately accompanied in equally conspicuous type by words or statements definitely and truthfully disclosing the particular condition under which the product is effective as a waterproofing agent.

2. Representing, directly or inferentially, that any of such products produces a chemical reaction within the pores of concrete which results in the formation of crystals that entirely fill these pores.

3. The use of the words or statements "anti-freeze," "prevents freezing" or "frostproof," or other words or expressions of like meaning as designations for, as descriptive of, or with reference to a product which, when used as an additive to concrete, cannot be depended upon to protect such concrete from freezing or render same frostproof under any and all ranges of temperature and conditions of use; *Provided, however*, that if such product actually is effective in preventing freezing under certain conditions, then in that case such words or expressions, whenever used, shall be immediately accompanied in equally conspicuous type by words or statements definitely and truthfully disclosing the particular condition under which such product will be effective in rendering concrete immune to freezing.

4. The use of any representation that tends or may tend to convey the belief or impression that the use of any of said preparations as an additive to concrete affords permanency to such concrete or causes the same to be permanent or everlasting.

5. Representing, directly or inferentially, that concrete or mortar, in which any of such products are used as an additive, possesses any termite repellent properties not possessed by properly constructed concrete or properly prepared and applied mortar which do not contain such product.

6. Representing that the use of any of such products as an additive to concrete will cause such concrete to be of "granite-like strength and durability," or appreciably stronger or more durable than a properly constructed concrete which does not contain such product.

7. Representing that the product heretofore designated as "Acqua-Seal" is effective in stopping or preventing "efflorescence," or efflorescence, water stains, or walls from leaking under all conditions of use; *Provided, however*, that if such product actually is effective in stopping or preventing efflorescence, water stains or leaking walls under certain conditions, then in that case such representation, whenever used, shall be immediately accompanied in equally conspicuous type by words or statements definitely and truthfully disclosing the particular conditions under which the product is effective for the purpose or purposes indicated. (Dec. 4, 1944.)

3947. Plush and Pile Fabrics—Source or Origin and Composition.—E. F. Timme & Son, is a limited partnership organized under the laws of the State of New York, of which William E. Roschen is the sole general partner and Ilse Bishoff, Martha E. Sultan and Carola Terwilliger are the limited partners, and as such general partner, William E. Roschen determines the firm's policies and conducts its operation. Its place of business is at New York, N. Y. Woonsocket Falls Mill, Inc., a Rhode Island corporation with its principal place of business at Woonsocket, R. I., and Victoria Plush Mill, a Pennsylvania corporation with its principal place of business at Swarthmore, Pa., engaged in the manufacture of plush and pile fabrics simulating furs in appearance, and in the sale and distribution thereof in interstate commerce through E. F. Timme & Son as their sales agent, in competition 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.

William E. Roschen, for himself and as the general partner of E. F. Timme & Son, by Woonsocket Falls Mill, Inc., and by Victoria Plush Mill, and each of them, in connection with the sale and distribution of their products in commerce as defined by the Federal Trade Commission Act, agreed that they will forthwith cease and desist from:

(a) The use, or placing in the hands of others for their use, of the brand or trade designation "Alaskan Kurl" or depictions or other expressions indicative of Alaska, to denominate or describe products not procured from Alaska; and from the use of any term, word or picturization connoting or suggesting geographic origin of a product which is not in fact imported from or made of materials originating in the region so indicated or implied.

(b) Advertising, branding, labeling, invoicing, selling or offering for sale products composed in whole or in part of rayon without clearly disclosing, by the use of the word "rayon," the fact that such products are composed of or contain rayon; and, when a product is composed in part of rayon and in part of fibers or material other than rayon, from failing to disclose, in immediate connection or conjunction with the word "rayon," and in equally conspicuous type, each constituent fiber of said product in the order of its predominance by weight beginning with the largest single constituent. (Dec. 5, 1944.)

3948. **Food Products and Medicinal Preparations—Scientific or Relevant Facts, Success and Qualities, Properties or Results.**—Walter Camp and Werner Orbach, copartners trading variously as The Vita Health Food Co., Nutritional Products Co., American Health Products Co. and Eastern Health Food Stores Association, with place of business at Washington, D. C., engaged in the sale and distribution of sundry food products and medicinal preparations in the District of Columbia, in competition with firms, individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Walter Camp and Werner Orbach, whether operating individually, as copartners under the firm names The Vita Health Food Co., Nutritional Products Co., American Health Products Co., Eastern Health Food Stores Association, or by any other trade name or style, in connection with the sale and distribution of their commodities 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 that they and each of them will forthwith cease and desist from representing directly or inferentially:

(a) That the preparation referred to as Vitapan, or any ingredient thereof, can restore original color to gray hair; or that it can prevent the graying of hair, whether due to lack of calcium pantothenate or otherwise.

(b) That the vitamin method of restoring the original or natural color of hair has proven successful or satisfactory in 88 percent of the cases tested or in any other percentage or number of cases.

(c) That the use of Vitapan for a period of 1 month, 3 months, 1 year or any other period of time may be expected to darken the hair.

(d) That calcium pantothenate is an "anti-gray hair factor" or, by other statement or implication, that an intake thereof would have favorable effect on the grayness of hair; and from the use of the words "anti-gray hair" or terms of like connotation as purporting an efficacious property of Vitapan or any of its components. (Dec. 8, 1944.)

3949. **Books—"Progressive Educators," "School Advancement Program," Unique and Selected Offers, Subsidizing, Approval, Necessity of Product, Etc.**—A. D. Tinkler, a sole trader operating as "Progressive Educators," with place of business at Atlanta, Ga., engaged in the sale and distribution of a set of books entitled "Wonderland of Knowledge" in interstate commerce, in competition with individuals, firms and corporations

likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

A. D. Tinkler, in connection with his sale and distribution of books or other commodities in commerce as defined by the Federal Trade Commission Act, agreed that he will, both individually and through his agents or representatives, forthwith cease and desist from:

(a) The use of the words "Progressive Educators" as a trade designation for or as descriptive of his business; or of any other words, terms or expressions which import, imply or may cause the belief that his business is an undertaking conducted by a group or society of educators to promote improved methods of instruction.

(b) Representing, by the use of the legend "School Advancement Program" or similar expression, statement or implication, by himself or by his salesmen, that either the publication "Wonderland of Knowledge" or his method of selling same has any connection whatsoever with a program, plan or agenda for the promotion or enhancement of schools and their functions.

(c) Furnishing his agents with prepared sales talks representing, either directly or inferentially, that such salesman's canvassing call at the home of a school child is with reference to the child's school work; that his own work is in connection with an educational survey, to devise practical helps in meeting major educational problems or at all; that the concern with which he is associated has spent large sums of money, or any money, in preparing the books which he offers for sale; or that his customary offer made to all prospective purchasers is a most unusual offer to the few progressive mothers of the community.

(d) Subsidizing school superintendents, principals, teachers or officials, or making payments or gifts to them or their schools, directly or indirectly, to induce or cause them to recommend, influence or promote the purchase of books which he offers for sale.

(e) The use, in promoting his sales, of the hereinabove described "Fifteen-for-one give-away plan," or of any other practice involving representation that his method of distributing books is in any manner connected with a school program or has the approval of the school's authorities; that the school's work is or may be based on the material contained in the "Wonderland of Knowledge" or any similar set; that it has been adopted as the school's reference work, is essential in the pupil's home library for his progress in the school's advancement program, or is in itself a complete educational program; or by suggestion or insinuation, that the child's teacher will discriminate against those whose parents have not bought the set. (Dec. 8, 1944.)

3950. Powder Fire Extinguishing Compound—Qualities, Properties or Results, Necessity of Product, Comparative Merits, New, and Approval and Endorsement.—Halco Chemical Corporation, a New York corporation with its principal place of business at New York, N. Y., engaged in the sale and distribution of a powder extinguishing compound under the trade designation "Whippet" in interstate commerce, in competition 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.

Halco Chemical Corporation, in connection with the offering for sale, sale and distribution of its products in commerce as defined by the Federal

Trade Commission Act, agreed that it will forthwith cease and desist from representing:

(a) That the compound referred to as Whippet is an instant fire extinguisher successful against all types of fires; will instantaneously kill or extinguish every type of fire; snuffs out any type of fire instantly or in a matter of seconds; or is an adequate or dependable agency for the putting out of bomb, household, factory, forest, fabric, lumber, straw or similar fires.

(b) That Whippet is absolutely essential in combatting fires caused by incendiary bombs; is the most effective exterminating agent known against incendiary bombs; is as indispensable to civilian life as air-raid precautions or blackouts; is most effective on secondary fires caused by incendiary bombs, or reliably effectual in overcoming incendiary blazes.

(c) That Whippet involves a new principle; is the most intensive fire annihilating dry chemical that has ever been developed, or is so hailed; requires no apparatus to operate with full efficiency; is nonabrasive and noninjurious to or will not harm delicate fabric or intricate machinery or mechanism.

(d) That Whippet is approved or endorsed by firemen, civilian defense officials and fire wardens everywhere; or that the Maine State Police Patrol or other fire fighting agencies of said State either use or endorse the same. (Dec. 15, 1944.)

3951. Poultry Litter—Qualities, Properties or Results and Coverage.—Tamms Silica Co., an Illinois corporation with its principal place of business at Chicago, Ill., engaged in the manufacture of various products made from silica, including a poultry litter designated "Sani-Litt" in interstate commerce, in competition 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.

Tamms Silica Co., in connection with the offering for sale, sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from representing:

(a) That the product referred to as Sani-Litt is dustless, absorbs all odors, keeps poultry houses smelling sweet and clean for 8 to 10 weeks with one application, or for any extended period, without general maintenance such as cleaning the droppings, changing the litter or adding fresh litter.

(b) That Sani-Litt is one of the best insulators known to mankind or even is an effective thermal insulator; that it gives ample insulation against the cold; or that it assures the poultry a warm floor at all times.

(c) That 100 pounds of Sani-Litt will cover approximately 50 square feet one inch thick or any area in excess of its true coverage. (Dec. 15, 1944.)

3952. Battery Compound—Qualities, Properties or Results.—Samuel Schimmel, a sole trader operating as Peggio Chemical Products Co., with his place of business at Philadelphia, Pa., engaged in the sale and distribution of a battery compound designated "Peggio" in interstate commerce, in competition with individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Samuel Schimmel, whether trading under his own name, as Peggio Chemical Products Co. or by any other trade designation, in connection

with the offering for sale, sale and distribution of his products in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from representing:

(a) That the compound referred to as Peggio forms a new doubly efficient electrolite or any new electrolite, eliminates battery charging, makes battery troubles and charging almost obsolete, stops or prevents sulphation or overheating, will not permit the battery to go dead; or that by only one treatment or any number of treatments with Peggio can such results be obtained.

(b) That said compound when put in a battery doubles its performance and life; prolongs or extends its useful life, two or three times over, or at all; adds one or more years, or any other range of satisfactory service to the life of a battery; or in any way whatsoever, representing that the presence of such compound would materially alter the fundamental reactions occurring in storage batteries. (Dec. 15, 1944.)

3953. **Carpets—"Mills."**—Charles H. Lipman and David H. Cahn, copartners trading as Consolidated Carpet Mills with their place of business at Chicago, Ill., engaged in the sale of carpets in interstate commerce, in competition with individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Charles H. Lipman and David H. Cahn, whether trading under their own names or under any trade name or style, in connection with their sale and distribution of carpets in commerce as defined by the Federal Trade Commission Act, agreed that they and each of them, individually and as copartners, will forthwith cease and desist from the use of the word "Mills" as part of their trade name; and from the use of the word "Mills" or other word or term of like meaning in any manner that tends or may tend to convey the belief or impression that they actually own and operate or directly and absolutely control a mill or factory wherein said merchandise is made or manufactured. (Dec. 15, 1944.)

3954. **"Aloe Vera" Plant or Leaves—Qualities, Properties or Results and Safety.**—H. Wallace Johnston, an individual trading as Palm Lodge Tropical Fruit Groves, with place of business at Homestead, Fla., engaged in the sale and distribution of various plants and fruits, including the leaves of a plant designated as "Aloe Vera," in interstate commerce, in competition with individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

H. Wallace Johnston, whether trading under his own name, as Palm Lodge Tropical Fruit Groves, or under any other trade name or style, 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 plant or the leaves of the plant hereinbefore designated as "Aloe Vera," whether sold under such name or any other name or names agreed that he will forthwith cease and desist from:

1. The use of any statement or representation that tends or may tend to convey the belief or impression:

(a) That said plant or the leaves thereof is or are effective in healing open sores or X-ray burns or in relieving sprains, or are of any benefit, when used as an external application, in excess of the effect of the mucilage and water contained therein as a local emollient.

(b) That the internal administration of said plant or leaves or of any preparation made therefrom constitutes an effective treatment or relief for stomach ulcers, arthritis, rheumatism, gout, diabetes, colitis, indigestion or disorders resulting from excessive acidity or sugar in the system.

(c) That said plant or leaves or any preparation made therefrom tends to increase the flow of bile.

(d) The said plant or leaves or any preparation made therefrom constitutes an adequate treatment or a cure or remedy for constipation generally or for the underlying conditions which cause constipation, or that the efficacy thereof in connection with constipation exceeds that of affording temporary relief by causing a partial evacuation of the intestinal tract.

2. Disseminating or causing to be disseminated any advertisement pertaining to such plant or leaves which represents, directly or inferentially, that the use thereof is safe, or which fails to reveal the potential danger in such use in the presence of abdominal pains, nausea, vomiting or other symptoms of appendicitis; *provided, however*, that if and when the directions for use, wherever they appear, on the label, in the labeling, or both on the label and labeling, contain adequate warning of the potential danger to health as aforesaid, said advertisement need contain only the statement: "CAUTION: Use Only as Directed." (Nov. 17, 1944.)

3955. **Prophylactic Kits—Competitive Products.**—Reese Chemical Co., an Ohio corporation with principal place of business at Cleveland, Ohio, engaged in the sale and distribution of prophylactic kits under the trade designation "Doughboy" in interstate commerce, in competition 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.

Reese Chemical Co., in connection with the sale and 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 that it will forthwith cease and desist from representing directly or inferentially that, by government specification or otherwise, all chemical prophylactic packages for treatment of venereal disease must have two tubes with certain ingredients; or that a single tube chemical prophylactic package, that is to say, a package containing one ingredient or mixture of ingredients, is for such reason illegal; and from the use of any other unwarrantable statement tending to discredit or depreciate competitive products. (Dec. 22, 1944.)

3956. **Skin Ointment—Qualities, Properties or Results and Professional or Government Approval.**—Dominick Parisi, sole trader operating as Wizard Products Co., with place of business at Chicago, Ill., engaged in the manufacture of a skin ointment designated "A-1 Salve," and in the sale and distribution thereof in interstate commerce, in competition with individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Dominick Parisi, whether operating as Wizard Products Co., in his own name, or by any other trade name or style, in connection with the sale and distribution of his commodities 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 that he will forthwith cease and desist, directly or inferentially, from representing:

(a) By statement, depiction or otherwise, that a preparation of the composition of A-1 Salve is a competent treatment or an adequate remedy for, or aids in the healing of, such conditions as eczema, psoriasis, certain types of rash, scalp eruptions, athlete's foot of a deep-seated nature, boils, blisters, cuts that are severe, ulcers, varicose ulcers, or weeping eczema.

(b) By statements such as "U. S. Veterans' Hospitals use A-1 Salve," or in any other way, that said ointment has been used generally by or is officially approved by any hospital or medical service of the United States Government. (Dec. 21, 1944.)

3957. Radio Receiving Sets—Capacity.—Burstein-Applebee Co., a Missouri corporation, with place of business at Kansas City, Mo., engaged in the sale and distribution of merchandise, including radio receiving sets, in interstate commerce, in competition 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.

Burstein-Applebee Co., in connection with the sale and distribution of its radio receiving sets in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from representing, directly or by implication, that any radio receiving set contains a designated number of tubes or is of a designated tube capacity when, in fact, one or more of the tubes referred to are tubes or other devices which do not perform the recognized and customary functions of radio receiving set tubes in the detection, amplification and reception of radio signals. (Dec. 22, 1944.)

3968.¹ Correspondence Courses in Industrial Plant or Machine Shop Operation—"Institute."—Charles F. Harad and Sara E. Harad, copartners trading as Industrial Engineering Institute, with place of business at Indianapolis, Ind., engaged in the sale and distribution of a home study or correspondence school course of instruction pertaining to industrial plant or machine shop operation, in interstate commerce, in competition with individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Charles F. Harad and Sara E. Harad, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, of their home study or correspondence school course of instruction, agreed that they and each of them will forthwith cease and desist from using the word "Institute," or any abbreviation or simulation thereof, as a part of their trade name or as a part of the name of their school; or otherwise from representing, directly or by implication, that their school is an institute or that it was organized or established or is equipped to carry on the work of an institute. (Dec. 30, 1944.)

3974.² Cohama Nylon Fleece—Composition, Qualities, Properties or Results, Comparative Merits and Nature.—Cohn-Hall-Marx Co., a New York corporation with principal place of business at New York, N. Y., engaged in the manufacture of fabrics, including a so-called Cohama Nylon Fleece, and Chapman Wraps and Coat Co., Inc., a customer garment manufacturer, who is also a New York Corporation, with place of business

¹ Stipulations 3958 to 3967, inclusive, not approved until a later date, will be published in the ensuing volume.

² Stipulations 3969 to 3973, inclusive, not approved until a later date, will be published in the ensuing volume.

at New York, N. Y., and engaged in selling women's wear, including coats made from the so-called Cohama Nylon Fleece purchased by it from the aforesaid manufacturer thereof, both are engaged in interstate commerce, in competition with other corporations and with individuals, partnerships 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.

Cohn-Hall-Marx Co. and Chapman Wraps and Coat Co., Inc., agreed that they, and each of them, in connection with the advertisement, offering for sale, sale or distribution of the so-called Cohama Nylon Fleece, or of any other fabric of the same or similar composition, however designated, in commerce, as commerce is defined by the Federal Trade Commission Act, will cease and desist forthwith from:

1. The use of the word "fleece" as descriptive of said fabric which contains no wool, and from the use of the said word, in any way, so as to import or imply, contrary to fact, that the said fabric is composed, either in whole or in part, of wool.

2. The use of the word "nylon," either alone or in connection with the word "fleece" or with any other word or words, as descriptive of said fabric that is not composed of nylon; *provided, however*, that if the fabric is faced in its entirety with nylon, or contains nylon in substantial part, and is backed with or contains a different material, the word "nylon" may be used to describe the nylon part of the fabric, when such word is immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the word "nylon" is printed so as to indicate clearly that said fabric is not composed wholly of nylon and that the back or other portion thereof is material other than nylon, together with such other disclosure as may be required by provisions of law applicable to the respective fabric or article.

3. Representing that the nylon face of said fabric is a "pile," when in fact, such face is a nap and not a pile, as such terms are understood to mean to those associated with the clothing and textile industries.

4. Representing that garments made from the so-called Cohama Nylon Fleece would be 100 percent cooler in summer or 100 percent warmer in winter than wool, or that either of such representations is supported by a test or tests made by the United Merchants and Manufacturers' Corporation.

5. Representing that said fabric possesses the quality of indestructibility, that the nylon nap of the fabric will replace itself with wear, or that such nap will not wear off, as when subjected to friction and use.

6. Representing that said fabric is impervious to dampness or humidity in the sense that it will not absorb moisture and wet through, that it is 4,000 percent more water repellent than a wool-napped fabric, or that it will replace a raincoat.

7. Representing that the nylon-napped surface of said fabric will shed dust and dirt to the extent that it is proof against such conditions or will never get "really soiled," that most stains can be removed from such surface by brushing, or that there is any marked distinction in the effort required to remove stains which can be gotten rid of by brushing out from either a nylon-napped surface or a surface of wool nap.

The said Cohn-Hall-Marx Co. also agreed to cease and desist from the use of the word "Lambskin" in the trade designation for or as descriptive of a fabric or product which is not, in fact, made from lambskin, and from

the use of the said word, either alone or in connection with any other word or words as descriptive of a fabric, so as to import or imply or which may cause the belief, contrary to fact, that said fabric is made from the skin of the lamb. (Dec. 8, 1944.)

4012. **Furs or Fur Products — Nature.** — Abram Krupnick and Anna Shatkin, copartners trading as A. Krupnick with place of business at New York, N. Y., engaged in the sale and distribution of furs and peltries in interstate commerce in competition with individuals, firms and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition.

Abram Krupnick and Anna Shatkin, whether trading under such name as A. Krupnick or any other trade name or style in connection with the sale and distribution of his products in commerce as defined by the Federal Trade Commission Act, that they and each of them individually and as copartners, will forthwith cease and desist from designating furs or fur products in any manner other than by the use of the true name of the fur; Provided, that when any dye or process is used to simulate another fur and the name of the simulated fur is indicated, then in that case the true name of the fur shall appear as the last word of the designation and shall be immediately preceded in equally conspicuous type by the word "dyed" or the word "processed," as the case may be, compounded with the name of the simulated fur. (Dec. 11, 1944.)

4096.¹ **Furs or Fur Garments — Nature and Source or Origin.** — Morris Schwartz Fur Corporation and Biltwell Furs, Inc., New York corporations with their respective places of business at New York, N. Y. Green's Furs, Inc., is an Indiana corporation with its place of business at Indianapolis, Ind. Said corporations have been engaged in the sale and distribution of furs and/or fur garments in interstate commerce and/or with a foreign nation or nations; causing furs, purchased from suppliers in a foreign country or countries, to be shipped to the State of New York and thence, through the channels of commerce, to consumers residing in a State or States other than New York, thus continuing the stream of commerce from the foreign country or countries from which the furs were imported to the State or States in the United States in which the finished garments ultimately are sold to the consuming public. At all times referred to herein said corporations have been in competition with corporations, firms and individuals likewise engaged, and have entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Morris Schwartz Fur Corporation, Biltwell Furs, Inc., and Green's Furs, Inc., in connection with the sale and distribution of their furs or fur garments in commerce as defined by the Federal Trade Commission Act, agreed that they, and each of them, will forthwith cease and desist from:

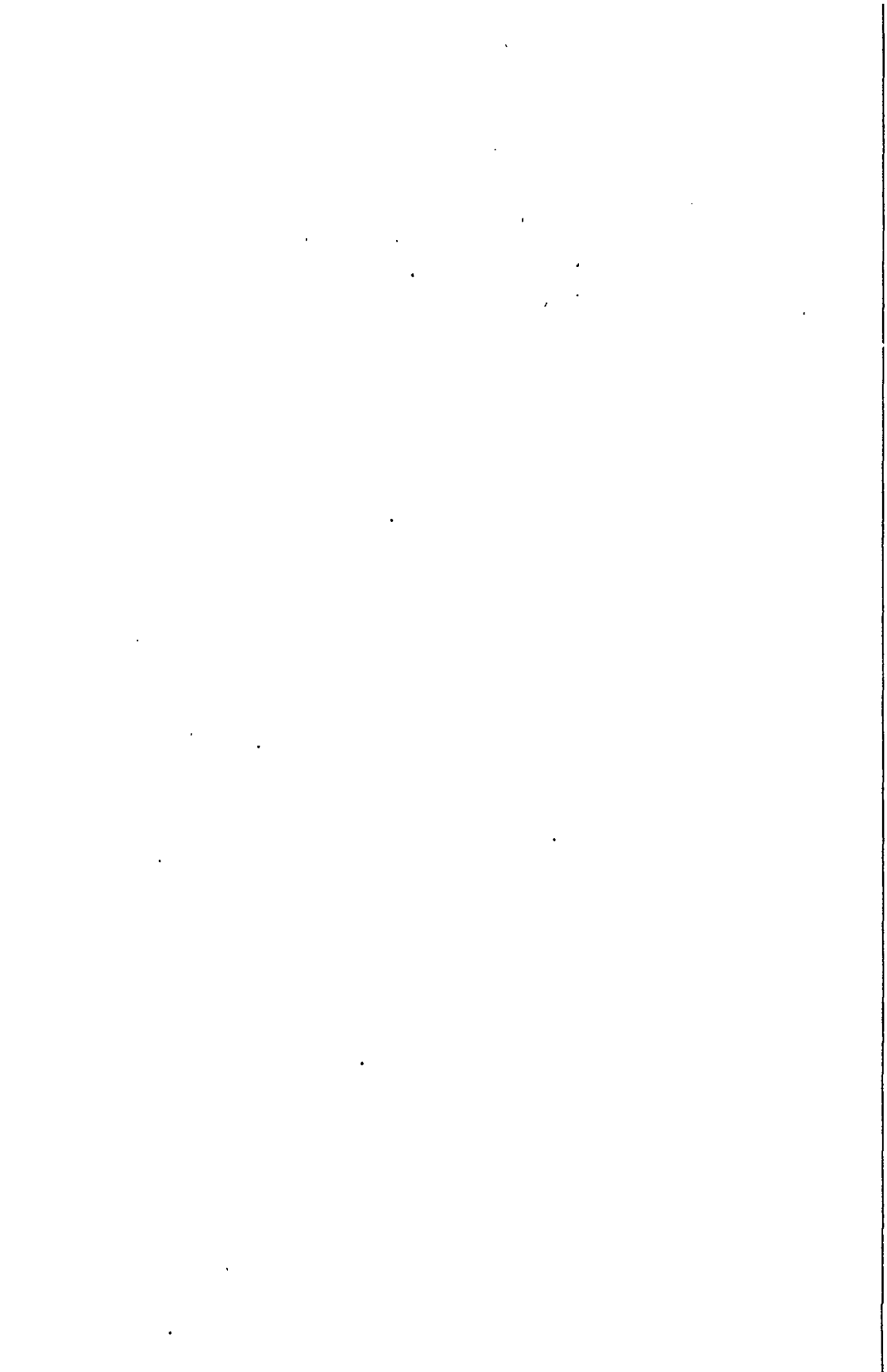
(1) Using the word "Seal," either alone or in connection, combination or conjunction with any other word or words, to designate or describe furs or fur products made from sea lion peltries;

(2) Designating or describing furs or fur products in any manner other than by the use of the true name of the fur as the last word of the designation or description thereof; and, when any dye or process is used to simulate any other fur, the true name of the fur appearing as the last word of the designation or description shall be immediately preceded in equally conspicuous type by the word "dyed" or the word "processed," as the

¹ Published as corrected, as shown in Aug. 8, 1945 release.

case may be, compounded with the name of the simulated fur as, for example, "Seal-dyed Muskrat."

It is further agreed by Biltwell Furs, Inc., and Green's Furs, Inc., in connection with the sale and distribution of fur garments or furs in commerce as defined by said Act, that they, and each of them, will forthwith cease and desist from the use of any statement or representation that tends or may tend to convey the belief or impression that such products consist of or are made from peltries originating in that part of the antarctic region commonly known as "Little America," when in fact such peltries do not originate in such region; or otherwise from misrepresenting the geographical origin of animals from which peltries have been obtained. (Oct. 10, 1944.)



DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS¹

02640. **Jewelry—"Free."**—Picture Ring Co., a corporation, Butler Building, Cincinnati, Ohio, advertiser-vendor, was engaged in selling jewelry and agreed that the provision relating to the word "free" in Stipulation No. 02640² should be stricken and the following substituted:

Using the term "free" or any other term of similar import or meaning to designate, describe or refer to merchandise which is furnished as compensation for services rendered or for which the payment of money is required. (Oct. 5, 1944.)

02838. **Lingerie and Hosiery—"Free."**—Samuel K. Kreenberg, an individual, doing business under the trade name of Supreme Hosiery Co., 807 Roosevelt Road, Chicago, Ill., advertiser-vendor, was engaged in selling lingerie and hosiery and agreed that the provision relating to the word "free" in Stipulation No. 02838³ should be stricken and the following substituted:

Using the term "free" or any other term of similar import or meaning to designate, describe or refer to sample outfits, wearing apparel or other items of merchandise which are furnished as compensation for services rendered or for which the payment of money is required. (Oct. 9, 1944.)

03228. **Medicinal Preparations—Qualities, Properties or Results, Tested and Recommended and Safety.**—Elizabeth Fontana, an individual doing business as Nature's Aids Center, 55-28 Myrtle Ave., Brooklyn, N. Y., advertiser-vendor, was engaged in selling medicinal preparations designated Karpatal, Regulator Femina, Holly Mountain Tea (or Holy Mountain Tea) and Garlo Garlic Pills and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Karpatal—

1. Will cure constipation, flatulence or any stomach disease or ailment;
2. Will have a beneficial effect upon the symptoms of stomach disorder such as: headache, loss of appetite, dizziness, bitter taste in the mouth, white tongue, bad breath, belching, heartburn or puffiness;

3. Will promote digestion, eliminate impurities from the body, promote excretion, regulate the excretory organs, or benefit the blood, the kidneys, the liver or the nerves;

or

(b) That Regulator Femina—

1. Will bring about regularity of the menses or will have any effect in curing diseases of women or in relieving the following conditions arising during the menses, namely,

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, July 1, 1944, to December 31, 1944, inclusive. For digests of previous stipulations, see vols. 14 to 38 of Commission's decisions.

² For original stipulation, see 31 F. T. C. 1770.

