

IN THE MATTER OF
ASCO VENDING MACHINE EXCHANGE CORP. 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 5681. Complaint, July 14, 1949—Decision, Mar. 14, 1951

Where a corporation and two individuals, its president and controlling stockholder and its sales manager, engaged in the interstate sale and distribution of nut-vending machines to members of the public through traveling salesmen who contacted prospective purchasers through advertisements in the local papers—

- (a) Represented in such advertisements that employment as an agent, sales representative, or employee was offered, with stated earnings, through such statements as "Route Supervisor—To deliver merchandise and make weekly collections from route 5¢ automatic merchandisers to be established by well-rated concern. Work done evenings and Sundays. Cash investment \$930 to \$2,325 required * * *," and "Exceptional Opportunity—Part time routeman wanted; national concern will establish reliable man in cash business of his own; no selling or canvassing required * * *"

The facts being that their sales plan contemplated no employment at all in the usual sense, as was the general import of their advertisement, notwithstanding the reference to the necessity of a cash investment, but rather the outright sale of vending machines;

- (b) Falsely represented in said advertisements that the cash investment required to obtain their machines was "secured" or "secured by inventory," when in fact the money paid represented an outright purchase;
- (c) Represented, through advertising and statements of salesmen, that the weekly net income to the purchaser from the operation of the machines would be approximately \$1.65 for a single-column dispenser "Asco" machine, and about \$4.15 for the "Ajax" three-column dispenser, and that satisfactory locations for the machines would be obtained by them;

The facts being that while theoretically the machines might be capable of producing the promised income if the locations were ideal and all other factors were favorable, in actual practice the income never approached the amounts represented, and the profits, if any, were usually but a small fraction of the amounts represented; and the locations were almost always unsatisfactory and unprofitable;

- (d) Represented that the territory allotted purchasers would be exclusive, and that the machines delivered would be complete; that is, conform in all respects with those pictured in their advertising material and displayed by the agent;

The facts being that in a number of instances, contrary to their agreement, they allotted the same so-called exclusive territory to more than one purchaser, and there were numerous instances in which the machines were delivered with certain attachments and parts missing; and while such parts were usually supplied upon request of the purchaser, substantial delay, incon-

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venience and even financial loss frequently were suffered by purchasers because of the deficiencies in the original shipment:

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

As respects various other charges in the complaint, such as that respondents falsely represented that under certain circumstances they would prepay the shipping charges, that other prospects had applied for so-called exclusive territory, that they would help a purchaser who desired to sell vending machines purchased before they had been placed in use, and that in the case of defective machines by reason of broken or missing parts they frequently required the purchaser to forward cash to cover cost or advised him that he must look to the manufacturer, that the major portion of their business came from repeat orders, and that they made use of the names Asco Vending Machine Exchange and Ajax Distributing Co., and that their salesmen made use of certain other trade names for the purpose of concealing their true identity: the Commission was of the opinion and found that such additional charges were not sustained by the evidence.

Before *Mr. William L. Pack*, trial examiner.

Mr. Charles S. Cox for the Commission.

Mr. Louis H. Solomon, of New York City, for respondents.

Mr. George R. Sommer, of Newark, N. J., also represented Charles W. Smith.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Asco Vending Machine Exchange Corp., a corporation, and Alexander S. Cohen, individually and as an officer of Asco Vending Machine Exchange Corp., and Charles W. Smith, and Frank A. Osborne, individually, 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, Asco Vending Machine Exchange Corp., is a corporation existing under the laws of the State of New Jersey. Respondent, Alexander S. Cohen, is president and controlling stockholder of said corporation and also trades under the names Asco Vending Machine Exchange, Asco Vending Machine Exchange, Inc., Asco Packing Co., and Ajax Distributing Co. Both respondents, Asco Vending Machine Exchange Corp. and Alexander S. Cohen, have their offices and principal place of business at 55 Branford Street, Newark, N. J. Respondent, Charles W. Smith, during the years 1944 to 1947, inclusive, was employed as the national distributor for re-

spondents Asco Vending Machine Corp. and Alexander S. Cohen, with his offices and principal place of business at 55 Branford Street, Newark, N. J. His present place of business and address is 1060 Broad Street, Newark, N. J. Respondent, Charles W. Smith, during said time, along with respondent Alexander S. Cohen, traded as Asco Vending Machine Exchange with offices and principal place of business at 55 Branford Street, Newark, N. J. Respondent, Frank A. Osborne, for some time prior to November 1948, was employed by respondents Asco Vending Machine Exchange Corp., Alexander S. Cohen, and Charles W. Smith, as a salesman and is currently in the employ of respondents Asco Vending Machine Exchange Corp. and Alexander S. Cohen as distributor.

PAR. 2. Respondents, Asco Vending Machine Exchange Corp. and Alexander S. Cohen, individually, have been, for more than 8 years last past, and respondent, Charles W. Smith, during 1944 through 1947, inclusive, engaged in the sale and distribution of peanut-vending machines. Said product is sold directly to purchasers through salesmen who travel in various States of the United States and in the District of Columbia.

In the course and conduct of said business, respondents cause said product, when sold, to be transported from Newark, N. J., and other places of manufacture, to purchasers thereof located in various other States of the United States other than those in which such shipments originate 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. Respondents' volume of business in such commerce is substantial.

PAR. 3. Respondents supply their salesmen with advertising literature and circulars, with reproductions of letters received from customers, evidence of Asco Vending Machine's membership in the Newark, N. J., Chamber of Commerce, a listing of the Mercantile-Newark Trust Co., South Street Branch, Newark, N. J., as a bank reference, and Dun & Bradstreet, as a credit reference, along with a format for a proposed advertisement for use by said salesmen for insertion in local papers. Respondents also supply said salesmen with order blanks, resale listing agreements, service and location agreements, and with a completely assembled vending machine with all attachments, as pictured in said literature, for display to prospective purchasers. Respondents permit their salesmen to use various names other than Asco Vending Machine Exchange and Asco Vending Machine Ex-

change Corp. and including the names United Sales Co., Merit Distributing Co., Precision-Built Co., and U. S. Sales Co. Respondents have acted in concert and cooperation each with the other in the acts and practices hereinafter set forth.