³ For original stipulation, see 33 F. T. C. 1731.

dizziness, fainting, nervous attacks, hysteria, pains throughout the body, bearing down or bleeding;

2. Will have a beneficial effect if used during the "change of life," or the menopause, or in the treatment of a general breakdown of internal functions; or

(c) That the preparation designated Holly Mountain Tea (or Holy Mountain Tea)—

1. Will have any effect in relieving or curing influenza, coughs, colds, inflammation, catarrh, bronchitis, asthma, consumption or any chest or lung disease or ailment;

2. Has been tested at or recommended by Institutions or Universities; or

(d) That Garlo Garlic Pills will have any effect in relieving symptoms of high blood pressure such as: dizziness, weakness, headache, nervousness or sleeplessness.

That the said Elizabeth Fontana further agreed not to publish, or cause to be published, any advertisement for the aforesaid preparation designated KarpatoI which fails to reveal that said preparation should not be used when abdominal pain, 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 caution or warning to the same effect.

The said Elizabeth Fontana further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 7, 1944.)

03229. Hair Dye—Nature and Qualities, Properties or Results.—Rose Eidinger, an individual trading as Germadol Herb Co., 1590 Jesup Ave., New York City, advertiser-vendor, was engaged in selling a hair dye designated Konceal and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That her preparation is a hair dressing;

(b) That her preparation is not a dye;

(c) That her preparation will restore the original color to the hair;

(d) That her preparation will dissolve dandruff;

(e) That her preparation will conceal the age or give a youthful appearance;

(f) That her preparation is "Double Strength"; or

(g) That her preparation is "The French Way" of hair coloring.

The said Rose Eidinger further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 13, 1944.)

03230. Vitamin Preparation—Qualities, Properties or Results.—Alfred Frieder, Oscar E. Frieder, Edward Frieder, Roland W. Frieder, and Arnold N. Frieder, copartners, trading as United Vitamin Products, 9 West Washington St., Chicago, Ill., advertiser-vendor, was engaged in selling a vitamin preparation designated Gra-No-Mor 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 "Gra-No-Mor" as the brand name of their product, or in any other manner or by any other means or device, that the said product will end gray hair;

(b) Through the use of the phrase "anti-gray-hair vitamin" as descriptive of their product, or in any other manner or by any other means or device, that the said product will prevent or end gray hair or restore the original natural color to the hair;

(c) That restoration of the natural color of a head of hair has been effected in 88% or any other definitely stated percentage of those to whom calcium pantothenate, the principal ingredient of their product, was administered in tests;

(d) That it has been established that 88% or any other definitely stated percentage of those administered calcium pantothenate, the principal ingredient of their product, have had the natural color of their hair restored;

(e) That their product improves the texture or color of or restores the natural luster to the hair;

(f) That their product gives more life to or increases the natural oiliness of the hair;

(g) That their product improves the complexion;

(h) That their product strengthens or increases the elasticity of the finger nails; or

(i) That their product enables one to maintain a youthful appearance.

The said Alfred Frieder, Oscar E. Frieder, Edward Frieder, Roland W. Frieder and Arnold N. Frieder, and each of them, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 26, 1944.)

03231. **Water Conditioning Apparatus—"Distilled."**—The Permutit Co., a corporation, 330 West 42d St., New York City, engaged in selling a water conditioning apparatus designated Permutit and Clarence D. Newell, Fred H. Walsh, Richard L. Strobridge, Clifford S. Walsh, William Reydel, John P. Cunningham, George S. Fowler, Frank H. Donshea, Thomas J. Maloney, copartners, doing business under the name of Newell-Emmett Co., 40 East 34th St., New York City, advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of The Permutit Co. agreed, in connection with the dissemination of future advertising, to cease and desist from using the word "distilled" to describe water treated by said apparatus or from otherwise representing directly or indirectly that such water is distilled.

The said The Permutit Company and Clarence D. Newell, Fred H. Walsh, Richard L. Strobridge, Clifford S. Walsh, William Reydel, John P. Cunningham, George S. Fowler, Frank H. Donshea and Thomas J. Maloney, and each of them, agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Aug. 18, 1944.)

03232. **Jewelry, Including Rings—Composition.**—Archie Simmons, an individual doing business under the trade name of Fifth Avenue Jewel Co., P. O. Box 545, Grand Central Station, New York, N. Y., vendor-advertiser, was engaged in selling jewelry, including rings and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That any ring containing no gold is of white gold effect; or

(b) That any ring containing no rhodium has a rhodium finish.

The said Archie Simmons agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 22, 1944.)

03233. **Cosmetic—Safety.**—The Nix Cosmetics Co., a corporation, Post Office Box 463, Memphis, Tenn., advertiser-vendor, was engaged in selling a cosmetic designated Nix Skin Bleach and agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating or causing to be disseminated any advertisement which fails to reveal that

said preparation should not be applied to an area of the skin larger than the face and neck at any one time, that too frequent applications and use over excessive periods of time should be avoided, that adequate rest periods between series of treatments should be observed, that the preparation should not be used where the skin is cut or broken, and that in all cases a proper patch test should be made to determine whether the patient is allergic or sensitive to the preparation, *Provided, however*, that such advertisement need contain only the statement, "CAUTION: Use Only as Directed" if and when the directions for use wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

The Nix Cosmetics Co. further agreed not to publish or cause to be published any testimonial which fails to comply with the foregoing agreement.

It is also stipulated and agreed that this stipulation is supplemental to a certain Stipulation No. 02772 executed by P. Edwards, an individual, operating under the trade name of The Nix Cosmetics Co. and accepted and approved by the Federal Trade Commission on April 8, 1941,¹ which stipulation remains in full force and effect. (Sept. 1, 1944.)

03234. **Cosmetic—Safety and Qualities, Properties or Results.**—E. T. Browne Drug Co., Inc., a corporation, 127 Water St., New York, N. Y., vendor-advertiser, engaged in selling a cosmetic designated Palmer's Skin Success Whitening Cream, and Cole and Co., a corporation, Sterick Building, Memphis, Tenn., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of E. T. Browne Drug Co., Inc. agreed, in connection with the dissemination of future advertising, to cease and desist from:

(a) Disseminating any advertisement which fails to reveal that said preparation should not be applied to an area of the skin larger than the face and neck at any one time, that too frequent applications and use over excessive periods of time should be avoided, that adequate rest periods between series of treatments should be observed, that the preparation should not be used where the skin is cut or broken, and that in all cases a proper patch test should be made to determine whether the patient is allergic or sensitive to the preparation; *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 warnings to the above effect; or from representing directly or by implication;

(b) By use of the word "Whitening" as a part of the brand name, or otherwise, that said product will permanently whiten the skin; or

(c) That said product will permanently lighten the skin.

E. T. Browne Drug Co., Inc. and Cole and Co., and each of them, further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Sept. 5, 1944.)

03235. **Medicinal Preparation—Safety.**—Dr. Peter Fahrney & Sons Co., a corporation, 2501-17 Washington Boulevard, Chicago, Ill., advertiser-vendor, was engaged in selling a medicinal preparation designated

¹ See 32 F. T. C. 1791.

Akpenkrauter, also designated Hoboko, Novoro, Zokoro, Lozogo, Kurkio and Gomozo and agreed, in connection with the dissemination of future advertising, to cease and desist from publishing or causing to be published any advertisement which fails to reveal that it should not be used when abdominal pain, nausea, vomiting or other symptoms of appendicitis are present: *Provided, however*, that the said advertisements need contain only the statement, "CAUTION: Use Only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or a warning to the same effect.

It is further agreed that Stipulation No. 02959, executed by the said Dr. Peter Fahrney & Sons Co. and accepted by the Commission March 11, 1942,¹ is to remain in full force and effect and that the terms and agreements therein are not to be considered modified or altered in any way by this supplemental stipulation. (Sept. 7, 1944.)

03236. Soap—Qualities, Properties or Results.—Manhattan Soap Co., Inc., a corporation, 441 Lexington Ave., New York City, advertiser-vendor, engaged in selling a soap designated Sweetheart Toilet Soap and Franklin Bruck Advertising Corp., a corporation, 1270 Sixth Avenue, New York City, advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of Manhattan Soap Co., Inc. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That Sweetheart Toilet Soap will not become gelatinous.

The said Manhattan Soap Co., Inc. and Franklin Bruck Advertising Corp., and each of them, further agreed not to publish, disseminate or cause to be published or disseminated any testimonial containing any representation contrary to the foregoing agreement.

It is further agreed by Manhattan Soap Co., Inc. that Stipulation No. 02516, heretofore approved and accepted by the Commission on February 26, 1940,² is to remain in full force and effect and that the terms and agreements therein are not to be considered modified or altered in any way by this supplemental stipulation. (Sept. 27, 1944.)

03237. Medicinal Preparations—Qualities, Properties or Results and Safety.—P. D. G. Products, Inc., a corporation, Box No. 1896, High Point, N. Car., advertiser-vendor, was engaged in selling medicinal preparations designated Dr. Foster's L-K and Kolron and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Dr. Foster's L-K will have a beneficial effect in the treatment of indigestion, stomach disorders, loss of weight or strength, under-nourishment, run-down condition, acid condition, muscular aches or pains, insomnia, nervousness, symptoms of toxic poisoning, kidney disorders, high blood pressure, or symptoms of an insufficient flow of gastric juices;

(b) That Dr. Foster's L-K has a beneficial effect in the treatment of loss of appetite, headaches or gas cramps except to temporarily relieve such conditions when caused solely by constipation;

(c) That Dr. Foster's L-K will cure constipation or that it possesses therapeutic properties in excess of those of an irritant cathartic;

¹ See 34 F. T. C. 1752.

² See 30 F. T. C. 1574.

(d) That Kolron will cure a cold or cough or influence the course or duration of a cold; or

(e) That Kolron has a beneficial effect in the treatment of bronchial irritations, fever, sneezing, stuffiness or congestion.

The said P. D. G. Products, Inc. further agreed not to publish, or cause to be published, any advertisement for the aforesaid preparations which fails to reveal that said preparations 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 the labeling, or in both label and labeling, contain a caution or warning to the same effect.

The said P. D. G. Products, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 1, 1944.)

03238. **Drug Preparation—Safety.**—E. R. Davis, an individual trading under the name of E. R. Davis Prescription Co., Blaine, Wash., vendor-advertiser, was engaged in selling a drug product called "Davis' Formula No. 7895" and agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating any advertisement which fails to reveal that the said preparation is potentially harmful and should not be used in cases of tuberculosis or goitre; *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 E. R. Davis further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 6, 1944.)

03239. **Radio Receiving Sets—Capacity.**—David L. Herson, an individual, trading as Manhattan Auto & Radio Co., 1706 Seventh St., N. W., Washington 1, D. C., vendor-advertiser, was engaged in selling various radio receiving sets of various makes and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That any radio receiving set contains a designated number of tubes or is of a designated tube capacity, when one or more of the tubes referred to are tubes or other devices which do not perform the recognized and customary functions of radio receiving set tubes in the detection, amplification, and reception of radio signals.

The said David L. Herson agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 6, 1944.)

03240. **Plant Food—Qualities, Properties or Results and Foundation.**—C. H. Hood & Co., Inc., a corporation trading as Gro-Plant Foundation, 683 Broadway, New York, N. Y., vendor-advertiser, was engaged in selling a plant food designated "Gro-Plant" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Gro-Plant is a complete plant food, that it contains all the nourishment of rich soil; or

(b) That results are assured through the use of Gro-Plant.

The said C. H. Hood & Co., Inc., further stipulated and agreed to cease and desist from representing through the use of the word "Foundation" in its trade name or otherwise, that its organization is in whole or in part supported by disinterested or eleemosynary funds.

The said C. H. Hood & Co., Inc., also agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 8, 1944.)

03241. Medicinal Preparations—Qualities, Properties or Results, Laboratories and Safety.—Frank J. Nightingale, an individual doing business under the trade name Philadelphia Organic Laboratories, Post Office Box 46, San Diego, Calif., vendor-advertiser, was engaged in selling three medicinal preparations, collectively referred to as "Maro-Glan," and individually designated "Maro-Glan No. 1," "Maro-Glan No. 2," and "Maro-Glan No. 3" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That any of said preparations is effective in purifying the blood stream, building the blood count, supplying nerve food, feeding the glands or liver, aiding the digestion or assimilation of food, or in stimulating the production of bile;

(b) That any of said preparations has any effect on the secretions, enzymes, glands or tissues;

(c) That any of said preparations is effective in the treatment of arthritis or rheumatism, stomach, intestinal or liver disorders, hemorrhoids or high blood pressure; or

(d) That the preparations Maro-Glan No. 2 and Maro-Glan No. 3 will cure constipation or be effective for constipation beyond providing temporary relief.

The said Frank J. Nightingale also agreed to cease and desist from representing through the use of the word "Laboratories" in his trade name, or otherwise, that he owns, operates or controls a laboratory equipped for the compounding of medicinal preparations and for research in connection therewith.

The said Frank J. Nightingale further agreed that in the dissemination of advertising, by the means and in the manner above set out, he will forthwith cease and desist from disseminating any advertisement which fails to reveal that the preparations "Maro-Glan No. 2" and "Maro-Glan No. 3" 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 the labeling, or in both label and labeling, contain a caution or warning to the same effect.

The said Frank J. Nightingale further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 16, 1944.)

03242. Radio Receiving Sets—Capacity.—The Rudolph Wurlitzer Co., a corporation, 121 East Fourth St., Cincinnati, Ohio, vendor-advertiser, was engaged in selling radio receiving sets of various makes and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That any radio receiving set contains a designated number of tubes or is of a designated tube capacity, when one or more of the tubes referred to are tubes or other devices which do not perform the recognized and customary functions of radio receiving set tubes in the detection, amplification, and reception of radio signals.

The Rudolph Wurlitzer Co. further agreed to cease and desist from representing as new any radio receiving set or other article or merchandise, offered for sale and distributed in commerce, which has been used, reconditioned or rebuilt, and from failing clearly to reveal that such radio receiving set or other article of merchandise has been used, reconditioned or rebuilt.

The said The Rudolph Wurlitzer Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 21, 1944.)

DECISIONS OF THE COURTS¹

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION

CHARLES OF THE RITZ DIST. CORP. v. FEDERAL TRADE COMMISSION²

No. 133—F. T. C. Dock. 3923

(Circuit Court of Appeals, Second Circuit. July 6, 1944)

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—ADVERTISING FALSELY OR MISLEADINGLY—LABEL DEPICTIONS—FOOD, DRUG AND COSMETIC ACT—WHETHER COMMISSION DEPRIVED OF JURISDICTION OVER, BY.

Although the Federal Security Administrator had control of the labeling of cosmetics, the Federal Trade Commission, upon the finding that a manufacturer of cosmetics had falsely represented its products as capable of restoring the youthful appearance of the skin, had jurisdiction to prevent depiction of a label containing the prohibited word "Rejuvenescence." Federal Trade Commission Act, 15 U.S.C.A. sec. 41 et seq.; Federal Food, Drug, and Cosmetic Act sec. 1 et seq., 21 U.S.C.A. sec. 301 et seq.

EVIDENCE—QUALITIES OR PROPERTIES OF PRODUCT—EXPERT TESTIMONY—IF FAMILIARITY WITH PARTICULAR PRODUCT LACKING—THERAPEUTIC VALUE OF ALLEGED REJUVENATING CREAM.

In proceeding before Federal Trade Commission to prevent manufacturer's false advertising of a product as having qualities of restoring the youthful appearance of skin, witnesses qualified as experts by their general medical and pharmacological knowledge were competent to testify as to the lack of therapeutic value of the cream despite their lack of familiarity with manufacturer's product. Federal Trade Commission Act, 15 U.S.C.A. sec. 41 et seq.

EVIDENCE—QUALITIES OR PROPERTIES OF PRODUCT—REFUSAL OF SELLER TO DISCLOSE FORMULA—EFFECT WHERE FALSE ADVERTISING ALLEGED.

Manufacturer charged with falsely advertising the rejuvenating qualities of a skin cream was not privileged to stand upon its refusal to disclose the true formula of its preparation as a trade secret and its failure to introduce such evidence was strong confirmation of commission's charges.

¹ Citations of Commission court decisions, included for convenience beginning with this volume, such as 1 S. & D. —, 2 S. & D. —, or 3 S. & D. —, refer respectively to the volume and page of the three volumes of Commission publications entitled "Statutes and Decisions — Federal Trade Commission, 1914-1929," "Statutes," etc., "1930-1938," and "Statutes," etc., "1939-1943," in which are published Commission court decisions for said periods.

² Reported in 143 F. (2d) 676. For case before Commission, see 34 F. T. C. 1203.

EVIDENCE—QUALITIES OR PROPERTIES OF PRODUCT—EXPERT TESTIMONY—IF FAMILIARITY WITH PARTICULAR PRODUCT LACKING—WHERE TESTIMONY UNCONTRADICTED—THERAPEUTIC VALUE OF CREAM ADVERTISED AS REJUVENATING.

Uncontradicted testimony of experts, having general medical and pharmacological knowledge in the field, that there was nothing known to medical science which could restore the youthful appearance of the skin, was substantial evidence necessary to support Federal Trade Commission order that manufacturer falsely advertised cream as having such rejuvenating qualities, despite expert's lack of familiarity with the product.

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—QUALITIES OR PROPERTIES OF PRODUCT—TRADE-MARK USE—IF DECEPTIVE.

Where Federal Trade Commission's finding, that a skin cream advertised as having ingredients which would restore the youthful appearance of the skin did not have such qualities, was supported by substantial evidence, commission was authorized to find that the use of the trade-mark "Rejuvenescence" was deceptive and misleading, since the word is treated as a common word with the plain meaning of a renewing of youth.

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—TRADE-MARK USE—IF MARK REGISTERED.

That the word "Rejuvenescence" as applied to skin cream had been registered as a trade-mark did not prevent its use from falling within the prohibition of the Federal Trade Commission when applied to face cream which contained no such rejuvenating quality.

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—ADVERTISING FALSELY OR MISLEADINGLY—CRITERIA OF DECEPTION—IF "STRAIGHT THINKING" PERSON NOT MISLED.

That no straight thinking person would believe that a skin cream would actually rejuvenate the skin as advertised would not eliminate element of deception in the advertising, since the act prohibiting false advertising was not made for the protection of experts but for the general public which includes the ignorant, the unthinking, and the credulous.

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—ADVERTISING FALSELY OR MISLEADINGLY—CRITERIA OF DECEPTION—NET IMPRESSION ON GENERAL PUBLIC

The important criterion in determining whether a product is falsely advertised is the net impression which the advertisement is likely to make upon the general public.

EVIDENCE—QUALITIES OR PROPERTIES OF PRODUCT—ADVERTISING FALSELY OR MISLEADINGLY—IF CONSUMERS' TESTIMONY AS TO DECEPTION, NOT PRODUCED.

In proceeding before Federal Trade Commission to prevent false advertising of a skin cream, that the commission did not produce consumers to testify as to being deceived by advertising the cream as having qualities which would restore the youthful appearance of the skin did not make a cease and desist order improper, since actual deception of the public was not required to be shown.

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—CAPACITY TO DECEIVE, AS CRITERION.

Representations merely having a capacity to deceive are unlawful as constituting false advertising.

EVIDENCE—QUALITIES OR PROPERTIES OF PRODUCT—WORDS USED—BUYER UNDERSTANDING—REJUVENATING QUALITIES OF SKIN CREAM—DERMATOLOGIST'S TESTIMONY.

In proceeding before Federal Trade Commission to prevent false advertising of a skin cream as having rejuvenating qualities, the testimony of a dermatologist whose occupation took him among the buyers of the cream was a qualified source of information as to buyers' understanding of the words used.

CEASE AND DESIST ORDERS—EXTENT—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—REJUVENATING QUALITIES OF SKIN CREAM—PROHIBITIONS—WHETHER INCLUSION WORD "REJUVENESCENCE" INAPPROPRIATE.

Where Trade Commission's finding, that manufacturer of skin cream had falsely advertised the cream as having qualities which would restore the youthful appearance of the skin, was supported by substantial evidence, that part of the cease and desist order which prohibited the use of the word "Rejuvenescence" would not be deleted as inappropriate to the order.

(The syllabus, with substituted captions, is taken from 143 F. (2d) 676)

On petition to review and set aside order of Commission, order affirmed. *Mr. Asher Blum*, of New York City (*Mock & Blum*, of New York City, on the brief) for petitioner.

Mr. Joseph J. Smith, Jr., Asst. Chief Counsel, Federal Trade Commission, of Washington, D. C. (*Mr. W. T. Kelley*, Chief Counsel, and *Mr. Jno. W. Carter, Jr.*, Sp. Atty., Federal Trade Commission, both of Washington, D.C., on the brief), for respondent.

Before L. HAND, SWAN, and CLARK, *Circuit Judges*.

CLARK, *Circuit Judge*:

This is a petition to review and set aside a cease and desist order issued by the Federal Trade Commission, pursuant to a complaint charging petitioner with having violated the Federal Trade Commission Act, 15 U. S. C. A. § 41, *et seq.*, by falsely advertising its cosmetic preparation "Charles of the Ritz Rejuvenescence Cream." Petitioner is a New York corporation engaged in the sale and distribution in interstate commerce of various cosmetics, one of which is the cream in issue. This is a preparation of the type commonly known to the trade as a powder base or foundation cream for make-up. During the years from 1934 until December, 1939, when sales were "temporarily discontinued" because of the issuance of the present complaint, petitioner's Rejuvenescence Cream [678] enjoyed a vast popularity, with total sales amounting to approximately \$1,000,000. The extensive advertising campaign which accompanied this business placed emphasis upon the rejuvenating proclivities of the product. The advertisements typically referred to "a vital organic ingredient" and certain "essences and compounds" which Rejuvenescence Cream allegedly contained, and stated that the preparation brings to the user's "skin quickly the clear radiance * * * the petal-like quality and texture of youth," that it "restores natural moisture necessary for a live, healthy skin," with the result that "Your face need know no drought years," and that it gives to the skin "a bloom which is wonderfully rejuvenating," and is "constantly active in keeping your skin clear, radiant, and young looking." (Emphasis as in the original.)

After a hearing, the Commission found that such advertising falsely represented that Rejuvenescence Cream will rejuvenate and restore youth or the appearance of youth to the skin, regardless of the condition of the skin or the age of the user, since external applications of cosmetics cannot overcome skin conditions which result from systematic causes or from physiological changes occurring with the passage of time and since there is no treatment known to medical science by which changes in the condition of the skin of an individual can be prevented or by which an aged skin can be rejuvenated or restored to a youthful condition. It, therefore, ordered petitioner to cease and desist disseminating in commerce any advertisement of Charles of the Ritz Rejuvenescence Cream "(a) In which the word 'Rejuvenescence,' or any other word or term of similar import or meaning, is used to designate, describe, or refer to respondent's [petitioner's] said cosmetic preparation; or (b) which represents, directly or by inference, that respondent's said cosmetic preparation will rejuvenate the skin of the user thereof or restore youth or the appearance of youth to the skin of the user."

The initial question raised on this appeal concerns the jurisdiction of the Commission in effect to prohibit any advertising which displays a picture of the jar and label of petitioner's product, for the natural consequence of clause (a) of the order is to prevent depiction of the label containing the prohibited word. Petitioner argues that the Federal Food, Drug and Cosmetic Act, 21 U. S. C. A. § 301, *et seq.*, vests exclusive control of the labelling of cosmetics in the Federal Security Administrator, and that the failure of the Commission to object in its complaint and order to labelling, as well as advertising, bears testimony to that fact. The Commission freely admits, however, that its omission to make a separate charge was inadvertent, but easily susceptible of correction by further proceedings, if and as necessary. In any event, we have repeatedly reaffirmed the jurisdiction of the Commission over labelling of this nature. *Houbigant, Inc. v. Federal Trade Commission*, 2 Cir., 139 F. (2d) 1019 [38 F. T. C. 832]; *Fresh Grown Preserve Corp. v. Federal Trade Commission*, 2 Cir., 125 F. (2d) 917 [34 F. T. C. 1827; 3 S. & D. 460]; *Justin Haynes & Co. v. Federal Trade Commission*, 2 Cir., 105 F. (2d) 988 [29 F. T. C. 1578; 3 S. & D. 134], certiorari denied 308 U. S. 616; see, also, *Etablissements Rigaud v. Federal Trade Commission*, 2 Cir., 125 F. (2d) 590 [34 F. T. C. 1811; 3 S. & D. 446]; *Parfums Corday v. Federal Trade Commission*, 2 Cir., 120 F. (2d) 808 [33 F. T. C. 1797; 3 S. & D. 392]; *Fioret Sales Co. v. Federal Trade Commission*, 2 Cir., 100 F. (2d) 358 [27 F. T. C. 1702; 2 S. & D. 481]. Petitioner says that, since the order is directed against its advertising, rather than its label, it is left in the anomalous position of being free to market its product labelled "Rejuvenescence" as long as no advertising accompanies the sales. As a matter of fact, however, it will need to re-advertise its cream if it recommences its sales; and it will hardly be practical for it to attempt a misrepresentation (as here found by the Commission) through merely deceptive labelling, especially when the order can be so easily broadened upon issuance of a supplementary complaint.

On the merits, petitioner first attacks the finding of fact that its preparation does not act as a rejuvenating agent and preserve or restore the youthful appearance of the skin. Two medical experts, one a leading dermatologist, testified for the Commission; and both affirmatively stated that there was nothing known to medical science which could bring about such results. There was no testimony to the contrary; but petitioner as-

serts that, since neither expert had ever used Rejuvenescence Cream or knew what it contained—petitioner being unwilling to reveal its secret formula—their testimony was not the substantial evidence necessary to support the final findings and order below. Despite their lack of familiarity with petitioner's product, however, the general [679] medical and pharmacological knowledge of the doctors qualified them to testify as to the lack of therapeutic value of the cream. *Justin Haynes & Co. v. Federal Trade Commission*, *supra*, 105 F. (2d) at page 989 [29 F. T. C. 1578; 3 S. & D. 134]; *John J. Fulton Co. v. Federal Trade Commission*, 9 Cir., 130 F. (2d) 85, 86 [35 F. T. C. 946; 3 S. & D. 499], certiorari denied 317 U. S. 679; *Neff v. Federal Trade Commission*, 4 Cir., 117 F. (2d) 495, 496–497 [32 F. T. C. 1842; 3 S. & D. 332]; *Goodwin v. United States*, 6 Cir., 2 F. (2d) 200, 201; *Dr. W. B. Caldwell, Inc. v. Federal Trade Commission*, 7 Cir., 111 F. (2d) 889, 891 [30 F. T. C. 1670; 3 S. & D. 218]. Further, petitioner was not privileged, under the circumstances, to stand upon its refusal to disclose the true formula of its preparation as a trade secret, *Coco-Cola Co. v. Joseph C. Wirthman Drug Co.*, 8 Cir., 48 F. (2d) 743, 747; 8 Wigmore on Evidence, 3d Ed. 1940, § 2212; and its failure to introduce evidence thus within its immediate knowledge and control, if existing anywhere, of the rejuvenating constituents and therapeutic effect of its preparation is strong confirmation of the Commission's charges. *Mammoth Oil Co. v. United States*, 275 U. S. 13, 51; *Local 167 v. United States*, 291 U. S. 293, 298; *United States v. Denver & R. G. R. Co.*, 191 U. S. 84, 92; *Kirby v. Tallmadge*, 160 U. S. 379, 383; *Interstate Circuit v. United States*, 306 U. S. 208, 225–226; *cf. United States ex rel. Vajtauer v. Commissioner of Immigration*, 273 U. S. 103, 112.

Next, and as the crux of its appeal, petitioner attacks the propriety of the finding that by use of the trade-mark "Rejuvenescence" it has represented that its preparation will rejuvenate and restore the appearance of youth to the skin. In view of the finding which we have just held supported on the evidence, that in fact there are no rejuvenating qualities in petitioner's cream, the question is then simply whether or not the trade-mark is deceptive and misleading within the meaning of the Federal Trade Commission Act. But the dictionaries treat "rejuvenescence" as a common word with a plain meaning of "a renewing of youth" or the perhaps more usual "rejuvenation"; *cf. Webster's New International Dictionary*, 2d Ed., Unabridged, 1939. Nor does the record show any other special meaning to have developed in the trade. On the contrary, the Commission's expert and practicing dermatologist testified directly that rejuvenescence still meant not only to him, but also, as far as he knew, to his female patients, the restoration of youth. In the light of this plain meaning, petitioner's contention can hardly be sustained that "rejuvenescence" is a nondeceptive "boastful and fanciful word," utilized solely for its attractiveness as a trade-mark. That the Patent Office has registered "Rejuvenescence" as a trade-mark is not controlling. Even conceding its non-descriptive quality and hence its validity as a trade-mark—a concession sufficiently doubtful in itself to be made only *arguendo*—the fact of registration does not prevent its use from falling within the prohibition of the Federal Trade Commission Act. *N. Fluegelman & Co. v. Federal Trade Commission*, 2 Cir., 37 F. (2d) 59, 61 [13 F. T. C. 602; 2 S. & D. 62]; *Federal Trade Commission v. Real Products Corp.*, 2 Cir., 90 F. (2d) 617, 619 [25 F. T. C. 1685; 2 S. & D. 404]; *Marietta Mfg. Co. v. Federal Trade Commission*, 7 Cir., 50 F. (2d) 641, 642 [15 F. T. C. 613; 2 S. & D. 129]; *Federal*

Trade Commission v. Kay, 7 Cir., 35 F. (2d) 160, 162 [13 F. T. C. 575; 1 S. & D. 1162], certiorari denied *Kay v. Federal Trade Commission*, 281 U. S. 764; cf. *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483, 494 [4 F. T. C. 610; 1 S. & D. 198].

There is no merit to petitioner's argument that, since no straight-thinking person could believe that its cream would actually rejuvenate, there could be no deception. Such a view results from a grave misconception of the purposes of the Federal Trade Commission Act. That law was not "made for the protection of experts, but for the public—that vast multitude which includes the ignorant, the unthinking and the credulous," *Florence Mfg. Co. v. J. C. Dowd & Co.*, 2 Cir., 178 Fed. 73, 75; and the "fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced." *Federal Trade Commission v. Standard Education Soc.*, 302 U. S. 112, 116 [25 F. T. C. 1715; 2 S. & D. 429]. See, also, *Stanley Laboratories, Inc. v. Federal Trade Commission*, 9 Cir., 138 F. (2d) 388, 392-393 [37 F. T. C. 801; 3 S. & D. 596]; *Aronberg v. Federal Trade Commission*, 7 Cir., 132 F. (2d) 165, 167 [35 F. T. C. 979; 3 S. & D. 528]; *D. D. D. Corp. v. Federal Trade Commission*, 7 Cir., 125 F. (2d) 679, 682 [34 F. T. C. 1821; 3 S. & D. 455]. The important criterion is the net impression which the advertisement is likely to make upon the general populace. *Stanley [680] Laboratories, Inc. v. Federal Trade Commission, supra*; *Aronberg v. Federal Trade Commission, supra*; *Federal Trade Commission v. Standard Education Soc., supra*; *Ford Motor Co. v. Federal Trade Commission*, 6 Cir., 120 F. (2d) 175, 182 [33 F. T. C. 1781; 3 S. & D. 378], certiorari denied 314 U. S. 668; *Newton Tea & Spice Co. v. United States*, 6 Cir., 288 Fed. 475, 479. And, while the wise and the worldly may well realize the falsity of any representations that the present product can roll back the years, there remains "that vast multitude" of others who, like Ponce de Leon, still seek a perpetual fountain of youth. As the Commission's expert further testified, the average woman, conditioned by talk in magazines and over the radio of "vitamins, hormones, and God knows what," might take "rejuvenescence" to mean that this "is one of the modern miracles" and is "something which would actually cause her youth to be restored." It is for this reason that the Commission may "insist upon the most literal truthfulness" in advertisements, *Moretrench Corp. v. Federal Trade Commission*, 2 Cir., 127 F. (2d) 792, 795 [34 F. T. C. 1849; 3 S. & D. 480], and should have the discretion, undisturbed by the courts, to insist if it chooses "upon a form of advertising clear enough so that, in the words of the prophet Isaiah, 'wayfaring men, though fools, shall not err therein.'" *General Motors Corp. v. Federal Trade Commission*, 2 Cir., 114 F. (2d) 33, 36 [31 F. T. C. 1852; 3 S. & D. 282], certiorari denied 312 U. S. 682.

That the Commission did not produce consumers to testify to their deception does not make the order improper, since actual deception of the public need not be shown in Federal Trade Commission proceedings. *Federal Trade Commission v. Winsted Hosiery Co., supra*, 258 U. S. at page 494 [4 F. T. C. 610; 1 S. & D. 198]; *Federal Trade Commission v. Raladam Co.*, 316 U. S. 149, 152 [34 F. T. C. 1843; 3 S. & D. 474]; *Herzfeld v. Federal Trade Commission*, 2 Cir., 140 F. (2d) 207, 208 [38 F. T. C. 833]; *Federal Trade Commission v. Balme*, 2 Cir., 23 F. (2d) 615 [11 F. T. C. 717; 1 S. & D. 666]; certiorari denied *Balme v. Federal Trade Commission*, 277 U. S. 598; *Brown Fence & Wire Co. v. Federal Trade Commission*, 6

Cir., 64 F. (2d) 934, 936 [17 F. T. C. 680; 2 S. & D. 230]; *Pep Boys—Manny, Moe & Jack, Inc. v. Federal Trade Commission*, 3 Cir., 122 F. (2d) 158, 161 [33 F. T. C. 1807; 3 S. & D. 401]; *Bockenstette v. Federal Trade Commission*, 10 Cir., 134 F. (2d) 369 [36 F. T. C. 1106; 3 S. & D. 539]; *Federal Trade Commission v. Hires Turner Glass Co.*, 3 Cir., 81 F. (2d) 362, 364 [21 F. T. C. 1207; 2 S. & D. 315]. Representations merely having a "capacity to deceive" are unlawful, *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, 81 [18 F. T. C. 669; 2 S. & D. 247]. *Herzfeld v. Federal Trade Commission*, *supra*; *General Motors Corp. v. Federal Trade Commission*, *supra*; and, as we have seen, the facts here more than warrant a conclusion of such capacity. Likewise it is not material that there was no consumer testimony as to the meaning of petitioner's representations. The testimony of the dermatologist, a person whose occupation took him among the buyers of Rejuvenescence Cream, is a qualified source of information "as to the buyers' understanding of the words they hear and use." *Benton Announcements v. Federal Trade Commission*, 2 Cir., 130 F. (2d) 254, 255 [35 F. T. C. 941; 3 S. & D. 495]; *Stanley Laboratories, Inc. v. Federal Trade Commission*, *supra*, 138 F. (2d) at page 390 [37 F. T. C. 801; 3 S. & D. 596].

Petitioner contends finally that, even if the Commission's findings of fact be upheld, that part of the order is inappropriate which bars use of the word "rejuvenescence." To delete this part of the order, however, would be not merely to create a patent ambiguity as to the meaning and effect of the broad prohibition of the remaining part of the order, but also to a large extent to frustrate the purposes of the whole proceeding to insure truth telling in the cosmetic trade. Certainly courts should be reluctant to emasculate a remedial order by striking out its more dynamic and practically effective parts while they affirm the Commission's proceedings as a whole. In any event, as we recently pointed out in *Herzfeld v. Federal Trade Commission*, *supra*, 140 F. (2d) at page 209 [38 F. T. C. 833], the Supreme Court in recent cases "has as much circumscribed our powers to review the decisions of administrative tribunals in point of remedy, as they have always been circumscribed in the review of facts"; and the present order seems peculiarly one wherein the special competence of the Commission in deciding "how far the chance of deception outweighs the inconvenience, or worse, to the merchant inevitable in compelling him to change his mark, his name, or his package" makes it "for all practical purposes supreme."

The order is affirmed and an enforcement decree will be entered.

CORN PRODUCTS REFINING CO. v. FEDERAL TRADE
COMMISSION ¹

No. 8116—F. T. C. Dock. 3633

(Circuit Court of Appeals, Seventh Circuit. July 6, 1944)

**METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2(a)
—DELIVERED PRICES—FICTITIOUS OR “PHANTOM” FREIGHT—WHERE PREDICATED
ON INCLUSION OF, OR BASING POINT SYSTEM—AS INVOLVING DIFFERENCE IN
CHARGES NOT BASED ON ACTUAL DIFFERENCES IN SERVICE OR DELIVERY, AND IN
VIOLATION OF STATUTE.**

Manufacturer of glucose having factories in Chicago and Kansas City and fixing selling prices by adding to effective Chicago price the freight rate from Chicago to destination, regardless of whether merchandise was forwarded from Kansas City or Chicago, violated the Clayton Act as amended, prohibiting discrimination in price, since the statute forbids any difference in charges to different competitive customers not based upon actual differences in service or delivery. Clayton Act sec. 2(a), as amended by Robinson-Patman Price Discrimination Act sec. 1, 15 U.S.C.A. sec. 13(a).

**METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2(a)
—VIOLATION OF—PROOF—ACTUAL INJURY—WHETHER REQUISITE.**

The Clayton Act as amended, prohibiting persons engaged in commerce from discriminating in price, does not require [212] proof of actual injury, but it is unlawful to discriminate in price between different purchasers where effect may be substantially to lessen competition, or to injure, destroy or prevent competition with any person who either grants or knowingly receives benefit of discrimination.

**STATUTES AND STATUTORY CONSTRUCTION—CRITERIA—WISDOM OF LEGISLATION—
JUDICIAL LIMITATIONS.**

Courts are not concerned with determination of wisdom of legislative policies, the only functions of judiciary being to so interpret statute as to promote and effectuate disclosed intent of Congress, to determine whether factual situation is within contemplation of act and whether legislation or acts of administrative bodies charged with enforcing it infringe upon constitution.

**METHODS, ACTS AND PRACTICES—DISCRIMINATION IN PRICE—CLAYTON ACT, SEC. 2(a)
—SPECIFIC PATTERNS—DESIRABILITY OF.**

The court must give effect to words of Clayton Act as amended as written, and to determine, not whether any suggested formal pattern is beneficial and desirable, but whether the specific practice of petitioners seeking review of order of Federal Trade Commission to cease and desist from discriminating in prices was within prohibition of act.

**METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2(a)
—SPECIFIC PATTERNS—IF FACTS WITHIN CERTAIN FORMULAE.**

The Clayton Act as amended, prohibiting discrimination in price by any per-

¹ Reported in 144 F. (2d) 212. For case before Commission, see 34 F. T. C. 850.

son engaged in commerce, does not grant exemption from discrimination merely because the facts fall within certain formulae; the real question being whether the discriminations inherently have the condemned probable effect upon competition.

**METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2(a)
—BOOKING PRACTICE ON PRICE ADVANCES—WHERE ORDERS FOR FUTURE DELIVERY
AT OLD PRICE, ACCEPTED FROM FAVORED CUSTOMERS.**

Evidence that, upon promulgation of price advances, petitioners, for five to ten days, accepted orders from favored customers for future delivery at previously prevailing lower price, justified Federal Trade Commission's finding that the favored customers received an illegal discriminatory advantage in violation of the Clayton Act as amended, prohibiting discrimination in price.

**METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2(a)
—BOOKING PRACTICE ON PRICE ADVANCES—WHERE ORDERS FOR FUTURE DELIVERY
AT OLD PRICE, ACCEPTED FROM FAVORED CUSTOMERS—WHETHER JUSTIFIED BY
COMPETITION—IF TESTIMONY MERELY STATEMENT OF CONCLUSIONS OF WITNESSES.**

Prima facie case of discriminatory booking practice where sellers accepted orders for future delivery from favored customers at previously prevailing lower prices for five to ten days after prices were increased was not rebutted by testimony merely stating conclusions of witnesses that prima facie case of discrimination was justified by competition.

**METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2(a)
—QUANTITY DISCOUNTS—IF EXTENDED TO CERTAIN CUSTOMERS IN TERRITORY
WITHOUT ORDER TO OTHERS THEREIN.**

Stipulation that petitioners sold for resale to certain customers in territory gluten feed and meal under contracts giving buyers discounts of 50 cents or more a ton from regular market prices, depending upon quantity bought, without giving similar discounts to other buyers in same territory, warranted Federal Trade Commission's finding that discriminations were illegal as reasonably probable to produce prohibited injurious effect upon competition.

**METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2(e)
—SPECIAL FACILITIES OR SERVICES—WHERE ACCORDED TO ONE AND NOT OTHERS
—CONGRESSIONAL INTENT.**

Congress, when it forbade extension of special facilities to one purchaser not accorded to others by the Clayton Act as amended, intended to forbid special favors to one purchaser over competitors in all cases where goods are sold and resold without processing or are included in a processed product. Clayton Act sec. 2(e), as amended by Robinson-Patman Price Discrimination Act, sec. 1, 15 U.S.C.A. sec. 13(e).

**METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2(e)
—SPECIAL FACILITIES OR SERVICES—WHERE ACCORDED TO ONE AND NOT OTHERS—
IF DISCRIMINATION THEREBY IN FAVOR OF ONE PURCHASER AGAINST ANOTHER OF
COMMODITY BOUGHT FOR RESALE "WITH OR WITHOUT PROCESSING."**

Under the Clayton Act as amended, making it unlawful for any person to discriminate in favor of one purchaser against [213] another purchaser of a commodity bought for resale "with or without processing," the quoted words are employed as an all-comprehensive term.

**METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2(e)
—SPECIAL SERVICES OR FACILITIES—WHERE ACCORDED TO ONE AND NOT OTHERS—**

IF DISCRIMINATION THEREBY IN FAVOR OF ONE PURCHASER AGAINST ANOTHER OF COMMODITY BOUGHT FOR RESALE "WITH OR WITHOUT PROCESSING"—ADVERTISING EXPENDITURES BY MANUFACTURER IN FAVOR OF SELECTED CUSTOMER'S PRODUCT INCLUDING AS INGREDIENT PRODUCT OF MANUFACTURER.

Evidence showing that manufacturer of dextrose spent \$750,000 in three years in advertising candies of certain purchaser of dextrose emphasizing dextrose content of such candies, without furnishing similar services to competing candy manufacturers buying dextrose from manufacturer, warranted Federal Trade Commission's finding that manufacturer unlawfully discriminated in violation of the Clayton Act as amended.

**METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2(e)
—SPECIAL FACILITIES OR SERVICES—WHEN ACCORDED TO ONE AND NOT OTHERS—
VIOLATION—PROOF—WHETHER SUBSTANTIAL BENEFIT TO ONE, OR INJURY TO ANOTHER REQUISITE.**

Under Clayton Act as amended, prohibiting discrimination in favor of purchasers for resale in the furnishing of services or facilities, to establish a violation of the act, there need not be proof of actual substantial benefit to one, or of substantial injury to another of two or more competitors, or even probability of adverse effect upon competition, but there need only be proof of special services rendered one purchaser not rendered to similar competing purchaser.

**METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2(e)
—SPECIAL SERVICES OR FACILITIES—WHERE ACCORDED TO ONE AND NOT OTHERS—
WHETHER SALES OF PRODUCT TO FAVORED CUSTOMER IN INTERSTATE COMMERCE.**

Evidence that petitioners sold dextrose to purchasers located throughout United States and shipped it in interstate commerce to such purchasers, that there was competition in commerce between favored purchaser and other purchasers, favored purchaser's business and that of petitioners were of interstate character, and that transactions in question were part of interstate commerce and directly affected such commerce, sufficiently showed that petitioner sold dextrose in commerce to favored purchaser for whose benefit petitioners furnished advertising not furnished to competing purchasers of dextrose.

**CEASE AND DESIST ORDERS—ENFORCEMENT—ABANDONMENT OF PRACTICE—DEALING ON EXCLUSIVE AND TYING BASIS—IN VIOLATION OF SEC. 3 OF CLAYTON ACT—
WHERE PRODUCT SOLD TO CUSTOMERS BELOW THEIR COST UNDER EXCLUDING ARRANGEMENT.**

Where petitioners furnished pearl starch to purchasers at prices below cost at which purchasers could have manufactured it under agreement whereby purchasers agreed not to use any starch or starch products manufactured by competitors of petitioners, mere discontinuance would not justify court in refusing to enforce Federal Trade Commission's order directing petitioners to cease and desist from such practice. Clayton Act sec. 3, 15 U.S.C.A. sec. 14.

**METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2(a)
—QUANTITY DISCOUNTS—CONTAINER SIZES—IF NO RESULTING DISCRIMINATION AMONG COMPETING PURCHASERS OTHER THAN DIFFERENCES NORMALLY ARISING FROM DIFFERENT SIZE QUANTITY BUYING.**

That petitioners shipped their products to consumers in different sized contain-

ers and based prices upon sizes of containers furnished no basis for inference by Federal Trade Commission of violation of law, where there was nothing to show that such practice resulted in any discrimination among competing purchaser other than to create such differences as normally arise in buying different size quantities. Clayton Act as amended by Robinson-Patman Price Discrimination Act sec. 1, 15 U.S.C.A. sec. 13(a).

(The syllabus, with substituted captions, is taken from 144 F. (2d) 211)

On petition for review of order of Commission, judgment in accordance with opinion.

Mr. Wm. S. Jameson, of Chicago, Ill., and *Mr. Frank H. Hall*, *Mr. Sidney S. Coggan*, and *Mr. Parker McColleston*, all of New York City (Lord, Day & Lord, of New York City, of counsel), for petitioner.

Mr. Joseph J. Smith, Jr., *Mr. Walter B. Wooden*, Asst. Chief Counsel, and *Mr. W. T. Kelley*, Chief Counsel, Federal Trade Commission, all of Washington, D. C., for respondent.

Before MAJOR, and KERNER, *Circuit Judges*, and LINDLEY, *District Judge*; MAJOR, *Circuit Judge*, dissenting in part.

[214] LINDLEY, *District Judge*.

Respondent issued a complaint on October 21, 1938, amended March 25, 1939, charging that petitioners had violated Sections 2 (a), 2 (e) and 3 of the Clayton Act, as amended by the Robinson-Patman Act, U. S. C. Title 15, Sec. 13. Petitioners answered denying the charges and averring that, if the acts complained of are prohibited, the statute is unconstitutional when so applied. The ensuing order, which petitioners seek to set aside and respondent to have enforced, directs petitioners to cease and desist from (1) discriminating in prices between purchasers of glucose, starch products and corn gluten feed and meal; (2) supplying services to Curtiss Candy Company in the latter's resale of dextrose purchased from petitioners while failing to accord similar facilities to other and competitive customers upon proportionally equal terms; and (3) selling certain merchandise "on the condition that the purchaser shall not use similar products of a competitor."

Sales of glucose at delivered prices based on Chicago price and freight from that city but delivered from Kansas City.

The evidence upon this phase of the controversy is not in dispute. Petitioners manufacture glucose (corn syrup) in Chicago and Kansas City, and ship it from these two points to purchasers residing in various cities in the west and southwest. From which plant deliveries shall be made is entirely within control of petitioners and the selling prices are fixed by them by adding to the effective Chicago price the freight rate from that city to destination, regardless of whether the merchandise is forwarded from Kansas City or from Chicago. Under this formula, glucose delivered from Kansas City to places nearer that city sells at the Chicago price plus the freight from Chicago, which exceeds freight from Kansas City by substantial percentages; the excess for St. Joseph being approximately 31 cents per 100 pounds; Fort Smith, 20 cents; Hutchinson, 25 cents; Lincoln, 16 cents; Waco, 19 cents; Sherman, 20 cents; San Antonio, 19 cents; Denver, 10 cents and Salt Lake City, 10 cents. Purchasers in these cities are manufacturers using glucose in making candy, competitively engaged in sale of their products to customers located in various states.

Glucose is a major raw material entering into many candies, constituting from 5 to 90 per cent of the weight of the finished article, being greater in the cheaper classes. The higher prices paid in cities other than Chicago "result to a greater or lesser degree" in higher material costs than those of manufacturers in Chicago. Those paying the higher prices "may attempt to recover such increased costs" by increasing the price or making sales "on a non-profit or other basis"; the effect in any case is to reduce profit *pro tanto*. The result just mentioned may work out either through the absorption of higher costs in sale at competitive prices or indirectly through a reduced volume of business and the ultimate effect may be to diminish the ability of those paying the higher prices to compete with those paying the lower. These results may be avoided or augmented by the effect upon the cost to such manufacturers of such other factors as labor taxes, rents, insurance, other ingredients, proximity to markets and delivery.

The Commission found that a purchaser located nearer freight-wise to Kansas City than Chicago who receives delivery from Kansas City is forced to pay a price which includes an item for delivery not actually incurred; that Chicago purchasers receiving delivery from Kansas City buy at a price which does not include any freight, artificial or real, and that any purchaser located nearer Chicago than Kansas City who receives delivery from the latter point is charged a price which does not include all of the actual freight. Its ultimate finding was that such discrimination results in substantial injury to petitioners' competitors; hinders, obstructs and tends to suppress competition among petitioners' customers and to create a monopoly in processing and refining corn and in sale and resale of its by-products and has resulted in substantial injury to competition among purchasers by affording substantial unjustified price advantages to preferred customers and not to others, in violation of subsection (a), Section 2 of the Act.

Our inquiry is whether the evidence is such as to justify the finding that petitioners have discriminated in prices between competitive purchasers of commodities of like grade and that such discrimination will probably substantially lessen competition or tend to create a monopoly in commerce or to injure, destroy or prevent competition with any person who knowingly receives the benefit of such discrimination or whether the evidence discloses that the discrimin[215]ation grew out of only due allowance for differences in the cost of delivery resulting from different methods or quantities of sales and deliveries under Section 2 of the Clayton Act as amended by the Robinson-Patman Act, 15 U. S. C. A. Section 13.

When purchasers receive goods from Kansas City, the sales price of which is fixed by charging the Chicago quotation plus the freight from Chicago rather than that from Kansas City, at a substantial increase of cost to the purchasers, a fictional factor is included in the sales price which is warranted in no way by actual delivery cost or other element. In some instances the price does not include all the actual freight; in others it includes more. In other words the item of freight from Chicago upon goods shipped from other points is an artificial element of cost arbitrarily added by petitioners. That it is substantial is apparent; in some instances amounting to approximately \$400 per carload. Consequently, so far as this ingredient is concerned, purchasers in cities discriminated against have higher costs of manufacture than those elsewhere with whom they are competitively engaged in purchase of petitioners' glucose and sale of

candy made therefrom. The parties stipulate that the effect "may be" to diminish the ability of those paying the higher prices to compete with those paying lower prices and that such increased cost can be met only by raising the prices of finished products or by making sales on a non-profit basis. In either event, obviously, the profit is reduced, in the absence of any offsetting factor. Consequently, some competitors have moved to Chicago, thereby decreasing their cost not only by reducing the actual cost of delivery but also by elimination of the fictional freight charge to which they were subjected when located in less favorably treated communities.

In so far as the delivery price includes for freight more than the actual cost of transportation it measures a definite discrimination forbidden by statute. Upon the principle of equality, the Act forbids any difference in charges to different competitive customers not based upon actual differences in service or delivery. If a difference is to be justified because of presence of the latter element, it must have some reasonable relationship to actual cost and may not be of such character or quality as to work an unjust discrimination. *Western Union Telegraph Co. v. Call Publishing Company*, 181 U. S. 92, 100. The inclusion of a fictional cost of delivery, having no justification in fact, in itself suggests, upon the part of the manufacturer, arbitrary fixation of prices discriminating illegally as between competitive customers. Systematic price discrimination is irreconcilable with free, active competition. It is not the kind of price competition found in a truly competitive market. Thus in *U. S. v. Sugar Institute*, 15 F. Supp. 817, the court condemned and enjoined defendants from "determining transportation charges or freight applications to be collected from customers or limiting freight absorptions" and "selling only on delivered prices or on any system of delivered prices, including zone prices or refusing to sell f. o. b. refinery." Upon appeal defendants waived their assignments of error as to each of these. The Supreme Court modified the decree in other particulars, not pertinent here, and affirmed in all other respects. *Sugar Institute v. U. S.*, 297 U. S. 553, 591, 605. Thus defendants were finally enjoined from selling at prices including artificial or fictional items of freight and the court adhered to the reasoning of *Western Union Telegraph Co. v. Call Publishing Co.*, 181 U. S. 92, forbidding "any difference in charge not based upon difference in service."

We think it irrefutable from the facts that resulting substantial loss is reasonably likely to accrue to purchasers in the less favorably located communities. The statute does not require proof of actual injury. *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 346. Under Section 2 (a) it is unlawful to discriminate in price between different purchasers where the effect "may be" substantially to lessen competition or to injure, destroy or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination. It is the congressional intent to halt in its incipency any possible injury to the public before it may have actually weakened the fabric of fair competition.

Petitioners' argument as to the wisdom or desirability of the expressed congressional economic policy is wholly beside the point. It is elementary, but it will work no harm to reiterate, that with determination of the wisdom of legislative [216] policies, we are in no way concerned. It is far beyond our function to decide or declare what is wise or unwise in statutory economic, political or fiscal tenets. The Congress is charged with the obligation to determine all such questions. When a standard of conduct has

once been fixed by legislative enactment, the only functions of the judiciary, as a coordinate branch of government, are so to interpret the statute as to promote and effectuate the disclosed intent of Congress, to determine whether a factual situation is within the contemplation of the act and whether the legislation or the actions of administrative bodies charged with enforcing it infringe upon the constitution. If the standard proves unsatisfactory or unwise, relief can emanate only from Congress.

In this connection petitioners insist that debates in the Congress disclose that it was not the intent of that body to place the "basing-point" system of distribution of commodities beyond the pale; that the Congress, *sub silentio* approved the method and that its acts are within the range of such approved procedure. We are not advised that such so-called system has any recognized legal definition or any well established boundary lines. Just what pattern it follows is uncertain. And to us the debates indicate at most only disagreement between members of the Congress as to the desirability or non-desirability of any such practice, resulting in the end, in utter silence in the Act upon that subject matter, — neither condemnation nor approval, and this in face of the fact that the Federal Trade Commission previously in 1924 had held that the "basing-point" method of distribution employed by the steel companies embraced unlawful price discrimination under the Clayton Act. 8 F. T. C. 1. Such was the administrative ruling in effect at the time when Congress acted. Indeed, in presenting the bill the member in charge announced that he believed the system to be "indefensible." Rather than indulge in futile inquiry as to what individual members of the Congress may have thought as to what is wise economic policy in this respect, we conceive it our duty to give effect to the words of the statute as written and to determine not whether any suggested formal pattern is beneficial and desirable but whether the specific practice of petitioners is within the prohibition. A search for meaning, for significance, in the silence of the Congress is fraught with such speculation as to afford little aid in the interpretation of express words. *Scripps-Howard Radio Inc. v. Federal Communications Commission*, 316 U. S. 4, 11. As we read the Act, it does not grant exemption from discrimination merely because the facts fall within certain formulae. The real question is, do the discriminations inherently have the condemned probable effect upon competition.

Petitioners' reliance upon *Staley Mfg. Co. v. Federal Trade Commission*, 135 F. (2d) 453 (CCA 7) [36 F. T. C. 1126; 3 S. & D. 556] is of no avail when we regard the comparative factual situations. In its final determination the court has there condemned the practice here disapproved. The final disposition of that case grew out of the belief of the court that the manufacturer was, under the facts there involved, justified in what it did in the proviso of the statute exempting the vendor from liability if it proves that the practice complained of is necessary, in good faith, to meet the lower prices of competitors. In other words, the facts were such, in the belief of the majority, as to rebut, as provided by the Act, the *prima facie* case of violation made by the Commission. No such question is presented to us here, for the present record discloses no such contention and no such rebutting facts.

Nor do we think that there was lack of proof that the purchaser knowingly received the benefit of the discrimination, in the face of the fact that certain customers have moved to Chicago from outlying cities; that it is well known to the public that petitioners' prices include a charge for

freight from Chicago wholly fictional when goods are shipped from other places, and that a customer getting wares in or near Chicago at a delivered price including actual Chicago freight well knew that he was thereby buying at a proportionately lower price than his competitors in the various cities named were charged when they were supplied from Kansas City at the Chicago price plus a fictional freight from Chicago.

Discriminations from Booking Practices.

The evidence discloses, without contradiction, that upon promulgation of price advances, petitioners, sometimes, for a period of from five to ten days after an announced increase, accept orders for future delivery at the previously prevailing lower price. In other words, they allow [217] favored customers options for delivery in the future at the old lower prices rather than the new higher ones. Later deliveries upon these options consummate completion of the contracts and frequently extend over substantial periods after establishment of the new prices. Petitioners also accept orders for sales by tank cars to customers who have no facilities for handling such cars and who, consequently, receive delivery from tank wagons which are supplied from petitioners' storage. The price charged is the lower tank car price.

We think the only reasonable inference is that each of these favored customers receives inevitably an illegal discriminatory advantage. Although, ostensibly, all customers are subject to the same terms, the privilege of booking orders on an advancing market for future deliveries at abandoned lower prices, creates discrimination in fact, whereby certain purchasers may be able to buy at substantially lower prices than their competitors. No customer knows how another is being treated. The agreed fact that the result "may be" that after a price increase, one customer is purchasing goods at the new and higher price and another at the old lower price, in itself, is sufficient to justify the ultimate finding. There is no exemption from liability for such action in the statutory provision that petitioners may select their own customers in bona fide transactions and not in restraint of trade. The Commission was amply justified in finding the practices reasonably likely to diminish the buying ability of those paying high prices as compared with competitors paying the lower prices.

Petitioners contend that the *prima facie* case of discriminatory booking practice is rebutted "by showing that a lower price was made in good faith to meet an equally low price of competitors" as authorized by subsection (b) of Section 2 of the Clayton Act as amended by Robinson-Patman Act, 15 U. S. C. A., Section 13. We think the evidence is insufficient to sustain this affirmative defence. After the Commission had made out its *prima facie* case, petitioners offered testimony to justify their action under subsection (b) but it was general in character and vague in effect, being merely that the discriminations occurred because of a competitive situation brought upon petitioners where "some competitor had offered purchasers the same proposition" and that, after a bitter controversy had arisen in which the wagon buyers claimed they had been discriminated against in favor of car buyers, competitors took orders from wagon buyers at tank car prices which the witness said, "I suppose forced us to do likewise." There was no testimony as to specific instances or facts but merely a conclusion upon the part of the witnesses that the *prima facie* case of discrimination was justified by competition. This, it seems to us, is not the

sort of testimony sufficient to sustain a finding of exemption provided by Congress for meeting competition or to justify a finding that the *prima facie* case of discrimination as to booking practices has been rebutted. Indeed, if competitors' prices were arrived at in the same manner, to approve the defence, we would be driven to the inconsistent position of approving one evil practice because it was indulged in in order to meet a similar evil practice.

Special allowances to certain buyers of gluten feed and meal.