PAR. 4. In the course and conduct of said business and for the purpose of inducing the purchase of said products, respondents have made various statements and representations regarding their said product and business methods through its salesmen and through advertisements inserted in newspapers, magazines, circulars, letters, and other advertising literature circulated generally among the purchasing public. Typical newspaper advertisements are as follows:

ROUTE SUPERVISOR

To deliver merchandise and make weekly collections from route 5¢ automatic merchandisers. Work may be done evenings or Sundays. Cash investment \$790 to \$1,975 required which is secured. Earning \$50.00 weekly and up, after expansion. No experience necessary. Give telephone. Box.

OFFER

To reliable party, man or woman, to own and operate a chain of 20 or more of these modernistic aluminum cast dispensers. Spare or full time. No selling. \$930 immediate cash required for 20 dispensers.

PAR. 5. Through the use of the foregoing statements, respondents represented that employment as an agent, sales representative, or as an employee is offered, with stated earnings.

PAR. 6. Said statements and representations are false, misleading, and deceptive. In truth and in fact, respondents do not employ persons who respond to said advertisements and have no employment available for such persons and do not offer them employment but instead when persons respond to said advertisements, respondents attempt to sell them their peanut-vending machines.

PAR. 7. In the course and conduct of their said business respondents have made various other statements in newspapers, magazines, circulars, letters, and orally by its salesmen, of which the following are typical:

- (a) That money invested in respondents' machines is secured;
- (b) That the weekly net income per vending machine is from \$1.67 to \$2 and above;
- (c) That respondents will obtain satisfactory locations for the vending machines for purchasers prior to or on the date of delivery of the vending machines;

(*d*) That respondents will place the vending machines on location for purchasers so desiring;

(*e*) That the prepayment of the entire purchase price will save the purchaser c. o. d. and shipping charges;

(*f*) That in the event a purchaser desires to dispose of the vending machines, respondents will dispose of same for such purchaser for a sum not less than the original purchase price, less a commission of 10 percent;

(*g*) That the purchaser will be given exclusive territory for vending machines purchased;

(*h*) That one or more persons have applied for the designated exclusive territory and that it is necessary to act at once, if the prospect desires to obtain the designated exclusive territory;

(*i*) That if the prospect places an order immediately, respondent's salesmen will not call on, or sell such other prospect or prospects the designated exclusive territory;

(*j*) That the vending machines will be shipped within a specified time after placing the order;

(*k*) That the vending machines delivered will be complete, as pictured and displayed to the purchaser;

(*l*) That most of the respondents' business is from repeat orders; and

(*m*) That all of the purchasers of respondents' vending machines report satisfactory results from the operations of such machines.

PAR. 8. The statements and representations set-out in paragraph 7 are false, misleading, and deceptive. In truth and in fact, money invested in respondents' machines is secured in no manner by respondents. The average weekly net income per vending machine is less than that represented. The locations obtained by respondents for purchasers are generally unsatisfactory and the selection of the same are made without having a survey made to ascertain whether or not the likelihood of the location selected will yield a satisfactory return. In some instances locations are not secured until long after the machines are received. Respondents do not place said vending machines on location for purchasers desiring such service. In the event a purchaser prepays the entire purchase price, respondents do not prepay the shipping charges thereon. Respondents do not aid and assist purchasers in any practical manner to dispose of vending machines in the event such purchasers so desire. When, for any reason, a purchaser desires to have respondents sell the vending machines

purchased before said vending machines are placed in use, respondents advise the purchaser to place the machines on location as it is easier to sell the machines as a going business and that respondents will then render the purchaser every assistance possible. In truth and in fact, respondents' advice to such purchasers is only a ruse and respondents are only interested in having a purchaser take up the c. o. d. shipment of vending machines. After the purchaser pays the balance on the c. o. d. shipment of vending machines, respondents do not render any practical assistance to the purchaser in the resale of said vending machines. After agreeing to give exclusive territory to purchasers of its machines, respondents frequently sell machines to others in the same territory. Respondents do not have one or more persons who have applied for so called exclusive territory and this representation is made only for the purpose of obtaining the immediate closing of the order for the vending machines. Respondents have failed to ship said vending machines, in many instances, within the specified time after the placement of the order, and, in many cases, long delays have been incurred between the time of the placement of the order and that in which said vending machines were shipped to the purchaser. When shipment of vending machines is not made in accordance with that promised the purchaser, respondents refuse to cancel the order therefor when requested by said purchaser and refuse to make refunds thereon. When a purchaser for any reason refuses to take up the c. o. d. shipment for the balance due on the order, respondents resell said shipment of vending machines and refuse repayment of any portion of the 50 percent deposit required by respondents on orders prior to shipment of the order and retain the same as alleged liquidated damages. In many instances, the vending machines which respondents deliver to purchasers are not complete, as pictured and displayed to the purchaser, and, in many instances, the same arrive with broken or missing parts and cannot be placed in operation until the same are repaired. Respondents, in many instances, require the purchaser to forward cash to cover the cost of replacing the broken or missing parts for said vending machines purchased or advise the purchaser that said vending machines are fully guaranteed by the manufacturer and that matters involving shortages of parts should be taken up with the manufacturer; and that claims for broken parts must be made to the carrier of said shipment. The major portion of respondents' orders for said vending machines are not from repeat orders of business, but from purchasers who only order 10 to 25 such vending machines. In truth and in fact, all operators of said vending machines purchased from respondents do

not report satisfactory returns from the operation thereof, and, in many instances, said vending machines do not cover the expense of operating the same.

Respondents' use of the names Asco Vending Machines Exchange and Ajax Distributing Co. in connection with the sale of said vending machines was for the purpose of concealing the true identity of respondents. The use of the names United Sales Co., Merit Distributing Co., U. S. Sales Co. and Precision-Built Co. by respondents' salesmen is for the purpose of concealing respondents' true identity in connection with the sale of said vending machines.