It is stipulated that petitioners sold to Cooperative Mills in Buffalo, gluten feed and meal under contracts whereby the vendors agreed to allow the purchaser a deduction from the market price amounting to 50 cents per ton upon purchases in certain quantities and to 65 cents per ton upon those in certain larger quantities; that the purchaser resold these products, both unmixed and as ingredients in other mixtures, to agent buyers and retail stores controlled by it; that, during the same period, petitioners sold the same wares to other dealers and feed mixers in the same territory competing directly with Cooperative, without discount or rebate. Similar are the facts as to purchases by Allied Mills, Inc., Chicago, Jesse C. Stewart & Company, Pittsburgh, E. W. Bailey & Company, Montpelier, Vermont, Marshfield Milling Company, Marshfield, Wisconsin, and Farley Feed Company, Janesville, Wisconsin. The allowances are sufficient, if and when reflected, "to attract business to the Cooperative" and similar purchasers "away from their respective competitors or to force competitors to resell such products at a substantially reduced profit or to refrain from selling" and the allowance is sufficient to increase substantially the favored purchasers' respective margins of profit. There was no evidence that these differences constituted only due allowance for actual differences in cost of manufacture, delivery or otherwise. The Commission held the discriminations illegal.

[218] These purchasers have been given discounts of 50 cents or more a ton from the regular market prices. One receives a discount on purchases of not less than 1200 tons per month, and a greater one if his deliveries are not less than 1500 tons per month, with an additional 15 cents per ton on purchases exceeding 2500 tons per month. Four others receive similar discounts, although they purchase much smaller quantities. Each is in competition with others in its territory. Again petitioners assert that the necessary adverse effect upon competition must be an actuality rather than a reasonable probability and that, in the absence of proof that the favored customer uses the discriminatory price to undersell, the possibility that such adverse effect is reasonably probable is conclusively negated. We think the facts lead to the opposite inference and that the natural result is even more than "reasonably probable" to produce the prohibited injurious effect upon competition.

Allowances to Keever Starch Company and Stein Hall Company.

The facts regarding this phase of the case were stipulated and were similar in import to those mentioned under the last heading. Petitioners make no contention that these allowances are justified in the cost of manufacture, sale or delivery and agree that "if and when reflected" they are sufficient to attract business to the favored purchasers and away from their

competitors so as to force the latter to resell such products at substantially reduced profit. The Commission concluded that the practice was in violation of the Act.

Under the facts stipulated with respect to this issue substantially the same question as to the sufficiency of the evidence of the effect upon competition involved in the sales of gluten feed and meal is presented. We think, without restatement, that there is proof of a reasonable probability of injury to competition.

Petitioners' arrangement with Curtiss Candy Company.

The Commission found that in entering into their arrangement with Curtiss Candy Company for advertising dextrose, petitioners have unlawfully discriminated in favor of one purchaser against other purchasers of a commodity bought for resale, furnishing a service or facility connected with processing and selling such commodities, without according to all purchasers proportionately equal terms in violation of Section 2 (e) of the Act.

In 1936 and prior thereto, dextrose, (refined corn sugar), was not largely used by housewives or in industry. Anxious to augment their volume of sales, petitioners entered into an arrangement with Curtiss Candy Company, one of the largest American manufacturers of candy bars. After experimentation, Curtiss undertook the use of dextrose as an ingredient in its products, to advertise the latter as "rich in dextrose" and to attempt to persuade the public of the beneficial quality of the element. This it proceeded to accomplish through nation-wide advertising, featuring the presence of dextrose in its candy, spending some \$200,000 or more a year in the project. Contemporaneously, petitioners similarly advertised Curtiss candies, emphasizing their dextrose content, expending in three years for this purpose some \$750,000. In the years during which this advertising continued, the purchases of dextrose by Curtiss from petitioners increased over five-fold and those of glucose from nothing in 1937 to over 14 million pounds in 1939. During all this period petitioners were selling substantial quantities of dextrose to other candy manufacturers who were in competition with Curtiss without making or offering them, or all of them at any rate, any proportionately equal terms. Rather, they "instructed their salesmen to advise customers to whom they sold products to be used in the manufacture of confectionery that we do not contribute to advertising done by customers."

Petitioners do not challenge the basic facts underlying the order in this respect but attack the validity of the ultimate finding of unlawful discrimination. They contend (1) that the transaction was not made with Curtiss as a purchaser; (2) that Curtiss bought no commodity for resale either with or without processing; (3) that there is failure of proof of discrimination between purchasers for resale; (4) that they did not furnish facilities connected with the processing, handling, or reselling of dextrose by Curtiss; (5) that the proof fails to show that petitioners failed to accord such arrangement to other purchasers on proportionately equal terms, and, finally, that there is no proof of sale to Curtiss in interstate commerce.

There is no express agreement that preferences to Curtiss were to be any part of the project. But the expenditure of \$750, [219]000 in advertising Curtiss candies and the dextrose in them, with the proof of voluminous increase of purchases, not only of dextrose but of glucose, by Curtiss dur-

ing this period is amply sufficient to support the inference of the Commission that the arrangement was made with Curtiss for the purpose of building up petitioners' sales of dextrose to it and to others and resulted in vast expenditures by petitioners for the sole benefit of Curtiss to the detriment of other competing purchasers.

The statute forbids furnishing preferential services or facilities "connected with" processing and selling a commodity. It applies where the commodity is bought for resale "with or without processing." Petitioners argue that when dextrose becomes part of a mixture, its identity ceases, being merged in the composite product, and that it is, therefore, beyond the definition of commodities affected by the Act and embraced in the words "with or without processing." Obviously in manufacture of finished products, in the compounded result, many ingredients lose their identity. Dextrose, constituting from 5 to 90 per cent of the product when it emerges in candy, is not capable of being isolated thereafter except by chemical reduction. But processing is a relative term. It embraces many modes of treatment of various materials to produce given results. It is an act or a series of acts with regard to the subject matter in its transformation into a different state or a different thing. It effectuates change in form, contour, chemical combination, physical appearance or otherwise by artificial or natural means and, in its more complicated form, involves progressive action in performing, producing or making something. *Cochrane v. Deener*, 94 U. S. 780; *Sharpless Co. v. Crawford Farms*, 287 Fed. 655 (CCA 2); *Bedford v. Colorado Fuel & Iron Corp.*, 81 P. (2d) 752, 757. We think that when Curtiss made its product, it changed the form of the dextrose used, in a progressive series of steps involved in making candy, so treating the material as to produce a desired given result, eventuating in a different state or thing. The advertising paid for by petitioners informed the public that Curtiss candy was "a blending of dextrose" with other such ingredients as chocolate, butter and milk. We think Congress, when it forbade extension of special facilities to one purchaser not accorded to others, intended to forbid special favors to one purchaser over competitors in all cases where goods are sold and resold without processing or are included in a processed product. Congress evidently contemplated that when a product is purchased, it may either be consumed by the purchaser or resold by him in its original form or after having been made a part of a compounded product. Evidently Congress employed the words "with or without processing" as an all comprehensive term. This conclusion seems inevitable when one considers the purpose of the legislation. Consequently the reasoning of *Fleming v. Hawkeye Pearl Button Company*, 113 F. (2d) 52 (CCA 8) is not applicable. There the court was dealing with an entirely different problem; an entirely different statute, having entirely different purposes. The court's reasoning obviously rested upon the congressional purpose involved in that specific statute. It does not apply to the Act with which we are concerned here.

The contention that no proof of discrimination between purchasers of dextrose for resale exists is closely related to petitioners' first assertion that the arrangement was not made with Curtiss as a purchaser for resale. In this connection petitioners insist that there is no proof that dextrose purchased by other candy manufacturers was bought for resale. But the record discloses that prior to 1936 dextrose was not well known to the confectionery industry and that experimentation, research and advertising produced a demand for it, and, further, that large quantities were bought

by candy manufacturers, competitors of Curtiss, after 1936 and during the period when petitioners were advertising Curtiss' product. The only reasonable inference is that competing candy manufacturers were purchasing dextrose for the very purpose for which Curtiss was purchasing it, in pursuance of the demand built up for dextrose in candy as a result of the advertising of Curtiss and petitioners. There is no requirement in Section 2 (e) that there be proof of actual substantial benefit to one or of substantial injury to another of two or more competitors. This paragraph does not require even probability of adverse effect upon competition as does Section 2 (a). We think it is satisfied by proof of special services rendered one purchaser not rendered to similar competing purchasers engaged in the same business and using the commodity for the same purpose.

[220] Petitioners claim that they did not furnish facilities in connection with processing, handling or selling dextrose by Curtiss. What we have said demonstrates that this contention can not be upheld, for the record discloses that petitioners did furnish the advertising for the benefit of Curtiss who was a steady and growing purchaser of dextrose from petitioners, and to it alone.

Petitioners assert that there is no proof that they failed to offer the same arrangement to other persons on a proportionally equal basis. We find no evidence that similar services, terms or facilities were accorded to other purchasers.

As to the assertion that there is no proof that dextrose was sold to Curtiss in commerce, it is sufficient to observe that petitioners sold the product to purchasers located throughout the United States and shipped it in interstate commerce to such purchasers; that there was competition in commerce between Curtiss and other manufacturers of candy bars; that Curtiss' business and that of petitioners' are of interstate and national character and that the transactions in question were part and parcel of interstate commerce and directly affected such commerce.

Sales to Huron Milling Company and Keever Starch Company.

After the Huron Milling and Keever companies had ceased manufacture of pearl starch, petitioners produced for them their requirements of that commodity and sold it to them at prices below the cost at which they could have manufactured it. Each agreement provided for sale of the requirements of the purchasing company and ran for fifteen years. The parties stipulated that these contracts obligated the two companies to refrain from using, receiving or delivering any starch or starch products manufactured by competitors of petitioners. The Commission directed petitioners to cease and desist. They have not sought to set this portion of the order aside but respondent seeks to have it enforced.

Petitioners assert that they and the two companies have already agreed to eliminate the covenant to purchase entire requirements from petitioners and the latter insist, therefore, that they have not disobeyed the order with respect to these contracts. But there is no proof of this averment; no showing of desistance or compliance. The claim merely presents a question of fact without any showing in the record to justify any review by us.

Furthermore, the mere discontinuance, were it proved, would not justify us in refusing to enforce the order. *Federal Trade Commission v. Goodyear Tire & Rubber Co.*, 304 U. S. 257 [26 F. T. C. 1521; 2 S. & D. 456]; *Bunte Bros. v. Federal Trade Commission*, 104 F. (2d) 996 (CCA 7) [28 F. T. C.

1959; 3 S. & D. 111]; *Sears, Roebuck & Co. v. Federal Trade Commission*, 258 Fed. 307 (CCA 7) [1 F. T. C. 562; 1 S. & D. 36]; *Hershey Chocolate Co. v. Federal Trade Commission*, 121 F. (2d) 968 (CCA 3) [33 F. T. C. 1798; 3 S. & D. 392].

Differentials arising from sizes of shipping containers.

Petitioners shipped its products to its customers in carload lots, tank truck loads, returnable steel drums, barrels, half barrels, 10-gallon kegs and 5-gallon kegs. An established differential in prices existed, dependent upon the size of the containers, the additional price per 100 weight over tank car prices being as follows: when shipped in tank trucks of the customer, 2 cents; when delivered by petitioners' equipment, 10 cents; when shipped in returnable steel drums, when there is no return freight paid, 13 cents; when the return freight on the empty drum is between 50 cents and 75 cents per hundred, 18 cents; when it is between 76 cents and 90 cents per hundred, 23 cents; when it is between 91 cents and \$1, 28 cents; when the return freight on the empty drum is more than \$1 per hundred, 33 cents; 5-gallon kegs \$1.08; 10-gallon kegs 98 cents; half barrels 56 cents; barrels 33 cents. This is the only evidence submitted upon this issue and upon it the Commission found petitioners guilty of unlawful discrimination.

The evidence is merely that the smaller the container the greater proportionately the cost. There is nothing to show that this resulted in any discrimination among competing purchasers other than to create such differences as normally arise in buying in smaller quantities or in larger quantities. We think the facts furnish no basis whatever for any sound inference of violation of the law in this respect.

We conclude that in all respects other than alleged discriminations arising from sales in different size containers, the findings and conclusions of the Commission are amply justified; that as to the different prices in different size containers there is no evidence to justify the Commission's [221] conclusion. Accordingly the order is modified by eliminating that portion. In all other respects it is affirmed and enforced. Petitioners' prayer to vacate the order is denied in all respects other than as to goods sold in different size containers.

Judgment in accord with our conclusions may be submitted.

MAJOR, *C. J.*, concurring in part and dissenting in part.

I concur in all respects except as to the holding that petitioner's delivered price is a discrimination in violation of § 2 (a) of the Clayton Act as amended. As to this I dissent, for the reason that a delivered price predicated upon use of the basing point price system does not, in my opinion, come within the proscriptions of the section. My views in this respect have been expressed in the dissent which I have filed in *Staley Manufacturing Company v. Federal Trade Commission*, decided by this court July 6, 1944. [144 F. (2d) 221].

A. E. STALEY MFG. CO. ET AL. v. FEDERAL TRADE COMMISSION ¹

No. 8072—F. T. C. Dock. 3803

(Circuit Court of Appeals, Seventh Circuit. July 6, 1944)

METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2(a)
—DELIVERED PRICES—FICTITIOUS OR “PHANTOM” FREIGHT—WHERE PREDICATED
ON INCLUSION OF, OR BASING POINT SYSTEM—IF EFFECT DISCRIMINATORY, RE-
STRICTIVE AND MONOPOLISTIC.

A finding of the Federal Trade Commission that the basing-point system as practiced by a manufacturer consisting of basing prices for glucose on prices at Chicago with freight added to destination, although shipments were made from Decatur, Ill., was discriminatory and worked to substantially lessen competition and tended to create a monopoly, being supported by substantial evidence, was conclusive on Circuit Court of Appeals.

CEASE AND DESIST ORDERS—METHODS, ACTS, AND PRACTICES—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2(a)—DELIVERED PRICES—FICTITIOUS OR “PHANTOM” FREIGHT—WHERE PREDICATED ON INCLUSION OF, OR BASING POINT SYSTEM—IF EFFECT DISCRIMINATORY, RESTRICTIVE AND MONOPOLISTIC—IF PRICES MADE IN GOOD FAITH TO MEET EQUALLY LOW PRICES OF COMPETITORS.

Federal Trade Commission's order to petitioners to cease and desist from using basing-point system, consisting of basing prices for glucose on prices at Chicago with freight added to destination, although shipments were made from Decatur, Ill., would not be enforced where evidence showed that petitioners' prices were made in good faith to meet an equally low price of competitors. Clayton Act sec. 2(a), as amended by Robinson-Patman Price Discrimination Act, sec. 1, 15 U. S. C. A. sec. 13(a).

(The syllabus, with substituted captions, is taken from 144 F. (2d) 221)

On petition to review order of and cross-petition by Commission for enforcement of order, order vacated and Commission ordered to dismiss the complaint.

Mr. C. C. Leforgee and *Mr. Carl R. Miller*, both of Decatur, Ill. (Leforgee, Samuels & Miller, of Decatur, Ill., of counsel), for petitioner.

Mr. Joseph J. Smith, Jr., *Mr. Walter B. Wooden*, Asst. Chief Counsel, and *Mr. W. T. Kelley*, Chief Counsel, Federal Trade Commission, all of Washington, D. C., for respondent.

Before *EVANS, MAJOR*, and *MINTON, Circuit Judges*; *EVANS, Circuit Judge*, dissenting, and *MAJOR, Circuit Judge*, dissenting in part.

MINTON, Circuit Judge.

The Federal Trade Commission filed a complaint against the A. E. Staley Manufacturing Company and the Staley Sales Corporation charging them with a violation of Section 2 (a) of the Clayton Act, as amended

¹ Reported in 144 F. (2d) 221. For case before Commission, See 34 F. T. C. 1362.

by the Robinson-Patman Act, 15 U. S. C. A. § 13 (a)¹. The Commission claimed that the discriminations which the [222] petitioners practiced in violation of the above statute arose from the Staley companies' practices of applying the basing point system in formulating their prices and of permitting favored customers unfair use of the so-called "booking" privileges. The Commission found that there were discriminations and that such discriminations "have resulted, and do result, in substantial injury to competition among purchasers of glucose * * *." The Commission ordered the companies to cease and desist from the use of these practices. The companies filed their petition before us to review the order of the Commission and the Commission cross-petitioned for enforcement.

On such petition for review and the cross-petition for enforcement, this matter was before us at the April Session in 1943. On May 10, 1943, we held the complaint to be sufficient but remanded the cause 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." Upon the remand, the Commission did not hear any additional evidence. It merely restated its findings of fact which were, for the most part, twenty-seven pages of argumentative dissertations in support of the Commission's thesis. The so-called findings of fact had to be sifted to find what the facts found were. The Commission again found that there was discrimination and that the effect of such discrimination "may be substantially to lessen competition or tend to create a monopoly," and left the order to cease and desist as originally entered. The matter is now before us for disposition after this remand and reconsideration.

The A. E. Staley Manufacturing Company operates a corn products processing plant at Decatur, Illinois. The Staley Sales Corporation is a wholly-owned subsidiary used for the purpose of marketing the manufactured products of the A. E. Staley Manufacturing Company. Among other things, the petitioners produce and sell in interstate commerce unmixed corn syrup, commonly called glucose. Shipments are usually made in tank cars but not in every instance. All shipments are made from Decatur. The companies' competitors are numerous other corporations who sell and ship similar syrup in interstate commerce. The glucose sold by the companies is used primarily in the manufacture of candy and mixed table syrup. Glucose comprises 5% to 90% of the finished weight of the candies produced and the prices paid for it are a substantial part of the total raw material cost of manufacture, especially in the cheaper lines of candy. Glucose is used in greater proportion in candies which are sold by candy manufacturers at a few cents a pound and on a narrow margin of profit. The margin of profit of such candy manufacturers is so narrow that business may be controlled on a concession of one eighth of a cent a pound. In the mixed table syrup, 85% of the mixture is glucose.

¹ "(a) It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce * * *."

The so-called basing point system consists of taking the price of the commodity in Chicago and adding thereto the freight to the place of destination. As practiced by the petitioners, this was without regard to the fact that none of their shipments were made from Chicago but all were made from Decatur. Thus, a buyer who lived in Decatur, where the companies operate their plant, would pay the Chicago base plus freight from Chicago to Decatur, although the goods had never been in Chicago but were always in Decatur and were there delivered to the purchaser. The same thing was true on shipments to all other points, such as Kansas City, Dallas, Sioux City, Little Rock, St. Louis, St. Joseph, Missouri, and other cities. Notwithstanding the fact that Decatur is nearer to these cities and that the freight rate from Decatur to them was lower than the rate from Chicago, the purchasers in these cities were charged freight from Chicago, although the goods were shipped from Decatur. The maximum amount of discrimination is between Decatur and Chicago, and sometimes Decatur customers are discriminated against in favor of Chicago customers by as much as 16%. Wherever the actual cost of delivery from Decatur is less than the cost of delivery from Chicago, the companies added the difference to the net prices at Decatur. This is what the Commission designated as "phantom freight," for which the companies did not pay. Discriminations under this practice have resulted at various times in differences as great as:

33½¢	a	hundred	between	customers	at	Decatur	and	Chicago
27½¢	"	"	"	"	"	"	"	" Kansas City and Chicago
25½¢	"	"	"	"	"	"	"	" Dallas and Chicago
24¢	"	"	"	"	"	"	"	" Sioux City and Chicago
20½¢	"	"	"	"	"	"	"	" Little Rock and Chicago
20¢	"	"	"	"	"	"	"	" St. Louis and Chicago
19½¢	"	"	"	"	"	"	"	" St. Joseph, Missouri, and Chicago
18¢	"	"	"	"	"	"	"	" Shreveport and Chicago

If the freight rate from Decatur were reduced while the rate at Chicago remained the same, the benefit of the freight reduction would be withheld from the customers and be added to the price of the commodity. If the freight from Decatur were increased and the rate from Chicago were increased still more, the price to the purchaser would be raised by the amount of the increase in the Chicago freight rate. If the rate from Decatur were reduced and the rate from Chicago were increased, the customers would not get the benefit of the reduced rate from Decatur but would have to pay the increased rate from Chicago. Such are the discriminations which the Commission found to exist in the application of the basing point principle, as employed by the companies.

The Commission also found that the petitioners' use of the "booking" practice resulted in discriminations which occurred by:

1. Permitting favored customers to take delivery at the old price long after the expiration of the thirty-day period within which all customers were supposed to exercise their option of converting their bookings into actual sales.

2. Converting into sales at the old price bookings made by salesmen without authorization of the customer, in anticipation of the increased price.

3. Selling favored customers at the old price where no bookings were even claimed to have been made and long after the period within which all

customers were supposed to have indicated whether they desired to take advantage of the booking privilege.

4. Delivering glucose in tank wagons at old tank car prices plus an additional delivery charge to buyers who had booked glucose for delivery in tank cars, although the buyers had no facilities for tank car delivery, where delivery was made long after a higher tank car price had become effective for other buyers.

The amount of the discriminations against small buyers growing out of the booking practice ranged from 30¢ to 55¢ a hundredweight or from 15% to 25% of the purchase price. These discriminations the Commission found to be such as "may be substantially to lessen competition or tend to create a monopoly * * *."

There was substantial evidence in the record to warrant the finding of the Commission that these basing point and booking practices of the companies were discriminatory. In our opinion of May 10, 1943, we stated that, even though there had been a finding that these discriminations tended substantially to lessen competition or create a monopoly, there was no evidence in the record to support such a finding. On further consideration and study, we think that that statement was unwarranted. A consideration of the stipulation concerning the effect of these practices¹ makes it [224] apparent that there was substantial evidence in the record to support the Commission's finding on this second essential to the cause of action.

However, we do not find it necessary to decide whether or not the so-called basing point system is legal or illegal. The Commission found that as employed by the petitioners, it produced discriminations and these discriminations were such as may be "substantially to lessen competition or tend to create a monopoly * * *." It is clear, therefore, that a *prima facie* case of unlawful discrimination was made out. These same practices have been condemned as discriminatory in an opinion by us this day in *Corn Products Refining Co. v. Federal Trade Commission* [144 F. (2d) 212. See ante, p. 664]. While both cases agree that the pricing under the basing point and booking practices was discriminatory, the companies in the present case present a defense not considered in the *Corn Products Refining Co.* case.

The companies take the position that notwithstanding that a *prima facie* case may have been made out, they are entitled under Section 2 (b) of the statute to rebut this *prima facie* case, if they could, by showing that their "lower price * * * was made in good faith to meet an equally low price of a competitor. * * *" 15 U. S. C. A. § 13 (b).

It is stipulated that the A. E. Staley Manufacturing Company went into business in Decatur, Illinois, in 1920. They soon discovered that they

¹ It was stipulated that the basing point practice had the following effect on competition among candy manufacturers:

"That the higher prices paid for such syrup by such candy manufacturers located as aforesaid other than in the City of Chicago, Illinois, contribute to a greater or lesser degree in their having higher raw material costs than those candy manufacturers located in Chicago, Illinois, the degree in each instance depending upon the difference in price and the proportion of such syrup used in the candies manufactured;

"* * *

"That the lower profits of these candy manufacturers paying higher prices for such syrup diminishes their incentive or desire to compete with those candy manufacturers paying the lower prices for such syrup and may deter potential new candy manufacturers from entering the industry in cities where they would pay the higher syrup costs."

As to the mixed table syrup producers, the stipulation was essentially the same.

could make as good glucose as their competitors but that its quality was not so superior to competitors' as to command the market and that business could be had only by meeting competitors' prices. The company "sold such syrup at the same delivered prices as were quoted by competitors in the markets and at the destinations set forth" in the evidence. Their chief competitors and the largest corn syrup market in the country were in Chicago. They "found that * * * large factories were manufacturing such syrup and delivering it in Chicago at prices which were lower than those prices then existing in any other market; that the delivered price in such other markets was generally equal to the Chicago delivered price plus the published freight rate on such syrup from Chicago to destination."

So, at the time the companies entered the business, their competitors were using the so-called basing point system. The prices they made conformed largely to that system. For the companies to get into the Chicago market under that system, they had to absorb the freight from Decatur to Chicago. The bulk of their business was in the Chicago market and their product was sold at a price to meet competitors' lower price in Chicago.

The petitioners claimed that in order to meet the competitive situation, they adopted the basing point price system in good faith, and later the so-called "booking" practice. The Commission found, however, that the companies "have not shown that the discriminations in price granted by them are within any of the excepting provisions of the statute." The Commission seeks to support this finding upon the following stipulation:

"That on several occasions, and since June 19, 1936, Respondents have increased and reduced their price per hundredweight for Corn Syrup for delivery in all markets by the same amount per hundredweight without and independent of any similar and prior action by competitors."

We do not think this is substantial evidence or that there is any other substantial evidence in the record to support the Commission's finding. The basing point practice was being used by the competitors when the A. E. Staley Manufacturing Company went into business. The booking practice developed as the business went along. The evidence in support of these facts is stipulated in the record and is not in dispute.

The stipulation above quoted does not say that such increases or reductions of prices were related to the discriminatory practices with which the companies are charged. For aught that appears in that stipulation, such increases and reductions may have had nothing to do with the discriminatory practices of which the companies were found guilty. Certainly one cannot say that the booking practice discriminations were shown to be related to those independent price changes. Even if it may be inferred that all prices were promulgated by use of the basing point system so that the price-changing mentioned in the above stipulation should be considered within the basing point practice, still § 2 (b) of the statute does not require that competitors' prices shall be first announced and promulgated before one may in good faith meet them. The companies may very well have known what the competitive situation in their industry was and what was certain to happen. In anticipation of what their competitors were certain to do, the companies promulgated prices to meet the foreseen competitive situation.

The fact that the companies were first in the field with a price is not controlling. The question here is: Were they first in the field to use the basing point pricing system? It is the use of the system that is complained

of. The evidence and stipulations are all to the contrary. The companies' competitors were using the system when the companies entered the field. The companies merely followed the system and practices which had been established by their competitors. That this was done in good faith is not questioned in the evidence.

We think the *prima facie* case made out by the Commission has been rebutted by the showing made by the companies and, since there is no substantial evidence to the contrary, we would not be warranted in enforcing the Commission's order. The order to cease and desist is vacated and the Commission is ordered to dismiss the complaint.

EVANS, *Circuit Judge*, dissenting.

I agree with the majority opinion when it states that the evidence supports the Commission's finding that the basing-point system as practiced by the A. E. Staley Manufacturing Company was discriminatory and worked to substantially lessen competition and tended to create a monopoly. Such a finding, supported by substantial evidence, necessitates our accepting it as a verity.

I can not follow the majority opinion, however, when it holds that the case made out by the Commission was rebutted by the petitioners. We part over the effect of petitioners' effort to bring themselves within the exception found in Subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson Patman Act (15 U. S. C. A. Sec. 13). That section condemns and makes unlawful discriminations in prices which "may be substantially to lessen competition or tend to create a monopoly in any line of commerce."

The Commission having made a finding supported by substantial evidence and approved by this court that such practice was indulged in, there would be nothing left to this case, were it not for subsection (b) of the same section 13, which places upon the party practicing discrimination the burden of affirmatively showing justification.

The language of the statute, as amended, is,—“Nothing contained in Sections 12, 13, 14-21, 22-27, of this title shall prevent a seller rebutting the *prima-facie* case thus made *by showing that his lower price * * was made in good faith to meet an equally low price of the competitor * *.*”

In an effort to determine whether petitioners have established the justification permitted by the statute, it is worthy of note,

First, that such justification is limited to cases where the seller is attempting to justify “his *lower price.*” In the instant case there is no attempt to show Staley was trying to justify a *lower price.* The most that the evidence shows is that Staley attempted to enter the field by complying with the existing basing-point practice. In short, Staley did not want “to stir up the animals” by starting a price war. He accepted the status quo,—a status quo which followed a practice which “substantially lessened competition and tended to create a monopoly,” and which was, no doubt, satisfactory to one about to enter the field. But the satisfaction was not over the fact that it was to be permitted to “lower prices,” but over the fact that said practice tended to lessen competition.

I can find nothing that would justify the conclusion that Staley indulged in its practice to justify a lower price.

Second. Likewise, worthy of note is the requirement of the statutory justification that the seller's “lower price” was to meet an “equally low price” of a competitor. There is nothing to show that the practice was adopted to meet “an equally low price” of a competitor.

If Staley's practice were limited to sales in Chicago, there could be a conceivable case of competition and a price fixing by Staley to meet the competition of Corn Products Company. But there is no show[226]ing that Corn Products Company was maintaining a low price. Nor could it be said that the adoption of the basing-point system resulted in either a lower price for the seller or "a low price" of the competitor.

There might be, in my opinion, some justification for saying that Staley adopted the price fixed by the competitors and the competitors' basing-point system in order to prevent a competitive war in the industry which it was about to enter. It continued to maintain that price, not because it was a "lower price" but because the system was profitable and therefore satisfactory to those engaged therein.

Third. Nor can I believe that good faith, as that term is used in the statute, would ever apply to, or justify, a practice by a seller which produced a discrimination of such character as to substantially lessen competition and tend to create a monopoly as here found.

Good faith can not be ascribed to a seller who adds a freight charge to the selling price when there was no freight charge. It is utterly inconceivable that Staley could charge a customer a price which included a freight item from Chicago to Decatur, when no shipment was ever made by Staley, and delivery was to a customer in Decatur, where Staley's plant is located, and then assert that said practice was to justify a *lower* price and to meet the equally low price of a (Chicago) competitor.

We are here dealing with an attempted legal justification of a practice which substantially lessened competition and tended to create a monopoly. The only justification which the law permits is limited to the instance where the seller lowered its price to meet an equally low price of a competitor. Staley failed to bring itself within the protection of the statute in three respects: (a) Its action was not to justify its "lower price." (b) Its acceptance of the practice was not "to meet an equally low price of a competitor." (c) It was not, and could not be, made "in good faith" when the result of it was to "substantially lessen competition and tended to create a monopoly."

In the concurring-dissenting opinion of Judge Major, it is said, "I agree that the strict literal language of Section 2 (a) makes it appear that the system has been proscribed, but at the same time I am even more certain that it was not the intention or purpose of Congress so to do." In other words, Congress did not mean what it said. The court does not like the language of the statute as written, so rewrites it.

With one part of the above-quoted sentence, to-wit, "the strict literal language of Section 2 (a) makes it appear that the system has been proscribed," I agree. We are, in other words, in accord on the proposition that the plus freight charge system is included in that which is proscribed.

What I can not agree to is that while Congress said so, it did not mean or intend what it said. Nor could I agree that if I were convinced that Congress did not intend what it said, courts could justifiably rewrite a statute to say what the courts believed Congress intended to say. If we were to so construe statutes, the courts, rather than the Congress would become the law making body.

Courts can and do go far in seeking intent, when the language used is ambiguous or uncertain and there is doubt as to the meaning of words. Courts then study the purpose of the legislation. In the case before us, there is no ambiguity nor uncertainty. And, instead of construing the

language to carry out the intent of Congress to prevent unfair trade practices the proposed construction would tie the hands of the F. T. C. and prevent it from performing its duty to keep open all the lanes of commerce to all who wish to use them. It would defeat, or at least handicap, the F. T. C.'s effort to protect the public against practices which the Commission has found (and we approve the finding) "substantially lessened competition" and tended "to create a monopoly."

The purpose of the legislation embodied in the Clayton Act, as amended by the Robinson Patman Act, is now so clear and obvious that debate or discussion is idle. We are dealing with unfair trade practices. Such condemned practices include those which result in "substantially lessening competition" or which "tend to create a monopoly." Unfair trade methods also include other bad practices, like misrepresentation of quality of goods, false and misleading advertisement, and fraudulent practices in general. In a word, the Act was passed to protect the public against the practices which the avaricious might inflict on an innocent or gullible public. The legislation did not define all the specific kinds of commerce which were subject to its provision. It used all inclusive language. The only limitation is that the commerce must be interstate.

[227] As in the recently decided case of *U. S. v. South-Eastern Underwriters Ass'n.*, the question is one where Congress has spoken and courts are asked to make an exception to the inclusion of its broad language where no such exception appears in the statute.

In *U. S. v. South-Eastern Underwriters Ass'n.*, (decided June 1944) the Justices agreed that insurance business was commerce. Division in the Court occurred over whether that phase of commerce represented by insurance was excepted from the inclusive language of the Sherman Anti-Trust Act. The Court held that the Act covered all commerce and therefore commerce represented by insurance could not be exempted.

In the case before us, we have even stronger reason for concluding that the Congressional Act did not except the practice here under consideration. In the instant case, petitioners must bring themselves within the language of the exception. The fact that one exception is stated in the Act excludes all other exceptions. We are not justified in adding other instances as exceptions. To come within this single exception, petitioners must show that their practices, which tended to lessen competition and to create a monopoly, were justified because they met an unusual situation,—in other words, that it was necessary to lower prices—in good faith,—to meet equally low prices of a competitor. There is no other exception. Either petitioners come within this exception, or they fail in their defense.

To even contend that such was the justification of the practice in question, strikes me as bordering on the absurd. No lower price by either party was contemplated. Good faith, a term often stretched to the breaking point, has never before been held to sustain a practice which lessened competition and tended to create a monopoly. "Good faith"—a term for the hard-pressed wrongdoer to conjure with, a term which protects the innocent from the consequences of his mistake, also a term behind which the insincere attempt to hide—would be given a false application if it covered the act of those seeking to monopolize an industry. Faced by many a decision, one of which was recently announced by this court (*Dietzgen Co. v. Federal Trade Commission*, 142 F. (2d) 321) [38 F. T. C. 840], we must hold that action which lessens competition or tends to create a monopoly is unfair within the meaning of the F. T. C. Act, and good faith, as that

term is used in the above-quoted exception found in the Robinson Patman Act, cannot be ascribed to those who indulge in such practice. Such a construction would run counter to the Sherman Anti-Trust Act, the Clayton Act, and the Federal Trade Commission Act. We cannot justifiably hold that by implication the Robinson Patman Act repealed or changed this Congressional policy so long established. If the change is to be made, Congress, not the courts, must do it.

The order of the Commission should be affirmed and enforced.

MAJOR, C. J., concurring in part and dissenting in part.

I concur in the result reached by Judge Minton, that is, that the Commission's petition for enforcement of its order should be denied. Neither do I take issue with the basis for his conclusion that petitioners' price "was made in good faith to meet an equally low price of a competitor" under § 2 (b). However, in my view there is no occasion to decide the merits of such defense for the reason that the Commission has failed to make a case of price discrimination under § 2 (a).

I disagree with the statement, "we do not find it necessary to decide whether or not the so-called basing point system is legal or illegal." In my view, the opinion is a holding that the price system is illegal. Notwithstanding respondent's apparent reluctance to meet this issue head on, it is squarely presented by its cease and desist order. The sold factual situation relied upon to show a "discrimination in price between different purchasers" is that petitioners sold at a delivered price of Chicago plus freight to the point of delivery, irrespective of whether the freight rate from Decatur (the location of petitioners' plant) was greater or less than that from Chicago. I am unable to discern how it can be said in one breath that the legality of such a system is not at issue and in the next that its use is violative of § 2 (a).

It should be kept in mind that respondent's complaint is based solely on an alleged violation of § 2 of the Clayton Act, as amended by the Robinson-Patman Act approved June 19, 1936, and we are therefore not concerned with a case which might be predicated upon some other provision of [228] the anti-trust laws. No contention is made that petitioners were in agreement with their competitors in their adoption of a delivered price system. On this ground alone, much of respondent's argument becomes irrelevant.

The basing point system has been widely employed by industry in this country for more than fifty years (Harvard Law Review 45, page 548, footnote), and notwithstanding respondent's assertion to the contrary, I think a court may and should take judicial notice of a system of such long and extensive use. Furthermore, we may take judicial notice of the fact that various agencies of the federal government by administrative orders and decrees have given recognition to the system. *Salt Producers Assn. v. Federal Trade Commission*, 134 F. (2d) 354, 358 [36 F. T. C. 1110; 3 S. & D. 542]; *Gay Union Corp., Inc. v. Wallace*, 112 F. (2d) 192, 195; *Benton Harbor, St. J. G. & F. Co. v. Middle West Coal Company*, 271 Fed. 216, 218. The Supreme Court, in *Cement Mfrs. Assn. v. United States*, 268 U. S. 588, 598 (decided in 1925), said of the system:

"Their use is rather the natural result of the development of the business within certain defined geographical areas. * * * The basing point is an essential element in making a delivered price, since selling by any particular manufacturer at the lowest of the delivered prices computed

from several basing points is a necessary procedure in competing in the sale of cement."

Petitioners contend that use of the basing system is not proscribed by § 2, and rely strongly upon the legislative history made at the time of the passage of the Robinson-Patman amendment. On the other hand, respondent contends that the legislative history is irrelevant for the reason that the basing system had no legal standing at any time and the most that can be said from the legislative history is that Congress did not intend to alter its status, that if it was legal before the amendment it was legal afterward, and if illegal before it was likewise illegal afterward. It may be, as respondent contends, that the legality of the system has never been established. Assuming that such is the case, I still think that the Commission carries a heavy burden in attempting to demonstrate that the system has been outlawed, in view of its extensive use in industry over such a long period of time, its recognition by numerous agencies of the government, its limited approval by the Supreme Court, and the emphatic refusal of Congress by express language to outlaw it, although often urged so to do. Furthermore, I am of the view that the legislative history of the instant amendment, together with related proceedings before Congress, amount to an implied recognition of its legality.

I agree that the strict literal language of § 2 (a) makes it appear that the system has been proscribed, but at the same time I am even more certain that it was not the intention or purpose of Congress so to do. I also agree that a superficial view of the system is calculated to lead to its condemnation. If it were within the province of this court to appraise the system, which it is not, we are in a poor position to do so from the record before us. It must be assumed, I think, that it is a two sided question; otherwise, repeated action to outlaw it would not have met with such potent, continued and successful opposition in Congress. Action with reference to a system so thoroughly embedded in the economic life of the country is a matter peculiarly within the legislative domain, and the responsibility should not be assumed by the courts unless compelled to do so by a statutory command which leaves no doubt as to the intention and purpose of Congress.

A mere recitation of the legislative history of the amendment under consideration, together with other pertinent facts relative thereto, leaves no room for doubt but that Congress did not intend to outlaw the basing system; in fact, its purpose to the contrary is clearly shown. Even though a literal reading of the Act as amended may lead to a contrary result, courts are not bound to accept such a meaning if inconsistent with the purpose and intent of its makers. *In re Rector, etc., of Holy Trinity Church v. United States*, 143 U. S. 457; *Takao Ozawa v. United States*, 260 U. S. 178, 194.

In the recent important case of *United States v. South-Eastern Underwriters' Assn., et al.*, decided by the Supreme Court June 5, 1944, the court held that the Sherman Anti-Trust Act was applicable to the defendant insurance companies. Surely it cannot be said that the Sherman Act is any less comprehensive or all inclusive in its terms than the language of the instant Act. Both the majority and [229] minority opinions in that case, however, rely upon the legislative history of the Act. In the majority opinion it is stated:

"But neither by reports nor by statements of the bill's sponsors or others was any purpose to exempt insurance companies revealed. * * * On the contrary, all the acceptable evidence points the other way. That Con-

gress wanted to go to the utmost extent of its Constitutional power in restraining trust and monopoly agreements such as the indictment here charges admits of little, if any, doubt."

If the legislative history may be looked to for a construction of the Sherman Act, I see no reason why it should not be looked to in construing the Clayton Act as amended. In the case last cited, the Supreme Court found nothing in the legislative history of the former Act contrary to its plain unambiguous language, but the congressional history of the latter Act is clearly at variance with the construction sought by respondent.

The Robinson-Patman Act was reported by the House Judiciary Committee as H. R. 8442 of the 74th Congress, and contained the following definition of "price":

"(5) The word 'price,' as used in this section 2, shall be construed to mean the amount received by the vendor for each commodity unit, after deducting actual freight or cost of other transportation, if any, allowed or defrayed by the vendor."

The Committee report accompanying the bill expressly stated that the object of this definition was to eliminate the basing point or delivered price method of selling, and that the definition would require the use of f. o. b. method of sale (House Reports, 74th Congress, No. 2287). This definition was stricken by an amendment unanimously agreed to by the House (80 Cong. Rec. 8140, 8224). Representative Patman, one of the authors of the bill, in connection with this amendment conceded on the floor of the House that the anti-basing point provision had been eliminated from the bill and that it met with his approval. Representative Citron, a member of the House Judiciary Committee in charge of the bill, stated some of the reasons why the basing system should not be outlawed, and among other things said:

"There is an economic justification of this system, because it provides an open and above-board method for manufacturers and wholesalers to meet competition outside of their own local freight area. * * * But a more serious consequence of the inclusion of this definition of price, as previously stated, would be to compel all manufacturers to ship f. o. b. shipping point, and therefore compel the very definite localization of operations of all manufacturers and wholesalers, which would have the immediate effect of increasing costs as the result of seriously limited volume production." (80 Cong. Rec. 8224.)

Without quoting further, it is sufficient to note that all members who participated in the House debate agreed that the inclusion of the definition of "price" as originally contained in the bill was directed at the basing point price system, and that the elimination of such definition was for the express purpose of removing the basing system from the proscriptions of the amendment. There was not a single discordant note to this view. It is true that some of the members criticized the system, but even those admitted it was a matter which should be given consideration in separate legislation. For instance, one member of the Committee stated, "I think the basing point practice indefensible and we should deal with it soon in a separate bill." When the bill was before the Senate, Senator Borah, in response to an inquiry by Senator Davis as to the effect the proposed legislation would have on the basing point system, stated, "My opinion would be that this does not have any effect upon that. I defer to the judgment of the Senator in charge of the bill, but that would be my impression." Senator Van Nuys, who was in charge of the bill, then stated, "The Senator from Idaho is correct."

Notwithstanding this imposing legislative history, respondent argues that it is inconceivable that Congress intended to legalize this "indefensible" practice. To my mind this is a spurious contention. The legislative history leaves no room for doubt but that Congress purposely refrained from outlawing the system and by strong implication gave recognition to its existing legal status.

It is also significant that at the same session of Congress the Wheeler Anti-Basing Point Bill was rejected (80 Cong. Rec. 8102, 8223 and 8224). In 1936, hearings were held before the Senate Committee on Interstate Commerce, from March 9 to April 10, on Senate S. 4055, which was expressly aimed at eliminating the basing point system, and again no legislation resulted. Also, it may be observed that the Temporary National Economic Committee created by joint resolution of Congress on recommendation of the President to study the entire problem of monopoly recommended in its final report the legislative destruction of the basing point system as a monopolistic price fixing device. (Senate Document No. 35, 77th Congress, 1st Session, page 33.) It is also interesting to note that the Assistant Chief Counsel for the Commission who argued the instant case before this court, on January 30, 1940 urged the Committee to "consider whether legislation outlawing the basing point system would be recommended." It was his position then that the system could be reached only under "theories of conspiracy and concerted action which are necessary to make the law applicable." (Record of proceedings of T. N. E. C., Vol. 4, page 400.) Cf. *Federal Trade Commission v. Bunte Brothers, Inc.*, 312 U. S. 349, 352 [32 F. T. C. 1848; 3 S. & D. 337].

All of which shows that not only has Congress refused in no uncertain terms to outlaw the system, but that the Commission has recognized its use as not unlawful except in combination or concerted action. Can it be possible that Congress in the enactment of the Robinson-Patman amendment proscribed the use of the basing system after its clearly expressed intention and purpose to the contrary? I am unwilling to attribute to Congress such a degree of mediocrity. Is it reasonable to suppose that the Commission and its counsel would have continued to urge legislation outlawing the system if such was already an accomplished fact? The plain unvarnished truth is that respondent seeks from this court that which Congress has steadfastly denied.

Respondent relies upon another crutch which furnishes little, if any, support. In 1924, in *Federal Trade Commission v. U. S. Steel Corp., et al.* (8 F. T. C. decisions 1), it held that the basing point system was illegal under the Clayton Act prior to the passage of the Robinson-Patman amendment. A cease and desist order was issued but, as I understand, no action has been taken by the Commission to enforce its order and the Steel Corporation continues to use this price system or one of the same principle. It is a fair inference in the light of what has since transpired that the Commission entertained no hope that such an order was enforceable under the old Clayton Act, and in view of the legislative history of the Robinson-Patman amendment and other related events, it has little, if any, basis for such hope at this time.

Another factor of some importance is the alternative price system open to petitioners. Of course, I assume it is not within the province of courts or respondent to advise petitioners or anybody else how a business should be operated so as to comply with the law. However, in the instant case, respondent's order requires that petitioners within sixty days file with the

Commission a report in writing setting forth "in detail the manner and form in which they have complied with this order." That means, so I would think, that petitioners must advise the Commission of the price system they have adopted in lieu of that which is condemned. Respondent in its reply brief, in response to petitioners' challenge that it describe a price system which would be nondiscriminatory, makes this pertinent suggestion, "But petitioners obviously do not want one pricing method that rather clearly would not be discriminatory, a uniform f. o. b. plant price with exceptions based only on differences in cost." This suggestion no doubt presents the only alternative to the price system now under attack. At any rate, so far as I know, it is the only system which on principle could be distinguished from the basing point system. The f. o. b., or mill price system as it is sometimes called, is the very system which Congress has refused to impose upon industry for the reason that it would cause or tend to cause the centralization of industry in the more highly populated centers. (See Representative Citron's remarks (80 Cong. Rec. 8224).)

This court in its former opinion expressed the view that there was no evidence in the record to support the finding that the discrimination shown tended substantially to lessen competition or to create a monopoly. I am not convinced that we were in error in this respect. In my view, the basing point system has the opposite effect, that is, it has a tendency to preserve competition and prevent monopoly. Especially is this so when compared with the f. o. b. system now sought to be imposed. It was stipulated in effect that the quality of syrup manufactured by petitioners and all competitors was substantially the same, that petitioners could not sell at a higher price than their competitors, and that competitors could not sell at a higher price [231] than petitioners. To me this means that petitioners and their competitors must sell their product at substantially the same price. Petitioners, forced to an f. o. b. price, could not compete with their competitors in the Chicago market any more than their Chicago competitors could compete with them in the area immediately surrounding Decatur. Competition might become a thing of the past, and each manufacturer have a monopoly of the trade in its own area. Other things being equal, and there is nothing in this record to the contrary, such a price system in my judgment would be calculated to lead to a price war from which only the financially strong and those with a favorable geographical location could survive. Such is the unreasonable result which the Commission would have us produce by embracing its construction of the Clayton Act as amended.

I would refuse such construction and leave the matter in the lap of the legislative branch of the government where, in my view, it properly belongs.

SEGAL LOCK & HARDWARE CO., INC., ET AL. v. FEDERAL
TRADE COMMISSION ¹

No. 322—F. T. C. Dock. 3896

(Circuit Court of Appeals, Second Circuit. July 14, 1944)

WORDS AND PHRASES—"PICK PROOF"

At hearing on charge that lock manufacturers violated Federal Trade Commission Act by representing that locks were "pick proof," evidence sustained Commission's definition of pick proof as meaning a lock which can be opened without damage thereto only with its own or duplicate keys. Federal Trade Commission Act, sec. 5(a), as amended, 15 U. S. C. A. sec. 45.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION
—QUALITIES OR PROPERTIES OF PRODUCT.

Conflicting evidence whether petitioners' locks could be opened without their own or duplicate keys without damage to locks supported Federal Trade Commission's finding that petitioners' representations that locks were pick proof were erroneous and misleading, so as to warrant order directing petitioners to desist from describing locks as pick proof or from otherwise representing that locks could not be picked.

EVIDENCE—CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—IF EVIDENCE CONFLICTING.

On petition to review order of Federal Trade Commission directing petitioner to cease and desist from unfair trade practices, Commission's decision on conflicting evidence is final.

EVIDENCE—CROSS-EXAMINATION—TRADE SECRETS.

Trial judge has wide discretion to limit cross-examination so as not to require witness to reveal trade secrets.

EVIDENCE—CROSS-EXAMINATION—TRADE SECRETS—WITNESSES' PRIVILEGE NOT TO DIVULGE.

At hearing on charges that lock manufacturers violated Federal Trade Commission Act by representing that locks were pick proof, in view of Commission's definition of pick proof, trial examiner properly excluded cross-examination of Commission's expert witnesses concerning methods and instruments used in picking the locks, on ground that witnesses were privileged not to reveal such trade secrets.

EVIDENCE—CROSS-EXAMINATION—TRADE SECRETS—WITNESSES' PRIVILEGE NOT TO DIVULGE—IF DEMONSTRATION OR DISCLOSURE BEFORE TRIAL EXAMINER ALONE.

A hearing on charges that lock manufacturers violated Federal Trade Commission Act by representing that their locks were pick proof was not rendered unfair by permitting commission's expert witnesses in order to protect their trade secrets to demonstrate before trial examiner alone their ability to pick the locks.

(The syllabus, with substituted captions, is taken from 143 F. (2d) 935)

¹ Reported in 143 F. (2d) 935. For case before Commission, see 34 F. T. C. 1375.

On Petition to review and set aside so much of an order of the Commission as directs the petitioners to cease and desist from using the words "pick proof" or words of similar import to describe their locks or lock cylinders, or from otherwise representing that their locks or lock cylinders cannot be picked, order affirmed.

Goodman & Friedman, of New York City, and *Mr. Charles M. Palmer* of Washington, D.C. (*Mr. Charles M. Palmer*, of Washington, D.C., of counsel, *Mr. Saul W. Goodman*, of New York City, on the brief) for petitioners.

Mr. W. T. Kelley, Chief Counsel, *Mr. Joseph J. Smith, Jr.*, Asst. Chief Counsel, *Mr. Everett F. Haycraft*, and *Mr. Jno. W. Carter, Jr.*, Special Attys., all of Washington, D.C., for respondent.

Before L. HAND, SWAN, and CLARK, *Circuit Judges*.

SWAN, *Circuit Judge*:

[936] The petitioners are Segal Lock & Hardware Company, a New York corporation, its wholly owned subsidiary Norwalk Lock Company, a Connecticut corporation, and Louis Segal, who is the president and treasurer of both corporations. The petitioners are engaged in the manufacture and sale in interstate commerce of locks and lock cylinders. They have marketed their locks under the trade name "Segal Pick-Proof" and have advertised extensively by such slogans as "the only lock cylinder that is impossible to pick," "only your key will unlock it," and similar statements representing that the petitioners' lock affords absolute security against picking and is the only lock which does do so. On September 1939 the respondent issued a complaint against the petitioners charging that the representations above referred to constitute a violation of section 5 (a) of the Federal Trade Commission Act, as amended, 15 U. S. C. A. § 45. Extensive hearings were held before a trial examiner and on June 12, 1942 the Commission made the challenged order which directs the petitioners to desist from using the term "pick-proof" in connection with their locks or otherwise representing that their locks or lock cylinders cannot be picked. The questions presented are (1) whether the Commission's finding that the petitioners' [937] lock cylinder is not pick proof is supported by substantial evidence; and (2) whether the hearing was so unfairly conducted, as the petitioners claim, that the order cannot stand.

The first question turns upon the meaning of "pick-proof." The petitioners argue that picking a lock means opening it by the use of conventional picks or instruments customarily used by locksmiths and burglars. But the Commission has made a finding that "picking a lock may be defined as the opening of the lock without the use of the original or duplicate keys and without damage to the lock." Not only is there testimony to support this definition but the petitioners' own advertising shows that they used "pick-proof" to mean that the lock could be opened only with its own key, and was "absolutely" pick-proof. The Commission found that although the lock is reasonably secure against customary or conventional methods of picking, it is not in fact pick-proof, and that the petitioners' representations with respect to the invulnerability of their lock against picking are erroneous and misleading. Plainly there is evidence to support the finding that "pick-proof" is misleading under the Commission's definition of the term. Although six expert locksmiths testified on behalf of the petitioners that they had not been able to pick the lock, three others on behalf of the respondent testified that they had picked it on numerous oc-

casions; and two of these witnesses conducted a demonstration before the trial examiner alone, in which they did so. On conflicting evidence the Commission's decision must be accepted as final. 15 U. S. C. A. § 45 (c). *Benton Announcements v. Federal Trade Commission*, 130 F. (2d) 254 (C. C. A. 2) [35 F. T. C. 941; 3 S. & D. 495].

We pass now to a consideration of whether the trial was fairly conducted. When counsel for the petitioners sought to cross-examine the respondent's experts as to the methods and instruments they had used in their alleged picking of the lock, the questions were excluded on the ground that the method and tools used by the witnesses were a "trade secret" which they were privileged not to reveal. By an order made on October 12, 1940 the Commission sustained the trial examiner's ruling but directed that the witnesses demonstrate the picking of the lock in the presence of the trial examiner alone, and that he include in the record a statement whether the lock was successfully picked by them. Thereafter such a demonstration was given by the witnesses Rusch and Leurele. Three of the petitioners' lock cylinders were purchased by counsel from hardware dealers and were successively installed in the door of the hearing room. The trial examiner and the two witnesses remained inside the room, all other persons being excluded. Counsel for petitioners and counsel for the respondent remained immediately outside the door until the picking was accomplished. One of the witnesses successfully picked two of the cylinders, the first within thirty minutes and the third within four minutes. The second witness was unsuccessful in his attempt to pick the second cylinder, but the record indicates that possibly this lock was not in perfect condition when purchased.

If "pick-proof" meant that the picking must be done by conventional picks and customary methods, the prevention of cross examination to find out what tools and technique the witnesses had used on the occasions when, according to their direct testimony, they had picked petitioners' locks might perhaps be so serious a limitation of the right of cross examination as to deprive them of a fair hearing, although the authorities recognize a wide discretion in the trial judge to protect against the revelation of trade secrets. See Wigmore, *Evidence*, 3rd ed. Vol. 8, § 2212; *Du Pont de Nemours Powder Co. v. Masland*, 244 U. S. 100, 103. But in view of the Commission's definition of picking a lock the issue was not *how* the lock was picked but whether it could be opened without keys and without damage to the lock. On that issue the petitioners' cross examination was not limited. For the same reason we think that the demonstration before the examiner in camera in order to protect the witnesses' trade secret was not unfair. The petitioners affixed the locks and saw the door opened without damage to the locks and without the use of keys. All they were deprived of was observation of the technique by which it was accomplished.

Order affirmed.

ANDREW J. LYTTLE, RICHARD CARL LYTTLE AND WILLIAM
EDGAR SPICER v. FEDERAL TRADE COMMISSION¹

No. 9688—F. T. C. Dock. 4829

(Circuit Court of Appeals, Sixth Circuit. July 17, 1944)

Order dismissing, for lack of prosecution, on motion of the Court, petition to review the Commission's order in Docket 4829, Sept. 28, 1943, 37 F. T. C. 464, requiring respondents, their representatives, etc., in connection with the offering for sale, etc., in commerce, of mailing cards or folders or any other printed or written material for use in obtaining information concerning debtors or other persons, to cease and desist from using the words "Bureau of Records of Employment," "Registration Number" or "Regional agent," or area designations such as "Eastern area," or any other words which represent that respondents are connected with any branch of the United States Government—the Selective Service Administration or any other—or are authorized to secure information for the use thereof, etc.

Mr. Dudley M. Sifling, of Akron, Ohio, for petitioners.

Mr. J. J. Smith, Jr., assistant chief counsel, and *Mr. James W. Nichol*, special attorney, Federal Trade Commission, both of Washington, D. C., for the Commission.

Before: HICKS, SIMONS & ALLEN, *Circuit Judges*.

ORDER

It appearing to the court that this cause was docketed on November 27, 1943; that the typewritten transcript of record was filed on January 7, 1944; and that counsel for petitioners has failed to proceed with due diligence to print the record as prescribed by Rule 20,

It is now ordered upon the court's own motion that the petition for review herein be and the same is hereby dismissed for want of prosecution.

POST INSTITUTE SALES CORPORATION AND LOUIS J.
STERN, INDIVIDUALLY TRADING AS POST INSTITUTE
AND AS AN OFFICER OF POST INSTITUTE SALES COR-
PORATION v. FEDERAL TRADE COMMISSION²

No. 18099—F. T. C. Dock. 4129

(Circuit Court of Appeals, Second Circuit. July 24, 1944)

Order dismissing, for lack of prosecution, on motion of the Commission, petition to review Commission's order in Docket 4129, December 16, 1941, 34 F. T. C. 394, requiring respondents, their representatives, etc., in connection with the offer, etc., in commerce, of their preparations for the hair and scalp designated Ultrasol Hair

¹ Not reported in Federal Reporter. For case before Commission, see 37 F. T. C. 464.

² Not reported in Federal Reporter. For case before Commission, see 34 F. T. C. 394.

Bath, *Ultrasol Pituitary Fluid*, and *Ultrasol .33*, either singly or in combination under the designation of *Ultrasol Scalp Treatment*, to cease and desist from disseminating any advertisements which represent, directly or through inference, that use of said preparations would stop abnormal loss of hair, restore natural color to the hair, be effective in curing dandruff, etc.

Mr. Morris L. Bower, of New York City, for petitioners.

Mr. J. J. Smith, Jr., assistant chief counsel, Federal Trade Commission, of Washington, D. C., for Commission.

ORDER DISMISSING PETITION TO REVIEW

This matter coming on for hearing upon the motion of the Federal Trade Commission, respondent, to dismiss petitioners' petition to review filed herein on February 11, 1942, it is *ordered* that said motion be and it hereby is granted, and that petitioners' said petition to review be and it hereby is dismissed for lack of prosecution.

GELB ET AL. v. FEDERAL TRADE COMMISSION ¹

No. 144—F. T. C. Dock. 3615

(Circuit Court of Appeals, Second Circuit. Aug. 14, 1944)

CEASE AND DESIST ORDERS—PROPRIETY—PARTIES—OFFICERS OF RESPONDENT CORPORATION—IF DISMISSAL AS TO LATTER FOR DISSOLUTION.

Though complaint charging unfair competition in advertising cosmetic products was dismissed as against corporation because of its dissolution, Federal Trade Commission was justified in entering cease and desist order against former officers also named in complaint who had dominant control of business activities of dissolved corporation and continued similar control over corporation which succeeded to its name and assets. Federal Trade Commission Act, sec. 5, 15 U. S. C. A. sec. 45.

CEASE AND DESIST ORDERS—EXTENT—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—ADVERTISING FALSELY OR MISLEADINGLY—INCLUSION OF DISCONTINUED FORMS.

Forms of advertising which had been discontinued could be included in order to cease and desist from certain unfair competitive practices.