PAR. 9. The use by respondents of the foregoing false, deceptive, and misleading statements, representations and practices, disseminated as aforesaid, in connection with the sale and distribution in commerce of said products has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasers and prospective purchasers of such products into the erroneous and mistaken belief that such statements and representations are true and to the purchase of substantial quantities of the products offered for sale in commerce by respondents.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 14, 1949, 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 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 designated by it, and such 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 the aforesaid complaint, the respondents' answer thereto, the testimony and other evidence, the recommended decision of the trial examiner and exceptions thereto by counsel for respondent Charles W. Smith (briefs having been waived and oral argument not having been requested); and the Com-

mission having duly considered the matter and having entered its order disposing of the exceptions to the recommended decision of the trial examiner, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Asco Vending Machine Exchange Corp., is a corporation organized under the laws of the State of New Jersey, with its principal place of business located at 55 Branford Street, Newark, N. J. Respondent, Alexander S. Cohen, is president and controlling stockholder of the respondent corporation and participates actively in the operation, management, and control of its business. Respondent, Charles W. Smith, was for a period of some 3 years, beginning in 1945 and ending in the spring of 1947, sales manager of the corporation and was in active charge of its sales activities and policies. The Commission having concluded that the complaint has not been sustained as to respondent, Frank A. Osborne, and that he should be dismissed from the proceeding, the term "respondents" as used hereinafter will not include respondent Osborne.

PAR. 2. Respondents, Asco Vending Machine Exchange Corp. and Alexander S. Cohen, are now and for a number of years last past have been, and respondent, Charles W. Smith, was, during the period beginning in 1945 and ending in the spring of 1947, engaged in the sale and distribution of nut-vending machines. In the course and conduct of their business respondents cause or have caused their machines, when sold, to be transported to purchasers thereof located in various States of the United States other than those in which such shipments originated, and in the District of Columbia. Respondents maintain or have maintained a course of trade in their machines in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The machines sold by respondents are of two types: the Asco machine, which is a single-column dispenser and handles only one variety of nuts at a time, usually peanuts, and the Ajax machine, which is somewhat more complicated, being a three-column dispenser and handling, if desired, three different varieties or mixtures of nuts simultaneously. The sale of the Ajax machine was not begun until the latter part of 1948 or the first part of 1949, and as respondent, Charles W. Smith, severed his connection with the respondent corpora-

tion in 1947 he appears to have had no connection with the sale of that machine.

PAR. 4. The machines are sold to members of the public through traveling salesmen. To locate prospective purchasers in any given town the salesman first inserts an advertisement in the local paper. One advertisement which is fairly typical of those used reads as follows:

ROUTE SUPERVISOR—To deliver merchandise and make weekly collections from route 5¢ automatic merchandisers to be established by well-rated concern. Work done evenings and Sundays. Cash investment \$930 to \$2,325 required which is secured. Good earnings from start. No selling necessary. Give telephone. Write Box 51 State Journal.

Another form of advertisement used reads as follows:

EXCEPTIONAL OPPORTUNITY—Part time routeman wanted; national concern will establish reliable man in cash business of his own; no selling or canvassing required; all accounts established for you; earnings up to \$100 weekly and more through expansion; full factory cooperation; clean, outdoor work; must be able to devote 5 hours weekly. If you are willing to follow instructions you may become financially independent in a few years; must be reliable, of unquestionable reputation and be able to invest \$1,700 and up cash immediately which is secured by inventory. Unless you are ready to do business do not answer. State qualifications and phone number for personal interview with district manager. Box 81-H, Star.

Persons answering the advertisement are contacted by the salesman, who demonstrates a sample machine to the prospect and supplies the prospect with advertising circulars and other sales literature furnished by respondents. If the sale is consummated the purchaser signs an order for the number of machines agreed upon (usually 20) and the machines are subsequently shipped to the purchaser either by respondents direct or by the factory which manufactures the machines for respondents. Under the terms of sale respondents assume the responsibility (either in the written contract itself or by oral representations of the salesman) for obtaining satisfactory locations for the operation of the machines (in taverns, bowling alleys, filling stations, etc.). The actual placing of the machines at the locations is the responsibility of the purchaser.

PAR. 5. The first charge made in the complaint herein with respect to respondents' business practices is that respondents' newspaper advertisements, which constitute the first step in the sales campaign, are misleading in that the advertisements represent "that employment as an agent, sales representative or as an employee is offered, with stated earnings." In the opinion of the Commission this charge is well founded. Despite the reference in the advertisements to the

necessity of a cash investment, the general import of the advertisements is that regular employment is offered or contemplated. Actually, respondents' sales plan contemplates no employment at all in the usual sense, but rather the outright sale of vending machines.

The advertisements also represent that the cash investment required to obtain respondents' machines is "secured" or "secured by inventory." Obviously these statements are erroneous and misleading, as the money paid for the machines represents an outright purchase of them and is not secured either by inventory or otherwise.

PAR. 6. Other representations made to prospective purchasers by respondents either through their printed advertising material or through oral statements of salesmen were: (a) That the weekly net income to the purchaser from the operation of the machines would be approximately \$1.67 for the Asco machine and approximately \$4.15 for the Ajax machine; (b) that satisfactory locations for the machines would be obtained by respondents; (c) that the territory allotted purchasers of the machines would be exclusive; that is, that respondents would not sell to others machines to be operated in that same territory; and (d) that the machines delivered would be complete; that is, conforming in all respects with the machines pictured in respondents' advertising material and displayed by respondents' agents.

PAR. 7. The record establishes and the Commission therefore finds that these representations were erroneous and misleading. While theoretically the machines might be capable of producing the promised income if the locations were ideal and all other factors favorable, in actual practice the income from the machines almost never approached the amounts represented. Usually the profits, if any, from the operation of the machines were but a small fraction of the amounts represented by respondents. The locations obtained for the machines by respondents were almost always unsatisfactory and unprofitable. A number of instances are disclosed by the record in which respondents, contrary to their agreement, allotted the same so-called exclusive territory to more than one purchaser. Numerous instances are also disclosed in which the machines delivered by respondents were incomplete and failed to conform with the sample machine displayed and demonstrated by the salesman, in that certain attachments and parts were missing. While the missing attachments and parts were usually supplied by respondents upon request of the purchaser, substantial delay, inconvenience, and even financial loss frequently were suffered by purchasers because of the deficiencies in the original shipment.

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PAR. 8. While the complaint contained certain charges in addition to those discussed above, the Commission is of the opinion and finds that such additional charges are not sustained by the evidence.

PAR. 9. The use by respondents of the erroneous and misleading representations referred to above has the tendency and capacity to mislead and deceive a substantial portion of the public with respect to respondents' products, and the tendency and capacity to cause such portion of the public to purchase 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, the respondents' answer thereto, testimony, and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision and exceptions thereto by counsel for respondent, Charles W. Smith (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 the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondents, Asco Vending Machine Exchange Corp., a corporation, and its officers, and Alexander S. Cohen, individually and as an officer of said corporation, and Charles W. Smith, individually and as sales manager of said corporation, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of vending machines in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using advertisements which represent directly or by implication that employment is offered by respondents, when in fact the real purpose of the advertisement is to obtain purchasers for respondents' machines.