EVIDENCE—COMPETENCE—REFUSAL OF EXPERT FOR COMMISSION, AFTER TESTIMONY, AND RECALL AS WITNESS FOR DEFENSE, TO DISCLOSE OTHER SOURCE OF PROSPECTIVE COMPENSATION.

Where expert witness was first called by Federal Trade Commission and was then subject to full cross-examination and was later recalled as a witness for defendants, his refusal during direct examination upon second appearance to disclose to whom besides commission he was looking for compensation bore merely on his credibility and did not require that all his testimony be stricken from the record. Federal Trade Commission, sec. 9, 15 U. S. C. A. sec. 49.

¹ Reported in 144 F. (2d) 580. For case before Commission, see 33 F. T. C. 1450.

EVIDENCE—FINDINGS OF COMMISSION—THAT CONCLUSIVE IF SUPPORTED BY—AS REQUIRING SUBSTANTIAL.

Statute providing that Federal Trade Commission's findings as to the facts, if supported by "evidence," shall be conclusive must be interpreted as requiring substantial evidence as the basis of findings in order to render them conclusive. Federal Trade Commission Act, sec. 5(c), 15 U. S. C. A. sec. 45(c).

EVIDENCE—FINDINGS OF COMMISSION—QUALITIES OR PROPERTIES OF PRODUCT—HAIR PREPARATION—WHETHER HAIR RECONDITIONED BY.

Where witnesses on both sides testified from experience that cosmetic preparation for shampooing and coloring hair known as Clairol reconditioned the hair and a chemist testified without contradiction that in use the shampoo would deposit a substantial percentage of free oil, another chemist's testimony that in his opinion Clairol could not recondition the hair could not be regarded as "substantial evidence" to support Federal Trade Commission's finding that the preparation was incapable of reconditioning the hair.

EVIDENCE—FINDINGS OF COMMISSION—QUALITIES OR PROPERTIES OF PRODUCT—HAIR PREPARATION—WHETHER HAIR PERMANENTLY COLORED.

Federal Trade Commission's finding that preparation for shampooing and coloring hair known as Clairol had no effect upon new hair sustained conclusion that advertisement that such preparation colors the hair permanently was misleading and warranted order to cease such advertising, though preparation admittedly imparted a permanent coloration to hair to which it was applied.

FEDERAL TRADE COMMISSION ACT—PROTECTIVE SCOPE.

The Federal Trade Commission Act was intended for protection of the trusting as well as the suspicious.

CEASE AND DESIST ORDERS—EXTENT—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—ADVERTISING FALSELY OR MISLEADINGLY—QUALITIES OR PROPERTIES OF PRODUCT—HAIR PREPARATION—PERMANENCE OF EFFECT—AS TO HAIR AS TO WHICH APPLIED—REPRESENTATION OF, AS TO, AS NOT PRECLUDED UNDER.

Order to cease representing that effect produced upon color of hair by use of cosmetic preparation known as Clairol is permanent does not preclude advertising that preparation colors permanently the hair to which it is applied.

CEASE AND DESIST ORDERS—PROPRIETY—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—ADVERTISING FALSELY OR MISLEADINGLY—SAFETY OF PRODUCT—IF USE NOT IN ACCORD WITH PACKAGE INSTRUCTIONS—REQUIREMENT OF SUGGESTION IN ADVERTISING ALSO—THAT CONSIDERATION TO BE GIVEN TO USE UNDER PRESCRIBED OR USUAL CONDITIONS.

Where cosmetic preparation for shampooing and coloring hair known as Instant Clairol was capable of causing injury if not used according to instructions printed on package, statute directing that, in determining whether advertisement is misleading, consideration must be given to use of the article under the conditions prescribed in advertisement, or under customary or usual conditions, did not preclude Federal Trade Commission from ordering petitioners to cease advertising preparation as harmless without suggesting in advertisement itself the warning contained in instructions. Federal Trade Commission Act, sec. 5, and sec. 15(a) as added by Act 1938, 15 U. S. C. A. secs. 45, 55(a).

CEASE AND DESIST ORDERS—EXTENT—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—ADVERTISING FALSELY OR MISLEADINGLY—SAFETY OF PRODUCT—IF REPRESENTED AS HARMLESS, WHERE USE IN ACCORDANCE WITH PACKAGE INSTRUCTIONS.

Order to cease representing that cosmetic preparation for shampooing and coloring hair known as Instant Clairol is harmless would not be infringed by advertisements representing that preparation is harmless if used in accordance with instructions contained in package, where such preparation is harmless if used according to instructions.

(The syllabus, with substituted captions, is taken from 144 F. (2d) 580)

On petition of Joan Clair Gelb, now known as Joan C. Vaughan, and others, to review order of Commission, order modified and, as modified, affirmed.

Mr. Wilbur H. Friedman, of New York City (*Mr. Joseph M. Proskauer*, of New York City, *Mr. John Wattawa*, of Washington, D. C., and *Mr. Eugene Eisenmann*, of New York City, of counsel), for petitioners.

Mr. W. T. Kelley, Chief Counsel, *Mr. Joseph J. Smith, Jr.*, Asst. Chief Counsel, and *Mr. Earl J. Kolb*, Sp. Atty., all of Washington, D. C., for respondent.

Before SWAN, AUGUSTUS N. HAND, and CLARK, *Circuit Judges*.

SWAN, *Circuit Judge*; CLARK, *Circuit Judge*, dissenting in part.

In September 1938 the Federal Trade Commission issued a complaint against Clairol, Inc., a New York corporation, and three individuals who were its officers and controlled its advertising policies and practices. The complaint charged violation of the Federal Trade Commission Act, 15 U. S. C. A. § 45, in advertising two cosmetic preparations for shampooing and coloring the hair known generally as "Clairol" and specifically as "Progressive Clairol" and "Instant Clairol." The proceedings resulted in the commission's order of October 8, 1941, which dismissed the complaint as against the corporation because of its dissolution in November 1940, and directed the individuals to cease and desist from making certain representations in advertising Clairol products. In due time they filed their petition in this court to review the order, but filing of the transcript of record was delayed nearly two years and the case was not brought on for argument until May 1944.

The petitioners' first contention is that no cease and desist order should have been issued against them, since they personally did no advertising of Clairol products and the proceeding was dismissed against the corporation whose advertising was challenged. This contention is without merit. The petitioners had dominant control of the business activities of the New York corporation named in the complaint and have continued similar control over a Connecticut corporation, Clairol, Incorporated, which succeeded to its name and assets. The commission was justified in concluding that it was necessary to enjoin the individuals in order to prevent the unfair competitive practices which it found to exist. *Federal Trade Commission v. Standard Education Society*, 302 U. S. 112, 119-120 [25 F. T. C. 1715]; 2 S. & D. 429]. Nor can the petitioners prevail in their argument that the injunction may not include forms of advertising which have been discontinued. See *Trade Comm'n v. Goodyear Co.*, 304 U. S. 257, 260 [26 F. T. C. 1521; 2 S. & D. 456]; *Educators Ass'n v. Federal Trade Comm'n*, 108 F. (2d) 470, 473 (C. C. A. 2) [30 F. T. C. 1614; 3 S. & D. 171].

Complaint is made of the trial examiner's refusal to strike the testimony of Dr. Snell because after admitting that he was looking to some one besides the commission for compensation, he declined to obey the examiner's direction that he answer the question "To whom?" Dr. Snell was first called as an expert witness by the commission, and was subject to full cross-examination; later he was recalled as a witness for the respondents. It was on the latter appearance and during direct examination that he refused to answer the question propounded. Had counsel desired to compel the testimony, the means provided by the statute were available, 15 U. S. C. A. § 49. The incident bore merely on the credibility of the recalcitrant witness; it did not require that all his testimony be stricken from the record.

[582] The only substantial question presented by the case is whether there is evidence to support the findings upon which rest clauses 2, 3 and 7 of the order enjoining the petitioners from

"(2) Representing that said preparations recondition the hair, or restore the natural or youthful color of the hair.

(3) Representing that the effect produced upon the color of the hair by the use of said preparations is permanent; * * *

(7) Representing that said preparation Instant Clairol is harmless or safe for use."

We are not unmindful of the statutory admonition that the commission's findings as to the facts, "if supported by evidence, shall be conclusive." 15 U. S. C. A. § 45 (c); *Federal Trade Comm'n v. Standard Education Society*, 302 U. S. 112 [25 F. T. C. 1715; 2 S. & D. 429]. But this provision must be interpreted as requiring substantial evidence as the basis of findings in order to render them conclusive. *J. B. Lippincott Co. v. Federal Trade Commission*, 137 F. (2d) 490, 491 (C. C. A. 3) [36 F. T. C. 1158; 3 S. & D. 584]; and authorities there cited. The petitioners contend that the findings essential to sustain clauses 2, 3, and 7 are not supported by substantial evidence.

As to clause 2 the petitioners' attack goes only to the prohibition against representing that Clairol preparations "recondition the hair." The commission found that the preparations are incapable of reconditioning the hair. It made no finding as to the meaning of the term "recondition." Dr. Snell, whom the commission produced as an expert in chemistry, testified that "as the term is used in the trade, it is intended to mean the application of an oil to the hair, usually hair which has been recently shampooed and which has a dry effect." He had previously testified to having made an analysis of Clairol, which he found to contain dye, soap and a "trace" of oil. Because soap would tend to remove natural oils from the hair, he was of opinion that Clairol could not "recondition" the hair as he had defined the term, and that it contained nothing to make the hair glossy. However his own analysis (Commission's exhibits A-D) shows that what he designated as soap was potassium oleate, 7.56%, and ammonium oleate, 12.23%. Another chemist, Mr. Barban, testified without contradiction that ammonium oleate, when diluted and warmed as in shampooing, liberates ammonia gas and leaves a fatty deposit of oleic acid as free oil, which will impart luster and softness to the hair. Not a single witness who testified from experience in using the preparation denied that Clairol did in fact leave the hair glossy—"reconditioned" within Dr. Snell's definition. Many witnesses on both sides affirmatively stated from experience that it did. Dr. Snell's inference to the contrary, based solely on his chemical

analysis, without experience in the use of the preparation, and with no contradiction of Mr. Barban's testimony that in use the ammonium oleate deposits a substantial percentage of free oil, oleic acid, cannot, in our opinion, be regarded as substantial evidence that Clairol is incapable of reconditioning the hair.

Clause 3 of the order forbids the petitioners to advertise that Clairol colors the hair permanently. There is no dispute that it imparts a permanent coloration to the hair to which it is applied, but the commission found that it has "no effect upon new hair," and hence concluded that the representation as to permanence was misleading. It seems scarcely possible that any user of the preparation could be so credulous as to suppose that hair not yet grown out would be colored by an application of the preparation to the head. But the commission has construed the advertisement as so representing it, and so construed it is false. One witness was found who by dint of much prodding was finally induced to testify "that you would think 'permanent' means you would never need to bother having it dyed again"; although she herself knew better. Since the Act is for the protection of the trusting as well as the suspicious, as stated in *Federal Trade Commission v. Standard Education Society*, 302 U. S. 112, 116 [25 F. T. C. 1715; 2 S. & D. 429], we think the order must be sustained on this point. The restraint which the prohibition in question puts upon the petitioners can be of little practical importance; it does not preclude them from advertising that Clairol colors permanently the hair to which it is applied.

Clause 7 of the order forbids representing that Instant Clairol is harmless or safe for use. This rests upon a finding that it is not so in all cases since it contains a coal tar derivative, paratolylene diamine, and where the user is allergic to such drug, the use of the preparation will result in irritation or rash; and if used for dyeing the eyelashes or eyebrows, blindness may result. That this finding is correct is proved by the cautionary notice printed on each package of Instant Clairol. The petitioners argue that since the preparation is never recommended for use, nor ever used, on the eyelashes or eyebrows, and is perfectly harmless to the normal person, and even the rare allergic person cannot be injured if he follows the instructions printed on the package, the advertisement is true. They rely also on the 1938 amendment to the Act, 15 U. S. C. A. § 15 (a) which directs that in determining whether any advertisement is misleading consideration must be given to the use of the article "under the conditions prescribed in said advertisement or under such conditions as are customary and usual." But we do not think that this amendment precludes the commission from requiring that the warning carried by the package must be suggested by the advertisement itself. Members of the general public who see the advertisement and may thereby be induced to ask a beauty parlor operator to use Instant Clairol on her hair, may never see the warning printed on the package. Hence clause (7) is supportable. But its prohibition would not be infringed by an advertisement representing that Instant Clairol is harmless and safe if used in accordance with instructions contained in the package.

Clause (2) of the order is modified by omitting the words "recondition the hair or"; as so modified the order is affirmed.

CLARK, *Circuit Judge* (dissenting in part):

I think the Commission's entire order was in its power; indeed, I go further and believe the Commission has the bounden duty to take compar-

atively stern measures against this type of particularly crude, if not cruel, appeal to human vanities, both for the benefit of honest competitors (of whom at least several have already stipulated to forego such advertising) and, now since the extension of the Commission's powers in 1938, for the direct protection of the consuming public. We held as much recently in dealing with "Rejuvenescence Cream" in *Charles of the Ritz Distributors Corp. v. F. T. C.*, 2 Cir., July 6, 1944, 143 F. (2d) 676 [39 F. T. C. 657], a case to my mind quite on all fours with this one. Here there was ample expert evidence, if, indeed, it was needed beyond the teachings of common sense, that a shampoo "tint" (the word petitioners find somehow preferable to "dye") could not restore "youthful color"—or, as they now say, in a palpable attempt to dissimulate, the "most youthlike color." It is against this background that the claim "of reconditioning" of the hair and of "permanent" revivifying obviously must be read. Reading these blurbs together, with their natural and clearly intended significance, it seems to me improper to hold the Commission compelled as a matter of law to find a mere oil shampoo to be a reconditioning of the hair in any real sense. Of course, it is hardly claimed that the hair is really made "youthful" or "youthlike"; petitioners' actual defense is that no one should be fooled—a defense repudiated every time it has been offered on appellate review, so far as I know, since it is well settled that the Commission does not act for the sophisticated alone. See extensive citations in *Charles of the Ritz Distributors Corp. v. F. T. C.*, *supra*; *F. T. C. v. Standard Education Society*, 302 U. S. 112, 116 [25 F. T. C. 1715; 2 S. & D. 429]; *Sebrone Co. v. F. T. C.*, 7 Cir., 135 F. (2d) 676, 679 [36 F. T. C. 1142; 3 S. & D. 570]. How much of a change in the advertising employed will be required in practice under our decree is far from clear, since it is coupled with an interpretation, technically accurate, but practically artificial, of "permanent." I fear the emasculation of the Commission's order goes so far that in all probability no consumer will notice any difference. Moreover, ambiguity lurks in permission to advertise a product as "harmless" if used in accordance with instructions contained in the package, while the label on the bottle warns (as legally it must under the Federal Food, Drug, and Cosmetic Act as amended in 1938, 21 U. S. C. A. § 361 (a)) that it is harmful to certain persons or under certain conditions. Hence, even if we had control over the Commission's choice of remedy, I should think it quite a mistake to exercise it here. But we have protested most strongly and steadily recently that we have no such control. *Herzfeld v. F. T. C.*, 2 Cir., 140 F. (2d) 207 [38 F. T. C. 833]; *Parke, Austin & Lipscomb v. F. T. C.*, 2 Cir., 142 F. (2d) 437 [38 F. T. C. 881]; *Charles of the Ritz Distributors Corp. v. F. T. C.*, *supra*.

DORFMAN ET AL. v. FEDERAL TRADE COMMISSION ¹

No. 12653—F. T. C. Dock. 4234

(Circuit Court of Appeals, Eighth Circuit. Oct. 5, 1944)

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—SELLER ORDERS—PADDING.

Evidence supported finding that, in carrying out fraudulent sales plan, petitioners' salesmen padded orders and failed to extend the total of the various purchases on order blanks so that purchaser could immediately determine the amount of the merchandise which he was purchasing, so as to justify cease and desist order. Federal Trade Commission Act, 15 U. S. C. A. sec. 41 et seq.

CEASE AND DESIST ORDERS—PROPRIETY—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—SELLER ORDERS.

The Federal Trade Commission has power to require preparation of orders for interstate sales which shall be clear not only to experts but which may also be readily understood by the unthinking and the credulous.

CEASE AND DESIST ORDERS—PROPRIETY—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—SELLER ORDERS—COMPLIANCE.

To comply with order of Federal Trade Commission directing petitioners to cease the use of a sales method involving preparation of deceptive orders for merchandise, petitioners may entirely revise order blank form or they may instruct their salesmen to prepare the orders so as to conform to Commission's orders.

CEASE AND DESIST ORDERS—PROPRIETY—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—SELLER ORDERS—PADDING.

Order of Federal Trade Commission directing petitioners and their salesmen to cease deceiving their customers and stop padding their orders was not objectionable as placing an unfair burden upon petitioners and as being too broad.

CEASE AND DESIST ORDERS—PROPRIETY—METHODS, ACTS AND PRACTICES—ENFORCING DEALINGS OR PAYMENTS WRONGFULLY—COERCING PURCHASERS BY THREATS OR OTHER FORMS OF INTIMIDATION.

Order of Federal Trade Commission requiring petitioners to cease from coercing or attempting to coerce purchasers, by threats or other forms of intimidation, into accepting rugs in excess of quantity ordered or into paying sums of money in excess of that agreed to be paid, or into paying damages for cancellation of orders for quantities of rugs in excess of that ordered, was not objectionable as interfering with petitioners' constitutional right to resort to the courts.

(The syllabus, with substituted captions, is taken from 144 F. (2d) 737)

On petition to review and set aside order of Commission, order affirmed and decree of enforcement entered.

Mr. Roger Rutchick, of St. Paul, Minn. (*Mr. W. L. Ulwin*, of St. Paul, Minn., on the brief), for petitioners.

Mr. Everett F. Haycraft, Sp. Atty., Federal Trade Commission, of Washington, D. C. (*Mr. W. T. Kelley*, Chief Counsel, and *Mr. Joseph J. Smith, Jr.*, Asst. Chief Counsel, for Federal Trade Commission, both of Washington, D. C., on the brief), for respondent.

¹ Reported in 144 F. (2d) 737. For case before Commission, see 36 F. T. C. 651.

Before GARDNER, THOMAS, and RIDDICK, *Circuit Judges*.

THOMAS, *Circuit Judge*.

This case is presented on a petition to review and set aside an order of the Federal Trade Commission. The scope of the relief sought is limited in the brief to the contention that the Cease and Desist Order "should only be modified, rather than reversed for any insufficiency of the evidence."

The petitioners, Meyer Dorfman and Arthur Cohler, trading under the name Stetson Felt Mills, are engaged at St. Paul, Minn., in the manufacture and in the sale in interstate commerce of felt rugs.

In a conventional proceeding under the Federal Trade Commission Act, 15 U. S. C. A. § 41 et seq., comprising a complaint, an answer, the taking of testimony and the report of an examiner, the Commission made findings of fact and entered the Order here sought to be modified. The complaint relates to the activities and practices of the petitioners in the sale and distribution of their products in interstate commerce. The Commission found that the proceeding is in the interest of the public, and that the acts and practices of the petitioners as found are all to the prejudice [738] and injury of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

The findings of fact briefly summarized are (1) that the petitioners are and have been engaged in the manufacture and sale of felt rugs and other things in interstate commerce; (2) that in the conduct of their business they and their salesmen have been accustomed falsely to represent to prospective purchasers that they are connected with John B. Stetson Company, a well-known hat manufacturer of Philadelphia, and that their rugs are made from trimmings from felt hats made by that company; (3) that petitioners and their salesmen practiced padding orders and shipping to purchasers merchandise greatly in excess of that actually ordered; that the order blanks used were to some extent confusing; that their salesmen failed to extend the totals of the various purchases on such blanks so that the purchaser could immediately determine the amount of merchandise purchased; that in some instances confusing notations were placed upon orders indicating additional purchases or purchases of more expensive merchandise than that actually ordered or desired; that petitioners when attempts were made to cancel such orders often collected as much as 19 percent of the total amount of the order as handling charges, and in many instances large sums as damages by threats to sue and other forms of intimidation; and (4) that such acts and practices are deceptive and result in purchasers paying for rugs in excess of those ordered and paying more than they agreed or expected to pay.

Petitioners first assail paragraph 3 of the findings of fact wherein the Commission found that in carrying out their false and fraudulent sales plan the salesmen padded orders and "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." The contention is that the quoted part of the finding should be eliminated as not supported by the evidence. The contention is without merit. The evidence directly and unequivocally supports the findings. The evidence of the petitioners, instead of denying the statement, tended only to show that it is not customary for salesmen for other business concerns to extend the totals on orders for merchandise.

In their brief petitioners state that they have no quarrel with items 1, 2, 5 and 10 of the Order to Cease and Desist, and in their brief these items are not discussed other than incidentally. Items 1 and 2 cover the representations that petitioners are a part of or in any way connected with the John B. Stetson Company of Philadelphia, and that their rugs are manufactured from trimmings of felt hats made by the said John B. Stetson Company. Item 5 embraces the use of a sales plan by which notations placed on customers' orders increase the amount of their purchases and make the amounts purchased not readily recognizable on the order blanks when they affix their signatures thereto. Item 10 deals with the coercion of or attempt to coerce purchasers by threats to sue or other forms of intimidation into paying damages to petitioners in order to induce them to accept the return of merchandise in excess of the amount ordered.

In three particulars, however, the petitioners seek modification of the Cease and Desist Order. First, they ask that item 4 be modified "if the same is susceptible of an interpretation requiring Petitioners to require their salesmen to extend the amount of such orders." Second, they contend that the Order is too broad in its prohibition of the use of any sales plan which misleads or deceives purchasers and enables salesmen to obtain orders from purchasers in quantities greater than they order or expect to receive, or for amounts greater than they intend or expect to pay for, or in excess of their desires. Third, they assert that the Order requiring petitioners to cease coercing or attempting to coerce purchasers by threats to sue or other forms of intimidation is in violation of their rights to resort to courts of competent jurisdiction, even though the threats to sue and other forms of intimidation are made in the endeavor to compel the purchasers to accept rugs in excess of the quantity ordered or to compel them to pay more money than they agreed or expected to pay.

The first of these objections scarcely requires comment. Item 4 of the Order does not prescribe a means but enjoins a practice. Item 4 directs the petitioners to cease the use of a sales method "which involves the preparation of orders in such a manner that the purchasers cannot readily determine the quantity or 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." In other words, the requirement is that the orders of purchasers must be clear and understandable both as to the quantity of merchandise purchased and the price to be paid. If to accomplish this purpose a blank order form is used which is not clear without an extension of the totals, then such extension is required. It is within the power of the Commission to require the preparation of orders for interstate sales which shall be clear not only to experts but which may also readily be understood by "that vast multitude which includes the ignorant, the unthinking and the credulous." *Florence Mfg. Co. v. J. C. Dowd & Co.*, 2 Cir., 178 Fed. 73, 75; *Charles of the Ritz Distributors Corporation v. Federal Trade Commission*, 2 Cir., 143 F. (2d) 676, 679 [39 F. T. C. 657]. The Act was "made to protect the trusting as well as the suspicious." *Federal Trade Commission v. Standard Education Society*, 302 U. S. 112, 116 [25 F. T. C. 1715; 2 S. & D. 429]. To comply with item 4 of the Cease and Desist Order petitioners may entirely revise the order blank form in evidence or they may instruct their salesmen to prepare the orders so as to conform to the Order of the Commission. Compliance will be easy if undertaken in good faith. Judicial interpretation is not necessary.

The second objection is directed to those clauses of the Order to Cease and Desist intended to prevent the padding of purchasers' orders by any means whatever. It is said the language used by the Commission is "too broad" because "it binds the Petitioners by the undisclosed 'expectations,' 'desires,' 'intentions,' etc. of its customers." We do not think the Order is subject to the criticism directed against it. The petitioners were dealing unfairly with their customers in devious ways. The Order, while prospective in its application, deals with particular practices of the past and is designed to fit the situation and remove the evil practices disclosed by the facts. Compliance requires only that petitioners deal fairly with customers; that they see to it that orders of purchasers are not padded, and that such orders be prepared to include only the quantity and quality of merchandise actually ordered at prices actually made known to the purchasers and agreed upon. Whether the language of an order is too broad or not depends upon the nature and character of the unfair practice which it is intended to cure. The Order requires only that salesmen, before preparing orders, discover the desires, intentions and expectations of the purchasers with reference to the amount and cost of the merchandise, and prepare the orders accordingly. In short, the Order says to the petitioners and their salesmen, cease deceiving your customers and stop padding their orders. The Order, in our opinion, places no unfair burden upon the petitioners. It should be strictly obeyed. *Hill v. Federal Trade Commission*, 7 Cir., 124 F. (2d) 104 [34 F. T. C. 1800; 3 S. & D. 436]; *Haskelhe Mfg. Corporation v. Federal Trade Commission*, 7 Cir., 127 F. (2d) 765 [34 F. T. C. 1855; 3 S. & D. 485]; *National Labor Relations Board v. Express Publishing Co.*, 312 U. S. 426.

Petitioners' final contention is that threats to sue in connection with controversies with their customers are not coercion and intimidation and should not have been included in the Order to Cease and Desist. In support of this contention they urge that resort to the courts is a constitutional right of all citizens and that a threat to sue can not constitute coercion or intimidation.

The Order requires petitioners to cease and desist from coercing or attempting to coerce purchasers, by threats to sue or other forms of intimidation, into accepting rugs in excess of the quantity ordered, or into paying sums of money in excess of that agreed to be paid, or into paying damages for cancellation of orders for quantities of rugs in excess of that ordered.

Petitioners make no claim that the Order is not supported by the findings or the evidence or that the question was not in issue. The sole claim is that one's right to sue makes it impossible for a threat to do so to constitute coercion or intimidation. The reasoning is fallacious. Right, in law, is not an absolute. An act innocent in itself may be lawful or unlawful depending upon circumstances and the intent of the actor. For example, a man has a right to draw a check upon his deposit in a bank and the holder has a right to present it for payment. But if a man for the purpose of ruining the bank by causing a run upon it threatens to accumulate a large amount of checks and to present them at one time he may be enjoined. *American Bank & Trust Company v. Federal Reserve Bank of Atlanta*, 256 U. S. 350, 358. A series of contracts, each of which is [740] lawful, the necessary result of which is materially to restrain trade among the States violates the Sherman Anti-trust Act and may be enjoined. *United States v. Reading Company*, 226 U. S. 324, 357. And acts absolutely lawful may be steps in a criminal plot. *Aikens v. Wisconsin*, 195 U. S. 194, 206. So

here, threats to sue for the purpose of extorting money from customers where no money is due may be forbidden by the Federal Trade Commission, and an Order to Cease and Desist from such a practice is within its powers under the Act. Such an Order does not interfere with petitioners' constitutional rights.

The Order is affirmed and a decree of enforcement will be entered.

SILVERMAN v. FEDERAL TRADE COMMISSION ¹

No. 10663—F. T. C. Dock. 4846

(Circuit Court of Appeals, Ninth Circuit. Nov. 13, 1944)

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—BUSINESS STATUS AND DECEPTIVE INDUCEMENTS TO PURCHASE OR DEAL—COLLECTION AID OR "SKIP TRACER" SWINDLES.

Federal Trade Commission properly ordered petitioner to cease and desist from scheme to obtain for creditors and collection agencies information as to debtors' address, bank, employer and friends by sending in interstate commerce postcards purporting to be from a package forwarding company or a pen company requiring such credit information "for identification" so that a non-existent "misaddressed prepaid package" or a free pen "to introduce our pens" could be forwarded, as an unfair and deceptive practice, notwithstanding that scheme sometimes trapped swindling debtors or that debtors suffered no pecuniary damage. Federal Trade Commission Act, sec. 5(a-c), 15 U. S. C. A., sec. 45(a-c).

PUBLIC INTEREST—COLLECTION AID OR "SKIP TRACER" SWINDLES.

The prevention of perversion of interstate commerce by use in interstate commerce of unfair and deceptive practices to obtain for creditors or collection agencies information concerning debtors is "in the interest of the public" within the meaning of the Federal Trade Commission Act so as to authorize a cease and desist order.

(The syllabus, with substituted captions, is taken from 145 F. (2d) 751)

On petition to review and set aside order of Commission, order affirmed. *Seaman & Jackson*, of San Francisco, Cal., for petitioners.

Mr. W. T. Kelley, Chief Counsel, Federal Trade Commission, *Mr. Joseph J. Smith, Jr.*, Asst. Chief Counsel, and *Mr. Jno. W. Carter, Jr.*, Sp. Atty., Federal Trade Commission, all of Washington, D. C., for respondents.

Before *WILBUR*, *DENMAN*, and *STEPHENS*, *Circuit Judges*.

DENMAN, *Circuit Judge*:

Petitioner seeks a review of the Federal Trade Commission's order to cease and desist from the use in interstate commerce of "unfair and deceptive acts and practices" prohibited by 15 U. S. C. A. § 45 (a) (b) (c) in a scheme to enable creditors to locate debtors. The facts as stated in the Commission's brief are supported by the record and are hereby repeated.

Petitioner is an individual having his principal office in San Francisco and trading as *J. Silverman & Associates*, General Forwarding System and

¹ Reported in 145 F. (2d) 751. For case before Commission, see 37 F. T. C. 609.