2. Representing that the cash investment required to purchase respondents' machines is secured, either by inventory or otherwise.

3. Representing as customary or regular earnings or profits to be derived from the operation of respondents' machines any amount in excess of that which has in fact been customarily and regularly earned by operators of such machines.

4. Representing that respondents will obtain satisfactory locations for said machines, unless such locations are in fact obtained by respondents.

5. Representing that the territory allotted purchasers of such machines is exclusive, unless respondents do in fact refrain from selling machines to other purchasers for operation in such designated territory.

6. Representing that vending machines will be complete and will conform with sample machines displayed to prospective purchasers, unless the machines delivered are in fact complete and conform in all respects with such sample machines.

It is further ordered, That the respondents named above 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 Frank A. Osborne.

IN THE MATTER OF
AUTOMATIC VOTING MACHINE CORP. ET AL.

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

Docket 5776. Complaint, May 10, 1950—Decision, Mar. 19, 1951

Where a corporation engaged in the manufacture and interstate sale and distribution of voting machines in competition with one or more concerns and, potentially, with others; and a number of its officers and employees who were active in the manufacture and sale of its product; through oral and written statements and depictions disseminated among prospective purchasers—

(a) Made disparaging and false and misleading representations concerning its competitor through such typical representations as that said competitor's financial stability was questionable and that said competitor lacked adequate experience in the business of manufacturing and servicing voting machines;

The facts being that said competitor's financial stability had been such as to enable it reasonably well to perpetuate itself in business, except to the extent that it might have been handicapped by said corporation and individuals as herein set forth; and the servicing of its machines had been adequate; and

(b) Made disparaging and false and misleading representations concerning said competitor's product through such typical representations as that use thereof, through improper and undetectable manipulations and other means, was conducive to and encouraged, fraud in elections; that its life was from 5 to 6 years, in contrast to their machine, which, allegedly, had a life expectancy of from 40 to 50 years; and that the electric motor in its machine served merely to close and open the curtains which enclosed the voter;

The facts being that the voting machines of said competitor were and had been for some time past in use by the public, and their adaptability and convenience had been such as to warrant and occasion the purchasing of additional voting machines by the same purchasers; where such machines had been in use there were no public records or other evidence to indicate fraud in elections; the competitive machines had been in use well in excess of 5 to 6 years; and the electric motor in said competitive machines served purposes in addition to those of operating the curtains; and,

(c) Disparagingly, falsely, and misleadingly represented that it was necessary for voters to assume ungainly positions when voting by means of said competitor's vertical closure voting machine; that the punching machine equipment used in conjunction therewith was unusually expensive; that with said competitor's electrically or manually operated voting machines, voting was slower than with the use of their corresponding voting machines; that secrecy in voting for write-in candidates was rendered impossible when using said competitor's machine; and that the cost for the actual printing was greater for competitor's machine than it was for their own; and,

Where said corporation, acting through and by means of said individuals—

(d) Secured or attempted to secure an unfair competitive advantage by instigating and financing vexatious and groundless taxpayers' law suits against

purchasers of said competitive machine, with intent or effect of preventing or restraining purchasers from paying said competitor for its machines which had been ordered by or delivered to them, or of restraining prospective purchasers from ordering machines from said competitor, through said suits wherein it was generally alleged, among other things, that the purchases were void and not according to law; or that contracts were not awarded to the lowest bidder; or that counters of the competitive machine could be manipulated without leaving a trace; or that fraud was possible with its use; or that the privacy for voting for write-in candidates with said machine was destroyed;

The facts being that their own voting machines and those of said competitor had been examined and studied by engineers and governmental officials throughout many parts of the United States, and it had been determined both through such examinations and studies and through actual use, that both machines reasonably served the purpose for which they were devised and met statutory requirements established as safeguards against fraud in elections; and no judgment had been rendered by any court upon the merits of an issue declaring that the voting machines of said competitor could be manipulated without leaving a trace, were conducive to fraud in elections, or were unlawful and did not meet statutory requirements;

Tendency and capacity of which acts and practices and methods, as hereinabove described, had been and were:

1. Unlawfully to divert trade in voting machines to said corporation from its competitors;
2. To lessen and suppress competition in the distribution and sale of voting machines in commerce;
3. To threaten the existence of all potential competition in such distribution and sale;
4. To create in respondent corporation a complete monopoly in such distribution and sale;
5. To deprive the public of the natural advantages inherent in a competitive market where voting machines may be purchased upon their merits;
6. Unduly to hinder, embarrass, and place in a disadvantageous competitive position said competitor who was harassed with vexatious and groundless lawsuits;
7. To mislead the public into the erroneous and mistaken belief that with the use of said competitor's voting machine voters would be caused to suffer inconvenience and hardships, fraud would be present in elections, and elections would be costly and slow; and
8. To mislead and deceive a substantial portion of the purchasing public (a) into the erroneous belief that the false, misleading, and disparaging representations concerning said competitor and its voting machines were true, and (b) into the purchase of respondent's voting machines in preference to those of said competitor:

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

In said proceeding while it appeared that 90 percent of all communities in the United States used voting machines made and sold by respondent corpora-

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tion, it appeared that in 8 States, in which its voting machines and those of its competitor were used, it had sold, as of July 2, 1949, 11,699 machines as compared with 3,702 machines sold by its competitor, and that while to all intents and purposes said corporation and its said competitor were the only companies in the United States which sold voting machines, other concerns were preparing to enter the business of manufacturing and selling the same.

Before *Mr. William L. Pack*, trial examiner.

Mr. Leslie S. Miller and *Mr. Fletcher G. Cohn* for the Commission.

Duane, Morris & Heckscher, of Philadelphia, Pa., and *Mr. Ralph J. Gutzsell*, 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 Automatic Voting Machine Corp., a corporation, its officers, its board of directors, and its employees, hereinafter referred to as respondents, have violated the provisions of section 5 of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent, Automatic Voting Machine Corp., is a Delaware corporation, with its principal office and place of business Jamestown, N. Y. It will be referred to hereinafter as respondent corporation.

The individual respondents serving and acting as officers or members of the board of directors of respondent corporation, each individually, not only participated in the alleged acts and practices hereinafter set forth, but each also participated in the domination and control of respondent corporation in its performing the alleged acts and practices. Each of the said officers and directors named herein as individual respondents and the respective positions held by each are:

Alaric R. Bailey, 484 Fairmount Ave., Jamestown, N. Y.	President and member of the board.
Burton G. Tremaine III, % The Miller Co., Meriden, Conn.	Vice president and member of the board.
Paul A. Ahlstrom, 162 Euclid Ave., Jamestown, N. Y.	Secretary and treasurer.
William H. Staring, 13415 Shaker Blvd., Cleveland, Ohio.	Chairman of the board.
George S. Stevenson, % New Haven Savings Bank, New Haven, Conn.	Member of the board.

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Burton G. Tremaine, Jr., % The Miller Co., Meriden, Conn. Member of the board.
 W. G. McKettrick (first name known) Do.
 18208 Shelburne Rd., Shaker Heights, Ohio.

The other individual respondents also are in the employment or service of respondents corporation, and as such, each has been engaged in the acts and practices hereinafter alleged. These other individual respondents are:

Frank P. Stone, % Automatic Voting Machine Corp., Jamestown, N. Y. Sales manager.
 Raymond C. Anderson, % Automatic Voting Machine Corp., Jamestown, N. Y. Assistant sales manager.
 Alvin N. Gustavson, % Automotic Voting Machine Corp., Jamestown, N. Y. Superintendent of production.
 Oscar F. Swanson, % Automatic Voting Machine Corp., Jamestown, N. Y. Foreman of the experimental department.

PAR. 2. The respondent corporation is now, and has been at all times herein referred to, engaged in the business of manufacturing and selling voting machines, which are, and have been, known by the trade name Automatic Voting Machines.

The individual respondents are and have been at all times herein referred to affiliated with respondent corporation in their respective positions or capacities as hereinbefore set forth. As such, each is and has been actively engaged in the management of said corporation or in formulating, directing or executing the policies and methods of said corporation pertaining to the manufacturing and selling of its voting machines.

Furthermore, each of said respondents individually is and has been engaged in initiating, actively participating in or knowingly acquiescing in one or more of the illegal acts or practices hereinafter alleged.

Each of the said individual respondents hereinbefore named and described in paragraph 1 hereof is proceeded against as a party respondent in his individual capacity and in his respective capacity as an officer, director, or employee of respondent corporation.

PAR. 3. A voting machine is a device which is operated manually or electrically by an individual voter to record and tabulate mechanically his vote with the votes of all other individuals using such machine. Said device also tabulates mechanically the total number of persons voting and the total number of votes cast for each candidate and the total number of votes cast for or against each issue on the ballot.

PAR. 4. The respondent corporation, in the course and conduct of its business, as aforesaid, sells and transports, or causes to be sold and transported, its voting machines from its place of business to purchasers thereof located in the various States of the United States, other than the State of origin.

Respondent corporation, acting in, through and by means of the individual respondents herein named maintains, and at all times herein referred to has maintained, a course of trade in said voting machines in commerce, as commerce is defined in the Federal Trade Commission Act, among and between the various States of the United States.

PAR. 5. In the course of its aforesaid business of selling and offering for sale its voting machines in commerce, as hereinbefore described, respondent corporation is in competition with one or more firms or corporations which sell or offer for sale in said commerce voting machines which are designed and sold for the same general use and purpose as those of the respondent corporation.

In addition to these competitors, other firms or corporations are contemplating the manufacture and sale in commerce of voting machines designed for the same general use and purpose as those of respondent corporation.

Because of the close relationship between the franchise possessed by American voters and the voting machines which are used as mechanical devices on which to register and record their respective votes, and because of the right of the American public to enjoy the advantages inherent in free and open competition which would make available to the citizens and taxpayers the best voting machines possible at the lowest prices which can only be achieved on an open competitive market, there resides great public interest in maintaining such competition.

PAR. 6. In the course and conduct of its business, as aforesaid, respondent corporation and the individual respondents, acting individually and in their respective official capacities, are now, and have been at all times therein referred to, disparaging and making false and misleading representations concerning a competitor of respondent corporation and its competitive voting machines. This is, and has been, accomplished directly or inferentially by the use of words, statements, and depictions, both oral and written, disseminated to and among prospective purchasers of voting machines. Among and typical of the disparagements, and the false and misleading representations concerning this competitor or its product, are the following:

(a) This competitor's financial stability is questionable;

(b) The use of the competitor's voting machine, through improper and undetectable manipulations, and other means, is conducive to, and encourages, fraud in elections;

(c) This competitor lacks adequate experience in the business of manufacturing, or having manufactured for it and selling and servicing voting machines;

(d) The life of the competitor's voting machine is from 5 to 6 years, in contrast to respondent corporation's voting machine, which allegedly has a life expectancy of from 40 to 50 years;

(e) The electric motor in the competitor's voting machine serves merely to close and open the curtains which enclose the voter while he is voting.

PAR. 7. Furthermore, in the course and conduct of its business, as aforesaid, respondent corporation, acting through and by means of the individual respondents, has secured, or attempted to secure, an unfair competitive advantage over its competitor in the sale and distribution in commerce of said competitor's voting machines, by instigating and financing vexatious and groundless lawsuits against purchasers or prospective purchasers of said competitor's voting machines. The respondents have instigated and financed or have been instrumental in instigating and financing taxpayers' lawsuits against purchasers of said competitor's voting machines for the purpose or with the effect of preventing or restraining purchasers from paying the said competitor for the voting machines thus ordered by or delivered to the said purchasers, or to restrain prospective purchasers from ordering from said competitor its voting machines. The said lawsuits have generally followed a similar pattern in certain respects in that within the bills of complaint or the petitions filed with the courts in the several jurisdictions, it has been or is alleged, among other things, that:

(a) The purchases are void and not according to law; or

(b) The contracts were not awarded to the lowest bidder; or

(c) The counters of the voting machines of the competitor can be manipulated without leaving a trace or visible evidence of such manipulation; or

(d) Fraud is possible with the use of the voting machine; or

(e) The privacy for voting for write-in candidates with the competitor's voting machine is destroyed; or

(f) A combination of two or more of the immediate factors ((a) to (e), inclusive) are present.