Commercial Pen Company. He is engaged in the business of selling and distributing in interstate commerce post cards designed and intended for use by creditors and collection agencies in obtaining by subterfuge information concerning debtors. Petitioner characterizes his business in advertisements to prospective customers as "Locations by Subterfuge," "a new and unique method of locating 'skips'" by "a cleverly-planned means of reaching these 'debt-evaders' in so subtle a manner that they do not know they are being traced," and the information which petitioner endeavors to obtain for his customers is the address, and the name of the employer, the bank and a friend, of their delinquent debtors.

Petitioner's "system," as he calls it, of obtaining such information consists of the use of one or more of three post cards, two sold and distributed under the name General Forwarding System and one under the name Commercial Pen Company. The cards are the type commonly referred to as "double post cards." One part of the card is addressed to and contains a message for the debtor. The other, or "reply," part is addressed to petitioner under one of his trade names and is intended to be detached, filled out, and mailed by the debtor. Some of the General Forwarding System cards are addressed to a friend or relative of the debtor, rather than to the debtor himself, and the attached reply cards in such [752] cases are intended to be filled out and mailed by such friend or relative.

The cards are sold and shipped by petitioner to some 1,800 merchants and collection agencies "throughout the United States" who address them to debtors or others, attach the required postage to both parts of the cards, and return them in bulk to petitioner. Petitioner then mails the individual cards, and upon his receipt of the reply cards filled out by the addressees, petitioner sends them to his customers, whom he identifies by means of code numbers stamped on the cards.

For the purpose of "eliminating any suspicion" on the part of the debtors and to prevent them from knowing that the cards "emanate" from their creditors, petitioner mails the cards from San Francisco, and the names of creditors or other purchasers of the cards do not appear on them.

The General Forwarding System cards addressed to debtors read as follows:

"FINAL NOTICE

We have on hand a PREPAID package for party whose name appears on reverse side of this card.

Due to change or error of address and lack of identification, we cannot make delivery.

We will hold same at your risk, subject to your forwarding directions and FULL and PROPER identification as indicated.

GENERAL FORWARDING SYSTEM

821 Market Street

San Francisco, Calif.

No Postage required on the attached
Reply Card. Please answer Promptly
Always refer to Package reference number
when correspondent."

Attached to this is the following reply card addressed to General Forwarding System, 821 Market Street, San Francisco, Calif.:

“MAIL THIS CARD TO US PROMPTLY

GENERAL FORWARDING SYSTEM

San Francisco, Calif.

Package Reference
Number
10073

Checked By.....
Charges..... NONE
Dept..... UNCLAIMED

Please send package (Fully Prepaid, with NO CHARGES) to me. My address and correct identification is as follows:

Consignee must be Identified
Fill in All Spaces Below
OR PACKAGE WILL NOT BE DELIVERED

Deliver the Above Package to
NAME.....
ADDRESS.....
CITY..... STATE.....

For Identification I Refer you to My
Employer and Bank and Friend
BANK.....
ADDRESS.....
PRESENT
EMPLOYER.....
ADDRESS.....
FRIEND.....
ADDRESS.....

NO POSTAGE OR ADDRESSING NECESSARY”

The Commercial Pen Company cards read as follows:

"TO INTRODUCE
OUR PENS

We will mail you one of them
ABSOLUTELY FREE OF
CHARGE provided you will
show it to your friends and
fellow employees where you
work.

In order to avoid duplica-
tion, name of employer must
be given.

You must act promptly, as
only a limited number of pens
will be distributed in this
manner. Yours will be sent as
soon as this request card is
returned."

Attached to this is the following reply card addressed to "Commercial Pen Company, 866 Pacific Building, San Francisco, Calif.":

"FREE COUPON

No. AB1572X

This certifies that.....
is entitled to one pen FREE OF CHARGE AND
WITHOUT ANY OBLIGATION when filled and
returned to the Commercial Pen Co., San Fran-
cisco, California.

NAME		ADDRESS
CITY		STATE
EMPLOYED BY	DEPT	ADDRESS
<u>Coupon Expires after</u> 30 days		<u>This Coupon</u> is Not Transferable."

On the basis of these facts the Commission concluded that petitioner had violated the Federal Trade Commission Act and ordered him, in connection with the sale [753] and distribution in interstate commerce of "cards designed for use in obtaining information concerning debtors," to cease and desist

(1) Using the name "General Forwarding System," or any other name of similar import, to designate, describe, or refer to [petitioner's] business; or otherwise representing, directly or by implication, that [petitioner] is connected in any way 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 [petitioner's] post cards or other ma-

terial are, or may be, consignees of goods or packages in the hands [of petitioner], or that the information sought through such means is for the purpose of enabling [petitioner] to make delivery of goods or packages to such persons.

(3) Using the name "Commercial Pen Co.," or any other name of similar import, to designate, describe, or refer to [petitioner's] business; or otherwise representing, directly or by implication, that [petitioner] is engaged in the business of selling or distributing pens or other merchandise.

(4) Using, or supplying to others for use, post cards or other material which represents, directly or by implication, that such cards or other material are for the purpose of introducing pens or any other merchandise to the public.

(5) Using, or supplying to others for use, post cards or other material which represents, directly or by implication, that [petitioner's] 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.

These facts so clearly warrant the inferences of unfairness and deceptive practices upon which the five sections of the cease and desist order are based, that the petition for review well could be dismissed as frivolous.

Petitioner had no "PREPAID package" on hand in his "General Forwarding System" of which he "cannot make delivery" for any reason, much less because of "change or error of address and lack of identification." Petitioner admitted he had no specific package which he was holding for anyone.

There was no "Commercial Pen Company" which was seeking "TO INTRODUCE OUR PENS" to anyone as that phrase would be and was intended to be understood. Petitioner admitted he had nothing more than a "stock of pen points" (meaning pen points and not assembled stocks and pen points) which he kept "for the purpose of being able to send something" to the persons named on the reply cards, and until he received the reply cards he did not even know the name of any person to whom he was to send a "package."

Petitioner's scheme is a cheap swindle and the argument that it is less so because it may in certain cases trap swindling debtors is not one pleasing to entertain.

Nor is there any support for petitioner's contention that it is not a matter of the Commission's concern because the swindled person suffers no pecuniary damage. *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, 78 [18 F. T. C. 669; 2 S. & D. 247].

Nor is there any merit in petitioner's contention that it is not to the public interest to prevent the perversion of interstate commerce with such swindling. As stated by the Supreme Court in *Federal Trade Commission v. Keppel & Brother*, 291 U. S. 304, 308 [18 F. T. C. 684; 2 S. & D. 259], "Upon the record it is not open to question that the practice complained of is a method of competition in interstate commerce and that it is successful in diverting trade from competitors who do not employ it. If the practice is unfair within the meaning of the Act, it is equally clear that the present proceeding, aimed at suppressing it, is brought, as § 5 of the Act requires, 'to the interest of the public.'"

The cease and desist order is sustained and the petition to set it aside is denied.

Affirmed.

MODERNISTIC CANDIES, INC., ET AL. v. FEDERAL
TRADE COMMISSION¹

No. 8356—F. T. C. Dock. 4605

(Circuit Court of Appeals, Seventh Circuit. Nov. 15, 1944)

PUBLIC POLICY—AS EXPRESSED IN CONSTITUTION, STATUTES, AND DECISIONS OF THE
COURTS.

The State's public policy is embodied in its Constitution and statutes and, when they are silent on subject, in its courts' decisions.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—LOTTERY MERCHAN-
DISING—PUNCH BOARDS.

The marketing of chewing gum by means of "Ballgum" boards is an "unfair trade practice," contrary to public policy, and within Federal Trade Commission's power to prohibit by cease and desist order, as devised to encourage and induce merchandising by gambling. Federal Trade Commission Act, sec. 5(a), 15 U. S. C. A. sec. 45(a).

METHODS, ACTS AND PRACTICES—LOTTERY MERCHANDISING AND AIDING AND ABET-
TING—DEVICES IN AID OF.

The Federal Trade Commission has power to eradicate merchandising by gambling in interstate commerce and to prohibit distribution in such commerce of devices intended to aid and encourage such merchandising.

(The syllabus, with substituted captions, is taken from 145 F. (2d) 454)

On petition for review of order of Commission, petition denied.

Mr. Irvin H. Fathchild, of Chicago, Ill., for petitioners.

Mr. Joseph J. Smith, Jr., *Mr. W. T. Kelley*, Chief Counsel, and *Mr. Eugene W. Burr*, Sp. Atty., all of Washington, D. C., for respondent.

Before *EVANS*, *KERNER*, and *MINTON*, *Circuit Judges*.

MINTON, *Circuit Judge*.

On July 16, 1943, the petitioners filed in this court a petition to review a cease and desist order issued by the Federal Trade Commission on May 25, 1943, in proceedings instituted by the Commission pursuant to section 5 (a) of the Federal Trade Commission Act, 15 U. S. C. A. § 45 (a).

The petitioners market chewing gum in various flavors by means of a "Ballgum" board. This is a punch board with pockets for 150 small balls of gum. The holes in which the gum balls are placed are pasted over with sheets of paper so that the customer, punching out one of these little balls of gum, does not know what flavor or color of gum he is going to receive. Of the 150 balls of gum on the board, 20 or 24 are of one color, and the balance are of a different color. The merchant may, of course, if he so desires, merely sell these gum balls to his customers at a penny a piece.

My colleagues and I experimented with one of the exhibits to the extent of several punches. Two of us punched out white balls, but Judge Evans punched out a red ball. The gum ball was palatable but seemed to contain less gum than the ordinary stick. There would seem to be no par-

¹ Reported in 145 F. (2d) 454. For case before Commission, see 36 F. T. C. 822.

ticular inducement to a customer to buy gum in this manner. Our experiment told us that the board was not designed to operate as simply as this. The seller of that board had something else in mind.

The evidence is that when a ball of the off-colored gum was punched out, the merchant would give a prize of some kind to the lucky customer, usually a stick of candy or a candy bar. The number of off-colored balls was printed on the face of the board, and from this information the merchant could determine what value of prize he could afford. The setup was a perfect way to garner children's pennies although the record showed that adults were equally attracted, which reminds us of what the poet said, that "the child is father to the man."

Counsel for the petitioner discussed at great length from a sociological point of view, the age-old problem of the gambling instinct in the human being. According to his analysis, gambling pervades our entire economic system; thus insurance contracts are gambles, stock and grain exchange transactions are gambles, and the farmer's dependence on the weather is a gamble. [455] Counsel's attempts to apply this analysis to the present case left us cold and unimpressed. He even reminded us that our great idol, Mr. Chief Justice Marshall in his day attended the horse races and wagered with his clergyman. In fact, they ran a book. As indicating how times have changed, and how even our coarse nature has yielded to the protecting care of governmental policy, we confess we do not even know a bookmaker, clerical or otherwise, and our passes to the beautiful race tracks around Chicago lie in our desk unused.

There may be in every child the impulse that prompts him to take a chance, but it has been the public teaching and the public policy of the land that gambling is immoral and to be condemned. The Federal Government has made it a criminal offense to transport lottery tickets or to cause them to be transported in interstate commerce. 18 U. S. C. A. § 387. Lotteries used in the marketing of merchandise have long been condemned by the Supreme Court and by this court. The cases are legion.

In *Federal Trade Commission v. R. F. Keppel & Brother, Inc.*, 291 U. S. 304, 54 S. Ct. 423, 78 L. Ed. 814 [18 F. T. C. 684; 2 S. & D. 259], candy was sold by the piece and if it contained a certain number or legend when broken open, the lucky customer received as a prize another piece of candy, his purchase price, or some other small prize. Of this scheme, the Supreme Court said, "Such devices have met with condemnation throughout the community. * * * it is clear that the practice is of the sort which the common law and criminal statutes have long deemed contrary to public policy." In that case the condemned gambling device and the merchandise to be used with it were sold together as a unit. It is clear, under the *Keppel* case that such a method of merchandising is within the power of the Federal Trade Commission to prohibit by a cease and desist order.

The *Keppel* case, however, does not cover the case at bar because the article sold here, the Ballgum board, is incomplete in itself as a game of chance. No prizes are provided. The board, however, is designed, intended, and conducive to gambling; its use suggests, and was intended to encourage, gambling. Our question then is whether such a method of merchandising is an unfair trade practice contrary to public policy and within the power of the Federal Trade Commission to prohibit by use of a cease and desist order where the article sold is not complete in itself for merchandising by means of a game of chance, but is so devised, planned, and constructed as to encourage and induce its use for this purpose.

"The public policy of a state is to be found embodied in its constitution and its statutes, and, when these are silent on the subject, in the decisions of its courts." *The Illinois Bankers Life Association v. Collins*, 341 Ill. 548, 551, 173 N. E. 465. Recently we said in *Maltz v. Sax*, 134 F. (2d) 2, 4, "Moreover, in the absence of any statute condemning gambling as illegal, the Federal courts have consistently condemned it as against public policy." We have also held that those who aid and abet such a method of merchandising, those *participes criminis* with gamblers and their schemes, are likewise engaged in unfair trade practices contrary to public policy. *Jaffe v. Federal Trade Commission*, 139 F. (2d) 112 [37 F. T. C. 816; 3 S. & D. 610]; *Koolish v. Federal Trade Commission*, 129 F. (2d) 64 [34 F. T. C. 1863; 3 S. & D. 492]; *Maltz v. Sax, supra*. The device used in the case at bar is too apparently allied with the purpose of merchandising by gambling to appeal to a court as being a fair trade practice, particularly designed as it is to appeal to children's trade and to appease their desire to get something for nothing.

It is clear that the Federal Trade Commission has the power to eradicate merchandising by gambling in interstate commerce. We think the Commission also has the power to prohibit the distribution in interstate commerce of devices intended to aid and encourage merchandising by gambling. The gamblers and those who deliberately and designedly aid and abet them are both engaged in practices contrary to public policy. Merchandising by gambling should not be divided into insulated acts, which appear innocent when examined separately. This unfair practice should be viewed as a whole. If the Federal Trade Commission is to police merchandising by gambling, it must police those who designedly and deliberately aid and abet this practice. We think the Commission has such power.

The petition to review is denied.

J. E. TODD, INC., v. FEDERAL TRADE COMMISSION¹

No. 8608—F. T. C. Dock. 4549

(United States Court of Appeals, District of Columbia. Nov. 27, 1944)

EVIDENCE—CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—QUALITIES OR PROPERTIES OF PRODUCT—MEDICINAL PREPARATION—IF SUPPORTING EXPERTS, UNLIKE OPPOSING, WITHOUT CLINICAL EXPERIENCE THEREWITH.

Substantial evidence supported finding of Federal Trade Commission that petitioner's product had no value in treatment of arthritis, neuritis, rheumatism, or similar diseases, and justified order requiring petitioner to cease advertising that its product had value in treatment of such diseases, notwithstanding experts who gave testimony supporting the finding had no clinical experience with the product and the opposing experts had such experience.

¹ Reported in 145 F. (2d) 858. For case before Commission, see 37 F. T. C. 492.

EVIDENCE—EXPERT TESTIMONY—QUALITIES OR PROPERTIES OF PRODUCT—MEDICINAL PREPARATION—GENERAL MEDICAL AND PHARMACOLOGICAL KNOWLEDGE AS SUFFICIENT BASIS FOR.

General medical and pharmacological knowledge is sufficient basis for experts' testimony that product had no value in treatment of arthritis, neuritis, rheumatism, or similar diseases.

PROCEDURE AND PROCEEDINGS BEFORE COMMISSION—FINDINGS—IF MODIFIED AFTER ORDER WITHOUT REISSUING LATTER.

Where two months after cease and desist order was issued Federal Trade Commission slightly modified its findings but modified findings supported the order, the modified findings did not vitiate the order or require the formality of reissuing it.

(The syllabus, with substituted captions, is taken from 145 F. (2d) 858)

On petition for review of order Commission, affirmed.

Mr. John A. Nash, of Washington, D. C., with whom *Mr. Horace J. Donnelly*, of Washington, D. C., was on the brief, for petitioner.

Mr. Robert P. Bellinger, member of the Bar of the Supreme Court of South Carolina, of Washington, D. C., pro hac vice, by special leave of Court, with whom *Mr. W. T. Kelley*, Chief Counsel, Federal Trade Commission, and *Mr. Joseph J. Smith, Jr.*, Assistant Chief Counsel, both of Washington, D. C., were on the brief, for respondent. *Mr. J. Wallace Nichol*, of Washington, D. C., also entered an appearance for respondent.

Before GRONER, *Chief Justice*, and EDGERTON and ARNOLD, *Associate Justices*.

Per Curiam:

This is a petition to review an order of the Federal Trade Commission which requires petitioner to cease advertising that its product has value in the treatment of arthritis, neuritis, rheumatism or similar diseases. For the petitioner, two osteopathic physicians testified before the Commission that they had treated hundreds of patients with this product; that it had effected cures in severe cases of arthritis; and that its curative properties were due mainly to its olibanum content. For the Commission, a chemist testified that it contained at most a trace of olibanum; and three doctors of medicine, two of whom were specialists in the treatment of arthritis, testified that its ingredients, including olibanum, alone or in combination, had no value in relation to arthritis, neuritis or rheumatism. The Commission so found. The supporting evidence is substantial though the experts who gave it had no clinical experience with the product and the opposing experts had such experience. General medical and pharmacological knowledge is a sufficient basis for such testimony as the Commission's experts gave. *John J. Fulton Co. v. Fed. Trade Comm.*, 130 F. (2d) 85 (C. C. A. 9) [35 F. T. C. 946; 3 S. & D. 499], cert. denied 317 U. S. 679; *Neff v. Fed. Trade Comm.*, 117 F. (2d) 495 (C. C. A. 4) [32 F. T. C. 1842; 3 S. & D. 332]; *Justin Haynes & Co. v. Fed. Trade Comm.*, 105 F. (2d) 988 (C. C. A. 2) [29 F. T. C. 1578; 3 S. & D. 134], cert. denied 308 U. S. 616.

Two months after the order was issued the Commission slightly modified its findings of fact. Since the modified findings support the order they do not, as appellant contends, vitiate it or require the formality of reissuing it. Affirmed.

LEKAS & DRIVAS, INC., v. FEDERAL TRADE
COMMISSION ¹

No. 5—F. T. C. Dock. 4815

(Circuit Court of Appeals, Second Circuit. Nov. 30, 1944)

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—
QUALITIES OR PROPERTIES OF PRODUCT.

Evidence supported Federal Trade Commission's finding that petitioner's advertising matter was substantially false and misleading with respect to claims for olive oil sold by it, justifying issuance of cease and desist order.

CEASE AND DESIST ORDERS—EXTENT—MISREPRESENTATION—QUALITIES OR PROPERTIES OF PRODUCT.

Where the evidence did not support a finding that olive oil is wholly useless or even substantially useless as a laxative, an order directing petitioner to cease and desist from advertising the olive oil as a laxative was modified by permitting a claim to be made that it had a possible slight value as a laxative.

(The syllabus, with substituted captions, is taken from 145 F. (2d) 976)

On petition to review order of Commission, order modified, and, as modified, affirmed.

Mr. Henry Ward Beer and *Mr. Hyman L. Goldstein*, both of New York City, for petitioner.

Mr. R. P. Bellinger, Sp. Atty., *Mr. W. T. Kelley*, Chief Counsel, and *Mr. Joseph J. Smith, Jr.*, Asst. Chief Counsel, all of Washington, D. C., for respondent.

Before L. HAND, AUGUSTUS N. HAND, and CHASE, *Circuit Judges*.

Per Curiam:

The petitioner's advertising matter very clearly implied that olive oil would of itself make people healthy; specifically that it would prevent, or tend to prevent, appendicitis, gall stones, and bladder infections. Also that it had the vitamins A, E, and F, in substantial quantities; that it would cure skin irritations, neuralgia and rheumatism; stimulate the complexion and "tone up" the organs. According to the only witness sworn—a competent physician—all these claims were substantially false. It has no therapeutic value whatever except as a carrier for operative drugs; and except also that it possibly has some slight value as a laxative. It is a pure fat and therefore does have value as food, but the comparison made by the petitioner of olive oil with dried, or fresh, meats was wholly misleading. As a skin lubricant it may be of benefit when used in massage, but no more than any other lubricant. Its content of vitamins A, and E, is negligible, and there is no such thing as vitamin F. It is not a "tonic," in whatever sense that term may be used.

All this appeared without contradiction, and was ample to support the findings and the order save in one particular. The Commission has the burden of proof, and, as we have already indicated, the testimony does

¹ Reported in 145 F. (2d) 976. For case before Commission, see 37 F. T. C. 9.

not support a finding that olive oil is wholly useless, or even substantially useless, as a laxative. All that the expert would say about that was that its use was "slight, if any"; moreover, his later testimony was at least consistent with its having value for purposes of "elimination." For this reason we think that the order: Article I (a), should be supplemented by this suffix: "except a possible slight value as a laxative."

Order modified as above indicated, and, as modified, affirmed.

**JACOB SIEGEL COMPANY v. FEDERAL TRADE
COMMISSION ¹**

No. 8407—F. T. C. Dock. 3403

(Circuit Court of Appeals, Third Circuit. Nov. 30, 1944)

CEASE AND DESIST ORDERS — METHODS, ACTS AND PRACTICES — MISREPRESENTATION — TRADE NAMES — "ALPACUNA."

Substantial evidence supported decision of Federal Trade Commission that the name "Alpacuna," applied to coats containing a combination of alpaca, mohair, and wool fibers on a cotton backing, was misleading and deceptive implying that coats contained vicuna fiber, and authorized cease and desist order.

APPELLATE PROCEDURE AND PROCEEDINGS — FINDINGS OF COMMISSION — WHERE SUBSTANTIAL SUPPORTING EVIDENCE — IF TESTIMONY RELIED ON PREJUDICED OR BIASED.

Where there is substantial evidence to support finding of Federal Trade Commission, Circuit Court of Appeals may not intervene even if Commission relies upon prejudiced or biased testimony.

METHODS, ACTS AND PRACTICES — MISREPRESENTATION — TRADE NAMES — "ALPACUNA" — WHETHER SECONDARY MEANING.

Evidence was insufficient to establish a secondary meaning of "vicuna" as a soft finish on cloth or a soft fabric, as distinguished from primary meaning of a fabric containing vicuna animal fiber, and did not require reversal of Federal Trade Commission's determination that name Alpacuna as applied to soft fabric coats which contained no vicuna fiber was misleading.

FEDERAL TRADE COMMISSION ACT — SECTION 5 — THAT FINDINGS OF COMMISSION, AS TO FACTS, IF SUPPORTED BY TESTIMONY, SHALL BE CONCLUSIVE — EVIDENCE CONTEMPLATED.

The statute declaring that findings of Federal Trade Commission as to facts if supported by evidence shall be conclusive contemplates substantial evidence.

APPELLATE PROCEDURE AND PROCEEDINGS — FINDINGS OF COMMISSION — WHERE SUBSTANTIAL SUPPORTING EVIDENCE — IF SUBSTANTIAL EVIDENCE TO CONTRARY, ALSO.

In proceedings to review order of Federal Trade Commission, that there is a real conflict in testimony with substantial evidence by petitioner contrary to

¹ The case is reported in 150 F. (2d) 751. On motion for rehearing, the court, on Sept. 20, 1945, adhered to its decision herein. Certiorari granted Jan. 2, 1946, 66 S. Ct. 337.

finding of commission does not compel reversal of commission's order also supported by substantial evidence.

EVIDENCE — METHODS, ACTS AND PRACTICES — TRADE NAMES — WHETHER DECEPTIVE — IF PURCHASE BY DECEIVED BUYER, REQUISITE SHOWING — CAPACITY AND TENDENCY, AND POTENTIAL INJURY, AS TEST.

To sustain finding of Federal Trade Commission that a particular trade-name is deceptive, it is not necessary that actual purchases must be made with buyer deceived by name, but it is sufficient if name has both capacity and tendency to deceive *ordinary purchaser*; potential injury being the test.

APPELLATE PROCEDURE AND PROCEEDINGS — CEASE AND DESIST ORDERS — WHERE SUBSTANTIAL SUPPORTING EVIDENCE — IF UNNECESSARILY DRASTIC AND HARMFUL TO RESPONDENT — COURT LIMITATION.

Where order of the Federal Trade Commission, based on substantial evidence in requiring petitioner to cease using the name "Alpacuna" as applied to its overcoats destroyed a widely and favorably known trade-name, caused serious injury to [752] petitioner and its retail outlets, notwithstanding the infraction was slight and could be cured by simple qualifying language, appellate court was not authorized to interfere in view that the discretion as to the remedy in such a controversy is now vested in the Trade Commission.

(The syllabus, with substituted captions, is taken from 150 F. (2d) 751)
On petition to review order of Commission, order affirmed.

Mr. Robert T. McCracken, of Philadelphia, Pa. (*Mr. Leo Weinrott* and *Mr. C. Russell Phillips*, both of Philadelphia, Pa., on the brief), for petitioner.

Mr. Seymour M. Klein, of New York City (*Marchall, Bratter & Seilgson* and *Mr. Marvin J. Bloch*, all of New York City, on the brief), for amicus curiae.

Mr. George W. Williams, of Washington D.C., (*Mr. W. T. Kelley*, Chief Counsel, of Washington, D.C., on the brief), for respondent.

Before BIGGS, JONES and McLAUGHLIN, *Circuit Judges*.

By McLAUGHLIN, *Circuit Judge*.

The petitioner in this case has been manufacturing overcoats in the City of Philadelphia, Pa. for the last 30 years. In 1930 it developed a cloth for such coats consisting of a combination of alpaca, mohair and wool fibers, on a cotton backing. This was inexpensive and designed for warmth and long wear. The purpose of adding the cotton was to obtain a denser face for the garment than possible with animal fibers alone. That same year the petitioner corporation gave the name "Alpacuna" to the coats. Within two years, the petitioner brought out a top coat which it also called "Alpacuna." The top coat had the same animal fibers as the overcoat but in order to make it lighter, the cotton backing was eliminated.

Among other things, the Federal Trade Commission found 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 the coats contain fiber obtained from the animal known as the vicuna. The Commission ordered that the petitioner forthwith cease and desist from "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; * * *" This language is the first part of Paragraph Six of the

order. The first five paragraphs and the balance of the sixth paragraph are conceded by the petitioner and do not concern us. The issue has, therefore, been importantly narrowed and simplified.

There was a dissent in the Commission to the part of the order here disputed. It is very short and we quote it in full:

"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 thirteen 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."

The only questions involved are: was there substantial evidence supporting the Commission's finding and whether the remedy provided was within its powers.

According to the petitioner's testimony, which was not contradicted, the name "Alpacuna" was created by its sales manager who used a fanciful variation of the word alpaca, which animal represented 50% of the wool fibers in the fabric. To alpaca the suffix "una" was added partly in order to obtain a word that was very easy to pronounce and partly to signify that the Siegel Company was the one manufacturer and the first to make the coat. The head of the Siegel Company testified that he did not have vicuna in mind at all in connection with the name "Alpacuna." He said further: "I was not familiar with it [vicuna] and I have been in business for 30 years and only in the last five years or six years I have heard of Vicuna. I was not interested in it. We never used it." It is undisputed that the vicuna is one of the rarest of animals. It is found principally in the high mountains of Peru and is of the llama family. In order to obtain its hair, the animal itself has to be killed. Such killing [753] is regulated by law. Vicuna hair is one of the softest, finest animal fibers but has poor wearing qualities. Only a small amount of the fiber comes into the United States. The overcoats made from it, are valuable and run as high as \$900. The "Alpacuna" coats retail at \$40.

Strong testimony was presented supporting the petitioner's proposition that "Alpacuna" is a proper trade name for the particular coats and that the name does not represent to the public that the coats contain vicuna fiber. There was evidence of a poll taken in the particular section of a large New York department store where such coats were sold. Over 200 customers chosen at random were questioned and not one of them declared that the name "Alpacuna" indicated vicuna to them. There were numerous other witnesses, including: members of the public, reputable people in the clothing trade, department store specialists in protecting customers, a representative of clothing workers, a textile expert, etc. A person connected with the National Better Business Bureau stated he has never received a complaint regarding the name "Alpacuna." One of the functions of that organization is to receive complaints as to merchandise. The only person in the country who manufactures vicuna coats sent a letter to the Commission saying that he had no objection to the use of the name "Alpacuna" by petitioner. In addition to the direct defense testimony, some of the government witnesses supported the defense contention affirmatively by testimony to the effect that "Alpacuna" did not mean vicuna content to them; there were other government witnesses whose testimony was weak; and still others indicating prejudice or bias.

Petitioner also produced testimony tending to show that vicuna in connection with fabrics, denotes a soft finish cloth and argues that it is, therefore, properly applied to petitioner's coats. As to this, the same textile expert described vicuna finish cloth as a soft finish fabric with no definite indication as to its fiber content. This was corroborated by other witnesses. Petitioner introduced some dictionary definitions defining vicuna wool as the wool of the vicuna or a mixture of wool and cotton used for soft fabrics. Petitioner strongly argues that its product is a vicuna cloth, with the dictionary definitions justifying any possible implication in the name "Alpacuna" with respect to vicuna.

Petitioner next stresses the point that vicuna animal fiber and its qualities are not generally known to the public. It calls attention to the admitted rarity of the animal. One expert for the Commission stated that it is almost extinct. It is suggested that because of the extremely limited quantity of vicuna fiber available and because of its perishable quality, it would not be practical to attempt to combine it with alpaca from the standpoint of large scale commercial manufacture. It is contended that the thought of the \$40. "Alpacuna" coat capitalizing on the term vicuna is far fetched since most of the potential customers do not have the least idea as to vicuna and the few who do, readily understand that a coat for large production and in the lower price field could not be produced from vicuna fiber.