PAR. 8. In truth and in fact, the voting machines of respondent corporation and the voting machines of said competitor have been

examined and studied by engineers and governmental officials throughout many parts of the United States, and it has been determined, both through the examinations and studies aforesaid and through actual usage of the said voting machines, that they both reasonably serve the purpose for which they were devised, constructed, and sold and that both meet the statutory requirements established as safeguards against fraud in elections.

A judgment has not been rendered by any court of law or equity upon the merits of an issue declaring that the voting machines of the competitor of respondent corporation can be manipulated without leaving a trace or visible evidence of such manipulation or that the said machines are conducive to fraud in elections or that they are unlawful and do not meet statutory requirements.

Also, in truth and in fact, the representations hereinbefore set forth are disparaging, false, misleading, and deceptive in many respects and for various reasons, among which are:

(a) The competitor's financial stability has been such as to enable it reasonably well to perpetuate itself in business, except to the extent it may have been handicapped by the acts and practices of respondents, as herein alleged;

(b) This competitor's voting machines are now and have been for some time past in use by the public, and the adaptability and convenience thereof has been such as to warrant and occasion the purchasing of additional voting machines by the same purchasers;

(c) The servicing of the competitor's machines has been adequate;

(d) When this competitor's voting machines have been in use, there are no public records nor other evidence to indicate nor establish that fraud in elections through the use thereof has been prevalent or potential;

(e) Voting machines produced by or for this competitor have been in use for periods well in excess of 5 to 6 years;

(f) The electric motor in this competitor's voting machine serves purposes additional to those of opening and closing the curtains which seclude the voter while he is voting.

PAR. 9. To all intents and purposes, respondent corporation and its said competitor are the only companies in the United States which sell voting machines, but other firms or corporations are preparing to enter the business of manufacturing and selling voting machines.

Ninety percent of all communities in the United States using voting machines have the automatic voting machine manufactured and sold by respondent corporation. In 8 States where both the respondent corporation's voting machines and the voting machine of the afore-

said competitor are used, as of July 22, 1949, respondent corporation has sold 11,699 voting machines as compared to 3,702 voting machines sold by its said competitor.

PAR. 10. The tendency, capacity, and effects of the acts, practices, and methods of respondents, as hereinbefore alleged, have been and are:

(1) To unlawfully divert trade in voting machines to the respondent corporation from its competitor;

(2) To frustrate, lessen, hinder, and suppress competition in the distribution and sale of voting machines in commerce;

(3) To threaten the existence of all potential competition in such distribution and sale;

(4) To create in respondent corporation a complete monopoly in such distribution and sale;

(5) To deprive the public of the natural advantages inherent in a competitive market where voting machines may be selected and purchased by the duly elected or appointed representatives in Government, competitively and openly upon the merits of the respective competitive products;

(6) To unduly hinder, embarrass, and place in a competitive disadvantageous position the competitor who is harassed with vexatious and groundless lawsuits brought in bad faith;

(7) To mislead the public into the mistaken, erroneous, and false belief that with the use of said competitor's voting machine the voters will be caused to suffer inconvenience and hardships, fraud will be present in elections and said elections will be costly and slow;

(8) To mislead and deceive a substantial portion of the purchasing public (*a*) into the erroneous belief that the false, misleading, deceptive, and disparaging statements and representations concerning respondent corporation's competitor and said competitor's voting machines are true, and (*b*) into the purchase of respondent corporation's voting machines in preference to the voting machines of said competitors.

PAR. 11. The aforesaid acts, practices, and methods of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair methods of competition and unfair and deceptive acts or practices in commerce, within the intent and meaning of section 5 of the Federal Trade Commission Act.

ORDERS AND DECISION OF THE COMMISSION

Order denying respondents' appeal from initial decision of the trial examiner and decision of the Commission and order to file report of compliance, Docket 5776, March 19, 1951, follows:

This matter coming on to be heard by the Commission upon the respondents' appeal from the trial examiner's initial decision in this proceeding, and the brief in opposition thereto filed by counsel in support of the complaint; and

It appearing to the Commission that the grounds relied upon in support of said appeal are (1) that the alleged unfair methods of competition and unfair or deceptive acts and practices making up the alleged violation of law constitute a private controversy between the respondents and their competitor, redressable in the courts, and do not involve or affect the public interest; and (2) that certain of the trial examiner's findings of fact and conclusions are improper in that they are not supported by the record; and

It further appearing that the question of the public interest in this proceeding was specifically adjudicated by the Commission in its order of March 19, 1951, denying the respondents' motion to stay further proceedings and to stay the issuance of an order to cease and desist herein; and

It further appearing also that the trial examiner's findings of fact and conclusions are all fully supported by the record wherein the respondents against whom the order to cease and desist was directed admitted all of the material allegations of fact set forth in the complaint, waived all hearings and further procedure as to said facts, including their right to submit to the trial examiner proposed findings as to the facts, and agreed that the Commission might make any findings as to the facts and conclusion it deemed advisable and proper regarding the acts and practices admitted to have been engaged in and might issue any order it deemed appropriate to prevent the respondents from thereafter engaging in such acts and practices; and

The Commission being of the opinion that the respondents' appeal is without merit and that the trial examiner's initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That the respondents' appeal from the initial decision of the trial examiner and their request for oral argument in support of said appeal be, and they hereby are, denied.

It is further ordered, That the attached initial decision of the trial examiner shall on the 19th day of March 1951, become the decision of the Commission.

It is further ordered, That the respondents (except Burton G. Tremaine, III, George S. Stevenson, Burton G. Tremaine, Jr., and W. G. McKetterick, in their individual capacities, and respondent William H. Staring, now deceased) shall, within 60 days after service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Said initial decision, thus adopted by the Commission as its decision, follows:

INITIAL DECISION BY WILLIAM L. PACK, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 10, 1950, 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 that act. After the filing by respondents of their original answers to the complaint, respondents requested leave to withdraw said answers and to substitute therefor answers admitting (with certain exceptions as to certain directors of the respondent corporation in their individual capacities and as to one deceased respondent) all of the material allegations of fact in the complaint. Such leave being granted, the substitute answers were in due course filed as a part of the record in this proceeding. Also filed and made a part of the record herein were certain affidavits executed by said directors of the respondent corporation and a stipulation as to certain matters involved in the proceeding but not specifically set forth in the complaint. Counsel supporting the complaint and counsel for respondents also agreed upon and submitted to the trial examiner a proposed order to cease and desist. Thereafter, the proceeding regularly came on for final consideration by the above-named trial examiner, theretofore duly designated by the Commission, upon the complaint, substitute answers, affidavits, stipulation, and proposed order (the filing of proposed findings and conclusions having been waived by counsel and oral argument not having been requested), and the trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order.

Findings

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Automatic Voting Machine Corp. (hereinafter frequently referred to as respondent corporation), is a Delaware corporation, with its principal office and place of business located in Jamestown, N. Y.

The following respondents are officers of the respondent corporation and/or members of its board of directors as set forth below:

Alaric R. Bailey, 484 Fairmount Ave., Jamestown, N. Y.	President and member of the board.
Burton G. Tremaine, III, % The Miller Co., Meriden, Conn.	Vice president and member of the board.
Paul A. Ahlstrom, 162 Euclid Ave., Jamestown, N. Y.	Secretary and treasurer.
George S. Stevenson, % New Haven Savings Bank, New Haven, Conn.	Member of the board.
Burton G. Tremaine, Jr., % The Miller Co., Meriden, Conn.	Do.
W. G. McKetterick, 18208 Shelburne Rd., Shaker Heights, Ohio.	Do.

Respondents, Alaric R. Bailey and Paul A. Ahlstrom, have participated as individuals in the acts and practices hereinafter set forth and have also participated in the domination and control of respondent corporation in its performance of said acts and practices.

Respondents, Burton G. Tremaine III, George S. Stevenson, Burton G. Tremaine, Jr., and W. G. McKetterick, have not as individuals participated in or had actual knowledge of said acts and practices. It is therefore concluded that while these four respondents are properly joined in this proceeding in their respective capacities as officers and/or directors of said corporation, the complaint should be dismissed as to them in their individual capacities. The term respondents or individual respondents as used hereinafter will not include these four respondents in their individual capacities.

The following respondents are in the employ of respondent corporation, holding the respective positions set forth below:

Frank P. Stone, % Automatic Voting Machine Corp., Jamestown, N. Y.	Sales manager.
Raymond C. Anderson, % Automatic Voting Machine Corp., Jamestown, N. Y.	Assistant sales manager.
Alvin N. Gustavson, % Automatic Vot- ing Machine Corp., Jamestown, N. Y.	Superintendent of production.
Oscar F. Swanson, % Automatic Voting Machine Corp., Jamestown, N. Y.	Foreman of the experimental depart- ment.

Respondent, William H. Staring, has died since the institution of this proceeding and the terms respondents and individual respondents will, therefore, not include this respondent.

PAR. 2. The respondent corporation is now and at all times referred to herein has been engaged in the manufacture and sale of voting machines, such machines being known by the trade name Automatic Voting Machines.

With the exception of respondents, Burton G. Tremaine III, George S. Stevenson, Burton G. Tremaine, Jr., and W. G. McKetterick, as set forth in paragraph 1, each of the individual respondents is and has been actively engaged in the management of said corporation or in formulating, directing or executing the policies and methods of said corporation pertaining to the manufacture and sale of its voting machines. With said exceptions, each of the individual respondents is and has been also engaged in initiating, actively participating in or knowingly acquiescing in one or more of the acts and practices hereinafter set forth.

PAR. 3. A voting machine is a device which is operated manually or electrically by an individual voter to record and tabulate mechanically his vote with the votes of all other individuals using such machine. The device also tabulates mechanically the total number of persons voting and the total number of votes cast for each candidate and the total number of votes cast for or against each issue on the ballot.

PAR. 4. In the course and conduct of its business the respondent corporation causes its machines, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in the various States of the United States. The corporation maintains and has maintained a course of trade in its machines in commerce among and between the various States of the United States.

PAR. 5. In the course of its business of selling and offering for sale its voting machines in commerce, as hereinbefore described, respondent corporation is in competition with one or more firms or corporations which sell or offer for sale in said commerce voting machines which are designed and sold for the same general use and purpose as those of the respondent corporation.

In addition to these competitors, other firms or corporations are contemplating the manufacture and sale in said commerce of voting machines designed for the same general use and purpose as those of respondent corporation.

PAR. 6. In the course and conduct of its business respondent corporation and the individual respondents, acting individually and in

their respective official capacities, are now, and have been at all times herein referred to, disparaging and making false and misleading representations concerning a competitor of respondent corporation and its competitive voting machines. This is, and has been, accomplished directly or indirectly by the use of statements, both oral and written, and depictions disseminated to and among prospective purchasers of voting machines. Among and typical of such disparagements and such false and misleading representations are the following:

- (a) This competitor's financial stability is questionable;
- (b) The use of the competitor's voting machine, through improper and undetectable manipulations, and other means, is conducive to, and encourages, fraud in elections;
- (c) This competitor lacks adequate experience in the business of manufacturing, or having manufactured for it, and selling and servicing voting machines;
- (d) The life of the competitor's voting machine is from 5 to 6 years, in contrast to respondent corporation's voting machine, which allegedly has a life expectancy of from 40 to 50 years;
- (e) The electric motor in the competitor's voting machine serves merely to close and open the curtains which enclose the voter while he is voting.

PAR. 7. Furthermore, in the course and conduct of its business, as aforesaid, respondent corporation, acting through and by means of the individual respondents, has secured, or attempted to secure, an unfair competitive advantage over its competitor in the sale and distribution in commerce of said competitor's voting machines, by instigating and financing vexatious and groundless lawsuits against purchasers or prospective purchasers of said competitor's voting machines. The respondents have instigated and financed, or have been instrumental in instigating and financing, taxpayers' lawsuits against purchasers of said competitor's voting machines for the purpose or with the effect of preventing or restraining purchasers from paying the said competitor for the voting machines ordered by or delivered to the said purchasers, or to restrain prospective purchasers from ordering voting machines from said competitor. The said lawsuits have generally followed a similar pattern in certain respects in that within the bills of complaint or petitions filed with the courts in the several jurisdictions, it has been alleged, among other things, that:

- (a) The purchases are void and not according to law; or
- (b) The contracts were not awarded to the lowest bidder; or

(c) The counters of the voting machines of the competitor can be manipulated without leaving a trace or visible evidence of such manipulation; or

(d) Fraud is possible with the use of the voting machine; or

(e) The privacy for voting for write-in candidates with the competitor's voting machine is destroyed; or

(f) A combination of two or more of such factors ((a) to (e), inclusive) are present.