In addition to the above, there are certain other important facts which appear. This proceeding was started in 1938 and in the original complaint there was no charge against the petitioner for using the name "Alpacuna." After answer had been filed to the original complaint, settlement negotiations were entered into at the suggestion of counsel for the Commission and the Siegel Company executed and returned the stipulation for settlement drawn by the Commission's counsel. That settlement was not approved by the Commission and thereafter an amended complaint was filed which included the allegation regarding the use of the name "Alpacuna." A group of retail stores who handle the "Alpacuna" coats have filed a brief as amicus curiae in support of the petitioner's stand. Those stores set out that they have a very definite interest in the retention of the name by reason of cooperation in extensive advertising and selling the product over a period of years and that the barring the use of the name "Alpacuna" is a matter of serious detriment and direct prejudice to them.

There was also an array of witnesses on behalf of the Commission. The Director of the Bureau of Standards of one of New York's largest department stores said: "I take it this coat is made of a combination of alpaca and vicuna fibers." A person connected with a leading Philadelphia department store stated: "'Alpacuna' overcoats conveys to me Alpaca and Vicuna, a combination of alpaca and vicuna." A housekeeper on cross examination stated she arrived at the impression that the garment was made of alpaca and vicuna as she said, "Well, from the name itself." The assistant director of the Washington Better Business Bureau testified to the same effect. A person who had actually sold the coats for five or six years was of the opinion that they contained alpaca and vicuna fibers. The only person testifying who had purchased an "Alpacuna" coat said that he was told at the time he bought it that the coat was made of "* * * a vicuna wool-bearing South American animal." A number of other persons, including a construction engineer, housewives, a teacher, a physician, a publicity director of a Philadelphia department store, a director of merchandise research of another Philadelphia department store, a clothing

salesman for a third Philadelphia department store, several people connected with various clothing houses and men's shops, all associated vicuna with the word "Alpacuna." Most of these witnesses gave their impression after examining one or more of the various Commission exhibits of advertising matter with reference to the coats.

The Commission vigorously disputed petitioner's proposition that vicuna does have an established secondary meaning. It produced dictionaries and encyclopedias in which pictures of the vicuna were shown and also various encyclopedias, dictionaries and textile publications which do not include the secondary meaning of the word as asserted by the petitioner. Other evidence was produced tending to show that vicuna was known to a substantial portion of the public. For example, a letter from a principal of a textile high school in New York City was in evidence and stated that the school had a register of nearly 13,000 students, day and evening, with all of them taking a course in general textiles embracing knowledge of fibers obtained from goats, also sheep, vicuna, alpaca, etc. and that books dealing with the subject, and a wall chart showing pictures with samples of different fibers, vicuna, alpaca, etc. were used in the course. The letter concluded by stating: "I consider that it is part of general education under the head of commercial geography, textiles and dressmaking for the average high school student to know something of alpaca and vicuna and other goat hairs—as well as sheep wool."

Obviously, from the above very brief outline of the evidence, the petitioner has made an impressive showing in its effort to retain the name "Alpacuna." The Siegel Company is a well known and highly regarded concern and its coats have achieved considerable popularity in their own price range. They are widely publicized and large sums of money have been expended by the Siegel Company and various retail stores in merchandising them. The Siegel Company coined the name for the coats in 1930 and has been using it since that time. At this time it is a valuable asset not only to the company but, as the amicus curiae brief points out, to certain retail establishments throughout the United States.

Just as obviously, it clearly appears that there is substantial evidence supporting the Commission's decision. Even counsel for the petitioner are forced to concede, as stated in their brief: "It is true that a number of witnesses called by trial counsel testified that the name 'Alpacuna' signified a vicuna animal fiber content." Upon the whole record the Commission made a finding 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 the coats contain fiber obtained from the animal known as vicuna. The likelihood of misleading the class of customers with which the petitioner generally deals seems slight but in view of the testimony that some of the purchasing public believes that "Alpacuna" implies vicuna content, we cannot say that the finding is not supported by substantial evidence or that the order to cease and desist from the use of the word "Alpacuna" which the Commission issued in consequence of the finding was without foundation. Even assuming that some of the testimony on behalf of the Commission was prejudiced or biased as contended, if the Commission wished to rely upon such testimony, we may not intervene whatever our thought. *Segal v. Federal Trade Commission* (C. C. A. 2) 142 F. (2d) 255 [38 F. T. C. 867]. With reference to the secondary meaning of vicuna or vicuna cloth, as said by Mr. Justice Cardozo in *Federal Trade Commission v. Algoma Co.*, 291 U. S. 67 ta 80 [18 F. T. C. 669; 2 S. & D. 247]:

“The evidence here falls short of establishing two meanings with equal titles to legitimacy by force of common acceptance.”

The Federal Trade Commission Act, Title 15, Section 45c, U. S. C. A. provides that:

“The findings of the Commission as to the facts, if supported by evidence, shall [755] be conclusive.”

This means substantial evidence. *Federal Trade Commission v. Curtis Publishing Co.*, 260 U. S. 568 at 583 [5 F. T. C. 599; 1 S. & D. 271]; *Federal Security Administrator v. Quaker Oats*, 318 U. S. 218, 227, 228. The fact that there is a real conflict in the testimony with indeed substantial evidence by the petitioner contrary to the finding, does not change the situation, as this court cannot appraise testimony or pick and choose “for itself among uncertain and conflicting inferences therefrom.” *Federal Trade Commission v. Algoma Co.*, *supra*. It is not necessary in order to sustain the Commission’s finding that actual purchases must be made, with the buyer deceived by the name. It is enough if the name has both the capacity and tendency to deceive the ordinary purchaser. Potential injury is the test. *Federal Trade Commission v. Raladam Co.*, 316 U. S. 149, 152 [34 F. T. C. 1843; 3 S. & D. 474]; *Federal Trade Commission v. Hires Turner Glass Co.*, 81 F. (2d) 362 (C. C. A. 3) [21 F. T. C. 1207; 2 S. & D. 315]; *Jaffe v. Federal Trade Commission* (C. C. A. 7) 139 F. (2d) 112 [37 F. T. C. 816; 3 S. & D. 610]. Absolving the petitioner from any deliberate effort to deceive does not affect the Commission’s finding. *Federal Trade Commission v. Balme* (C. C. A. 2 1928), 23 F. (2d) 615, 621 [11 F. T. C. 717; 1 S. & D. 666]; certiorari denied 277 U. S. 598.

Although we sustain the Commission on its finding as to the name because of substantial evidence supporting that finding, we think strongly that the order is far too harsh. It destroys a widely and favorably known trade name, in existence for fourteen years. It causes serious injury to the petitioner and its retail outlets. The infraction, as the case now stands, is slight and could be cured by simple qualifying language. We could dispose of the problem by modifying the Commission’s order as suggested, if the practice as outlined in *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212 [17 F. T. C. 664; 2 S. & D. 217] and *Federal Trade Commission v. Hires Turner Glass Co.*, *supra*, a Third Circuit case, was still the law. While the Supreme Court has not dealt with the question of remedy in a Fair Trade Commission suit since the Royal Milling case, there have been a number of opinions from that court concerning remedies prescribed by the Labor Board. In those cases the court has forcibly pointed out that the matter of remedy is also for the administrative agency. In *Medo Corp. v. Labor Board*, 321 U. S. 678, where the remedy ordered by the Labor Board was upheld, Chief Justice Stone for the court said in a footnote at pages 681 and 682:

“¹ It has now long been settled that findings of the Board, *as with those of other administrative agencies*, are conclusive upon reviewing courts when supported by evidence, that the weighing of conflicting evidence is for the Board and not for the courts, that the inferences from the evidence are to be drawn by the Board and not by the courts, save only as questions of law are raised and that upon such questions of law, the experienced judgment.

¹ *Bear Mill Mfg. Co. v. Federal Trade Commission* (C. C. A. 2) 98 F. (2d) 67 [27 F. T. C. 1685; 2 S. & D. 468]; *Federal Trade Commission v. Cassoff* (C. C. A. 2) 38 F. (2d) 790 [13 F. T. C. 612; 2 S. & D. 72]; *Fluegelman & Co. v. Federal Trade Commission* (C. C. A. 2) 37 F. (2d) 59 [13 F. T. C. 602; 2 S. & D. 62].

of the Board is entitled to great weight. See *Franks Bros. Co. v. Labor Board*, post, p. 702; *Labor Board v. Southern Bell Co.*, 319 U. S. 50, 60, and cases cited; *Labor Board v. Nevada Copper Co.*, 316 U. S. 105, 106-107, and cases cited; cf. *Dobson v. Commissioner*, 320 U. S. 489, 501, and cases cited." (Italics ours.)

See also *Dixie Pine v. Commissioner*, 320 U. S. 516 at 519; compare *Security Mills v. Commissioner*, 321 U. S. 281 at 286; and see cases collected in quotation from opinion in *Herzfeld v. Federal Trade Commission*, *infra*.

The Second Circuit, which several times, on the authority of the Royal Milling decision, had modified orders of the Federal Trade Commission¹ has now recognized this in a series of opinions commencing with *Herzfeld v. Federal Trade Commission*, 140 F. (2d) 207 [38 F. T. C. 833], where Judge Learned Hand, for the court, said at page 209:

"However, since *Federal Trade Commission v. Royal Milling Co.*, *supra*, 288 U. S. 212, 53 S. Ct. 335, 77 L. Ed. 706 [17 F. T. C. 664; 2 S. & D. 217], was decided, the Supreme Court has as much circumscribed our powers to review the decisions of administrative tribunals in point of [756] remedy, as they have always been circumscribed in their view of facts. Such tribunals possess competence in their special fields which forbids us to disturb the measure of relief which they think necessary. In striking that balance between the conflicting interests involved which the remedy measures, they are for all practical purposes supreme. *International Ass'n of Machinists v. National Labor Relations Board*, 311 U. S. 72, 82, 61 S. Ct. 83, 85 L. Ed. 50; *Phelps Dodge Corp. v. National Labor Relations Board*, 313 U. S. 177, 198-200, 61 S. Ct. 845, 85 L. Ed. 1271, 133 A. L. R. 1217; *Virginia Electric & Power Co. v. National Labor Relations Board*, 319 U. S. 533, 541-543, 63 S. Ct. 1214, 88 L. Ed. 1568; *Williams Motor Co. v. National Labor Relations Board*, 8 Cir. 128 F. (2d) 960, 965. It is true that all these decisions concerned the Labor Board, but that tribunal does not enjoy a position of peculiar authority, as the court has indicated in other connections. *Gray v. Powell*, 314 U. S. 402, 412, 413, 62 S. Ct. 326, 86 L. Ed. 301; *Dobson v. Commissioner*, 320 U. S. 489, 64 S. Ct. 239; *Commissioner v. Heininger*, 320 U. S. 467, 64 S. Ct. 249. In controversies about trade-marks, and particularly about trade-names and make-up, the question is almost always one of degree; i. e., how far the chance of deception outweighs the inconvenience, or worse, to the merchant inevitable in compelling him to change his mark, his name, or his package. The decree marks the compromise which the court thinks adequate and necessary; it is the resultant of those unexpressed determinants which collectively we conceal under the term 'discretion.' We do not forget that from time immemorial this duty has been entrusted to courts, but that is irrelevant. Congress having now created an organ endowed with the skill which comes of long experience and penetrating study, its conclusions inevitably supersede those of courts, which are not similarly endowed."

That was followed by *Parke, Austin & Lipscomb v. Federal Trade Commission*, 142 F. (2d) 437 [38 F. T. C. 881], where Judge Chase said at pages 441 and 442:

"The petitioners are standing upon much firmer ground when they insist that this paragraph in the order is needlessly severe in its sweeping requirement that the words 'Smithsonian Institution' must be eliminated from the corporate name of petitioner Smithsonian Institution Series, Inc. There may well be some alternative remedy less drastic but adequately effective which might satisfy the requirements of fairness and should be

adopted. On this record, however, we cannot be sure that the Commission has abused its discretion in this respect, and only in that event should we interfere with its action."

The late case of *Charles of the Ritz Distributors Corporation v. Federal Trade Commission* (C. C. A. 2) 143 F. (2d) 676 [39 F. T. C. 657], in the same court, with opinion by Judge Clark, is to the same effect. The question, in connection with another administrative agency, the Securities & Exchange Commission, has been before the First Circuit recently in *American Power & L. Co. v. Securities and Exchange Commission*, 141 F. (2d) 606 where Judge Magruder for the court said at page 619:

"It is not enough that some other remedy, suggested by petitioners, might accomplish the statutory purposes in whole or in part. The choice of remedy is a matter confided primarily to the expert judgment of the Commission, and in this field the courts are quite properly loath to set up their own judgment in opposition to that of the administrative tribunal."

It is evident, therefore, that the discretion as to the remedy in such controversy as this has now been vested in the Federal Trade Commission. That discretion has been exercised to totally prohibit the use of the name "Alpacuna" to the petitioner. Since the Commission has such power, we are unable, in view of the evidence, to say that the power has been abused in this instance, though under the same facts and circumstances, if we were still in control of the remedy, we would modify the order as above indicated.

Order affirmed.

DEARBORN SUPPLY CO. v. FEDERAL TRADE COMMISSION¹

No. 8408—F. T. C. Dock. 3593

(Circuit Court of Appeals, Seventh Circuit. Dec. 23, 1944)

PROCEDURE AND PROCEEDINGS BEFORE COMMISSION—SUPPLEMENTARY PROCEEDINGS
—RECORD OPEN WHERE PRIOR PROVISIONS OF STIPULATION, FINDINGS AND ORDER
VACATED.

Where Federal Trade Commission, on supplemental petition, vacated provisions of stipulation, findings, and cease and desist order relating to danger involved in use of petitioner's cosmetic preparation and reopened proceeding for the taking of testimony, commission on such supplementary proceeding was entitled to consider entire record, other than that portion which was vacated prior to the hearing on issues raised by supplemental petition. Federal Trade Commission Act sec. 5 et seq., 15 U. S. C. A. sec. 45 et seq.

EVIDENCE—INFERENCES AND ASSUMPTIONS—STIPULATIONS—IF ORIGINAL SUPPORTING
CONFINED TO, PRIOR TO SUPPLEMENTARY PROCEEDING.

[6] Where there was no proof in support of complaint before Federal Trade Commission, except certain excerpts from petitioner's advertisements, petitioner

¹ Reported in 146 F. (2d) 5. For case before Commission, see 29 F. T. C. 648 and 37 F. T. C. 75.

had right to assume that commission was relying solely upon such excerpts and that commission regarded portions of advertisement not included in stipulation of facts as immaterial.

EVIDENCE—CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—ADVERTISING FALSELY OR MISLEADINGLY—FAILURE TO REVEAL.

Where there was no direct evidence to support Federal Trade Commission's findings that petitioner's advertisements were false in failing to reveal consequences of indiscriminate use of petitioner's cosmetic preparation and record showed no acquiescence by petitioner in commission's assumption that petitioner's advertisements were insufficiently revealing, cease and desist order based thereon was invalid.

(The syllabus, with substituted captions, is taken from 146 F. (2d) 5)

On petition for review of order of Commission, order vacated without prejudice to reopen and offer additional evidence.

Mr. William T. Woodson, of Chicago, Ill., and *Mr. James F. Hog* and *Mr. L. B. Stoughton*, both of New York City, for petitioner.

Mr. Joseph J. Smith, Jr., Asst. Chief Counsel, Federal Trade Commission, *Mr. W. T. Kelley*, Chief Counsel, and *Mr. Donovan R. Divet*, Sp. Atty., all of Federal Trade Commission, all of Washington, D. C., for respondent.

Before EVANS, SPARKS, and MAJOR, *Circuit Judges*.

MAJOR, *Circuit Judge*.

This is a petition to review and set aside a supplemental order to cease and desist, issued by the Federal Trade Commission (respondent). Inasmuch as we are convinced, after a careful study of the record, that there is no substantial evidence to support the finding of the Commission upon which its supplemental order is predicated, we find it unnecessary to consider numerous other questions raised by petitioner.

Respondent on September 17, 1938 issued its complaint, charging petitioner with having engaged in unfair methods of competition and unfair and deceptive acts in commerce in violation of the Federal Trade Commission Act (15 U. S. C. A. 45, *et seq.*). In substance, the charge was that petitioner had violated the statute by disseminating false and misleading representations concerning a cosmetic preparation called "Mercolized Wax," which the complaint alleged "may, under certain conditions, be harmful to the user thereof because of the ingredients from which said product is composed." Petitioner by answer denied this and other allegations of the complaint, but subsequently entered into a stipulation of facts which contained numerous excerpts from the advertisements of its product. The stipulation also recited that respondent "has available competent expert medical witnesses" who should have been deemed to have appeared and duly testified to the harmful effect calculated to result to the body upon application of such preparation.

A hearing having been waived, respondent made its finding of facts, which followed petitioner's stipulation, and on August 15, 1939, entered its original order to cease and desist. Some eight weeks later, petitioner filed with respondent a petition in which it prayed that the Commission set aside those provisions of the stipulation, findings, and order relating to "Mercolized Wax" and reopen the proceeding for the taking of testimony on the ground that "the petitioner has now available, and can procure,"

newly discovered evidence "to the effect that Mercolized Wax * * * has never been and is not now injurious to the users thereof." Thereupon, respondent vacated those provisions of the stipulation and the facts and findings relating to the danger involved in the use of "Mercolized Wax," set aside so much of the order to cease and desist as prohibited the dissemination of advertisements which failed to reveal such danger. Thus the issue was limited solely to the injurious effects which might result from the use of "Mercolized Wax." Numerous expert witnesses testified for the [7] respective parties concerning this issue. Thereupon, respondent made its supplemental finding of facts and entered its supplemental order to cease and desist, which is the order now sought to be vacated and set aside.

Petitioner advances the argument that respondent was limited in its findings, bearing upon the issue before it in the supplemental proceeding, to the proof which was offered therein. We think there is no merit in this argument and that respondent was entitled to consider and appraise the entire record other, of course, than that portion which was vacated prior to the hearing upon the issue raised by petitioner's supplemental petition.

Respondent found that the indiscriminate use of "Mercolized Wax" was harmful, and found the conditions and circumstances under which it could be used with safety. It also found that the directions for its use, enclosed in each package of the preparation, were sufficient to apprise persons examining them of the precautions which must be observed in order to avoid injurious effects. Notwithstanding the conflicting testimony concerning these matters, we think the findings so made are substantially supported.

The essential finding under attack, however, is as follows:

"Respondent's advertisements, however, make no reference to these precautions nor to the injurious effects which are likely to result from the indiscriminate use of the preparation, nor is there any statement in the advertisements referring to the directions for use and cautioning the public that the preparation should be used only as directed. The Commission is therefore of the opinion and finds that the advertisements constitute false advertisements in that they fail to reveal facts material in the light of the representations made therein, and material with respect to consequences which may result from the use of the preparation under the conditions prescribed in the advertisements or under such conditions as are customary or usual."

Admittedly, there is no direct proof in support of this finding, either in the evidence heard at the supplemental hearing or in the stipulation entered into prior to the original hearing. Respondent, however, indulges in certain inferences, assumptions and innuendoes, which it contends furnish the necessary support. The burden of its argument in this respect is that respondent, with petitioner's knowledge, was led to believe that petitioner was making no contention but that its advertisements failed to reveal any precautionary statement, and that under such circumstances it was the duty of petitioner to rebut the assumptions so indulged in by respondent by the introduction of petitioner's complete advertisements. Passing by the proposition that such assumption on the part of respondent, even though acquiesced in by petitioner, should be permitted as a substitute for proof, of which we are doubtful, we are of the view that the record furnishes no basis for saying that there was acquiescence by petitioner. In fact, the circumstances point to a contrary conclusion.

The most striking circumstance in this respect, so we think, arises from the stipulation of facts in connection with the pleading. All of the allegations of the complaint were directed at affirmative acts on the part of petitioner, and especially is this so with reference to the character of petitioner's advertisements. The complaint was based solely upon the disclosures of such advertisements and not upon what was failed to be revealed. The stipulation in an introductory paragraph stated:

"The following statement of facts 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 charges stated in the complaint, or in opposition thereto."

As already shown, there was no proof in support of the complaint except certain excerpts from petitioner's advertisements. We should think under such circumstances that petitioner would have a right to assume that respondent was relying solely upon such excerpts and not upon some other matter or proposition not included in the stipulation or otherwise offered to be proved. While we are dealing in inferences, we think it must be inferred that respondent, at any rate at the time of the original hearing, regarded the portions of the advertisements not included in the stipulation as immaterial to the issue between the parties, and in any event it appears certain that petitioner was justified in indulging in such inference.

It is therefore our judgment that the finding above quoted is without substantial support, and inasmuch as respondent's supplemental cease and desist order is predicated upon such unsupported finding, the order cannot stand. It is therefore vacated and set aside, without prejudice, however, to respondent's right to reopen the proceeding and to offer additional proof.

PENALTY PROCEEDINGS

During the last six months of 1944; the period covered by Volume 39, civil penalties in the amount of \$2,200 were collected in the following cases: *United States v. Irving Roy Jacobson, et al.*; United States District Court for the Western District of Wisconsin; penalty of \$1,000 assessed August 8, 1944.

The Commission had ordered Irving Roy Jacobson and Progressive Education Society, Inc., and its officers, etc., as of August 10, 1938, in connection with the offering for sale, etc., of any books, sets of books or publications in interstate commerce, to cease and desist from:

1. Advertising or representing in any manner to purchasers or prospective purchasers that any books or set of books offered for sale and sold by them will be given free of cost to said purchasers or prospective purchasers, when such is not the fact.

2. Advertising or representing in any manner that a certain number of sets or any set of books offered for sale and sold by them has been reserved to be given away free of cost to selected persons as a means of advertising, or for any other purpose, when such is not the fact.

3. Advertising or representing in any manner that purchasers or prospective purchasers of respondents' books or publications are only buying or paying for a loose-leaf extension service intended to keep the set of books up to date for a period of 10 years, or any other period, when such is not the fact.

4. Advertising or representing in any manner that the usual retail price at which respondents' publications are sold is higher than the price at which they are offered in such advertisements or by such representations, when such is not the fact.

5. Advertising or representing that any person has given testimonials or recommendations for and concerning respondents' books or publications, when such is not the fact.

6. Publishing or causing to be published and circulated testimonials or recommendations of and concerning the respondents' books or publications alleged to have been made by any person, when such testimonials and recommendations have not been made by such person.

7. Advertising or representing in any manner to purchasers or prospective purchasers of any book or set of books that they have 10 years, or any other period of time, to pay for the same, when such is not the fact. (D. 2132, 27 F. T. C. 755, 764.)

United States v. Kongo Chemical Co., Inc.; United States District Court for the Southern District of New York; judgment for \$200 on Aug. 9, 1944.

Kongo Chemical Co., Inc., its agents, etc., had been prohibited by the Commission's order of Dec. 28, 1940, as amended April 8, 1941, from:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails, or (b) by any other means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that said preparation is a purely vegetable product; that said preparation will permanently straighten the hair, or contribute to the straightening of the hair in any way other than by softening the hair temporarily; that said preparation will prevent hair from falling out and promote the growth of hair; that

said preparation will cure or permanently remove dandruff; that said preparation is the greatest discovery of the age; that the use of said preparation will benefit the offspring of the user; or that said preparation is safe or harmless; or which advertisement fails to reveal that the use of said preparation may result in severe caustic action upon the skin and scalp with resulting burns: *Provided, however,* That said advertisement need contain only a statement that said preparation should be used only as directed on the label thereof when such label contains a warning that the preparation may result in severe caustic action upon the skin and scalp with resulting burns and that in order to avoid such caustic action and burns, the preparation should not be applied at any one time for a period of longer than 10 minutes and should be removed immediately when a pronounced sensation of warmth is experienced; the preparation should be removed by washing the hair and scalp thoroughly with large quantities of water at least four times and until no sensation of the presence of soap remains and the preparation must not be brought in contact with any part of the body except the hands, hair, and scalp and especially must not be brought in contact with the eyes or with the mucous membrane of the nose or of the mouth.

2. Disseminating or causing to be disseminated any 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 in the Federal Trade Commission Act of said preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof; or which advertisement does not conform in all respects to the affirmative requirements of paragraph 1 hereof. (D. 4193, 32 F. T. C. 238, 245.)

United States v. G. Leach & Co.; United States District Court for the Eastern District of Pennsylvania; penalty of \$1,000 and costs of \$33.40 assessed Oct. 31, 1944.

Respondent, Glenn Leach, trading as G. Leach & Co., his agents, etc., in connection with the sale, etc., in interstate commerce of cooking utensils, were ordered to cease and desist from:

1. Representing or causing to be represented through advertising literature, oral statements or in any other manner, that the use of aluminum cooking utensils is deleterious to the health; or that the consumption of food prepared or kept in aluminum kitchen utensils causes or contributes to the causation of ulcers, cancers, cancerous growths, or any other disease or ailment, or that such food as a result of being prepared or kept in aluminum cooking utensils is injurious to the consumer thereof; and from making any other statements or representations of similar tenor or effect falsely disparaging or tending to disparage the quality or value of such aluminum cooking utensils with respect to the effect the use of the same might have on the health of the user or users thereof.

2. Representing that the usual, regular, and customary selling price of said cooking utensils is a special or advertising price or the factory cost of such utensils or that only a few sales are to be made at such special price, and from representing that a higher and fictitious or marked-up price of said cooking utensils is the customary, usual or regular price.

3. Representing that the respondent is the manufacturer of such cooking utensils.

4. Representing that such cooking utensils are fire resistant in all cases, or that they will never break when placed directly in or over an open flame. (D. 2480, 22 F. T. C. 684.)

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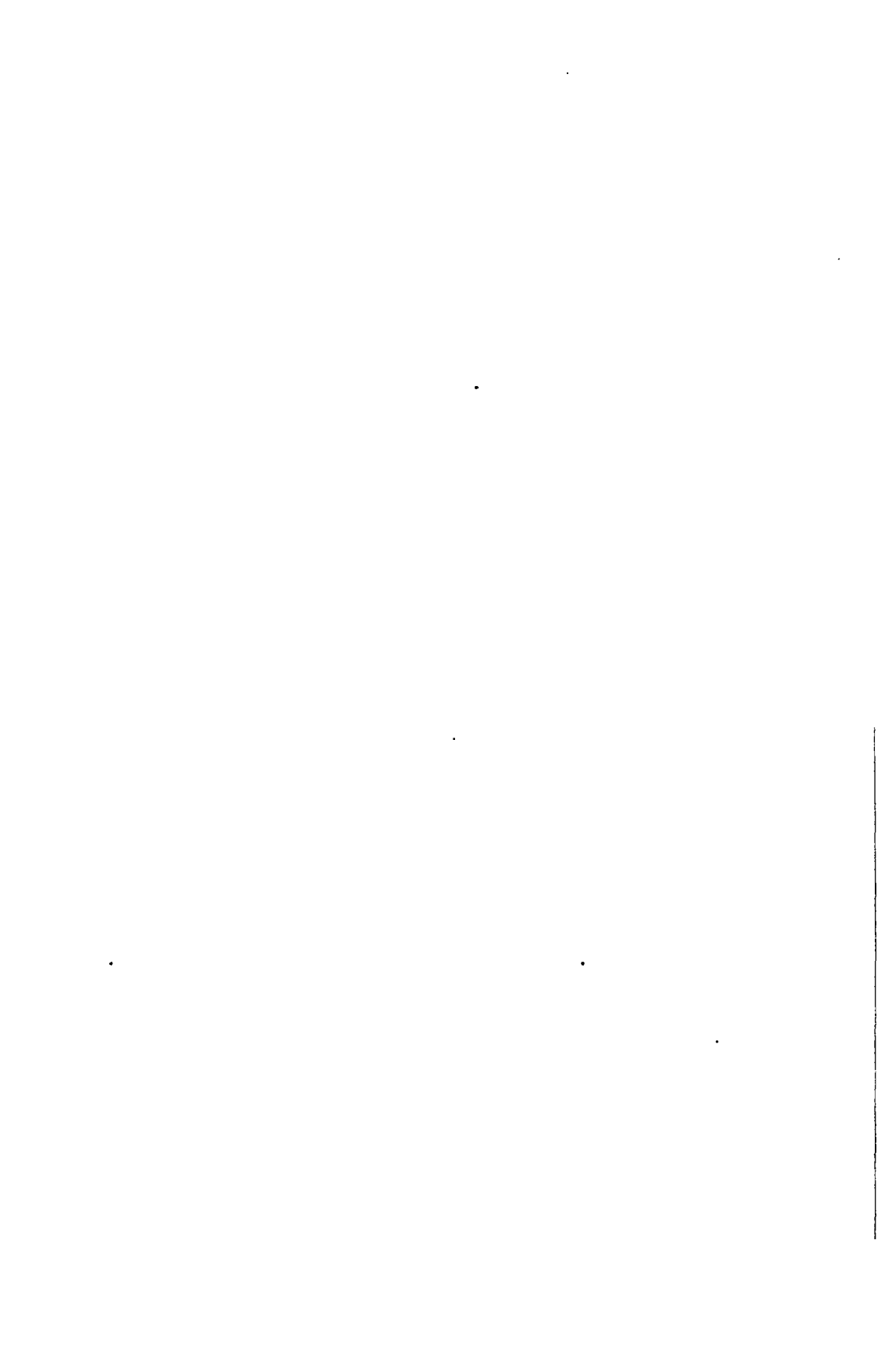
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