PAR. 8. In truth and in fact, the voting machines of respondent corporation and the voting machines of said competitor have been examined and studied by engineers and governmental officials throughout many parts of the United States, and it has been determined, both through these examinations and studies and through actual usage of the said voting machines, that they both reasonably serve the purpose for which they are devised, and that both meet the statutory requirements established as safeguards against fraud in elections.

A judgment has not been rendered by any court of law or equity upon the merits of an issue declaring that the voting machines of the competitor of respondent corporation can be manipulated without leaving a trace or visible evidence of such manipulation, or that the said machines are conducive to fraud in elections, or that they are unlawful and do not meet statutory requirements.

Also, in truth and in fact, the representations hereinbefore set forth are disparaging, false, and misleading in many respects and for various reasons, among which are:

(a) The competitor's financial stability has been such as to enable it reasonably well to perpetuate itself in business, except to the extent it may have been handicapped by the acts and practices of respondents, as herein set forth;

(b) This competitor's voting machines are now and have been for some time past in use by the public, and the adaptability and convenience thereof has been such as to warrant and occasion the purchasing of additional voting machines by the same purchasers;

(c) The servicing of the competitor's machines has been adequate;

(d) Where this competitor's voting machines have been in use, there are no public records or other evidence to indicate or establish that fraud in elections through the use thereof has been prevalent or potential;

(e) Voting machines produced by or for this competitor have been in use for periods well in excess of 5 to 6 years;

(f) The electric motor in this competitor's voting machine serves purposes additional to those of opening and closing the curtains which seclude the voter while he is voting.

PAR. 9. Other representations made by respondents which were disparaging, false, and misleading were the following:

(a) That it is necessary for voters to assume or be in ungainly positions when voting by means of said competitor's vertical column voting machine;

(b) That the punching machine equipment used in conjunction with competitor's vertical type voting machines is unusually expensive;

(c) That with competitor's electrically or manually operated voting machines, voting is slower than with the use of respondent corporation's electrically or manually operated voting machines, respectively;

(d) That secrecy in voting for write-in candidates is destroyed or rendered impossible when using competitor's voting machine;

(e) That the cost for the actual printing is greater for the competitor's voting machine than it is for the voting machines of respondent corporation.

PAR. 10. To all intents and purposes, respondent corporation and its said competitor are the only companies in the United States which sell voting machines, but other firms or corporations are preparing to enter the business of manufacturing and selling such machines.

Ninety percent of all communities in the United States using voting machines have the Automatic Voting Machine manufactured and sold by respondent corporation. In 8 States where both the respondent corporation's voting machines and the voting machine of the aforesaid competitor are used, as of July 22, 1949, respondent corporation has sold 11,699 voting machines as compared with 3,702 voting machines sold by its competitor.

PAR. 11. The tendency and capacity of the acts, practices, and methods of respondents, as hereinbefore described, have been and are:

(1) Unlawfully to divert trade in voting machines to the respondent corporation from its competitors;

(2) To frustrate, lessen, hinder, and suppress competition in the distribution and sale of voting machines in commerce;

(3) To threaten the existence of all potential competition in such distribution and sale;

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(4) To create in respondent corporation a complete monopoly in such distribution and sale;

(5) To deprive the public of the natural advantages inherent in a competitive market where voting machines may be selected and purchased by the duly elected or appointed representatives in Government, competitively and openly upon the merits of the respective competitive products;

(6) Unduly to hinder, embarrass, and place in a disadvantageous competitive position the competitor who is harassed with vexatious and groundless lawsuits;

(7) To mislead the public into the erroneous and mistaken belief that with the use of said competitor's voting machine voters will be caused to suffer inconvenience and hardships, fraud will be present in elections, and elections will be costly and slow;

(8) To mislead and deceive a substantial portion of the purchasing public (a) into the erroneous belief that the false, misleading, and disparaging representations concerning respondent corporation's competitor and said competitor's voting machines are true, and (b) into the purchase of respondent corporation's voting machines in preference to the voting machines of said competitor.

CONCLUSION

The acts and practices of respondents as hereinabove set out are all to the prejudice of the public and of the competitors of the respondent corporation, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent, Automatic Voting Machine Corp., a corporation, its officers and directors, and respondent Alaric R. Bailey, individually and as an officer and director of said corporation, and respondent Paul A. Ahlstrom, individually and as an officer of said corporation, and respondents Frank P. Stone, Raymond C. Anderson, Alvin N. Gustavson, and Oscar F. Swanson, individually and as employees of said corporation, and respondent Burton G. Tremaine, III, as an officer and director of said corporation, and respondents George S. Stevenson, Burton G. Tremaine, Jr., and W. G. McKetterick, as directors of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and dis-

tribution of voting machines in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner or by any means, directly or by implication:

(a) That the financial condition of the competitor of respondent corporation is unstable.

(b) That the voting machines of said competitor or the counting mechanism of said machines can be improperly manipulated without detection.

(c) That the use of said competitor's voting machines is conducive to, or encourages, fraud in elections.

(d) That said competitor lacks adequate experience in, or facilities for, servicing its voting machines.

(e) That the life expectancy of said competitor's voting machines is shorter than is the fact.

(f) That the electric motor in said competitor's voting machine serves no purpose other than to close and open the curtains which enclose the voter.

(g) That it is necessary for voters to assume ungainly positions when voting by means of said competitor's vertical column voting machine.

(h) That the punching machine equipment used in conjunction with said competitor's vertical type voting machines is unusually expensive.

(i) That where said competitor's voting machine is used the cost for printing is greater than is such cost where the voting machine of respondent corporation is used.

(j) That with said competitor's electrically or manually operated voting machines, voting is slower than with the respondent corporation's electrically or manually operated voting machines, respectively.

(k) That secrecy in voting for write-in candidates is destroyed or rendered impossible when said competitor's voting machine is used.

(l) That said competitor's voting machines do not fully, properly, or secretly record or tabulate a voter's choice.

2. Instigating or financing, directly or indirectly, lawsuits by others against purchasers or prospective purchasers of the voting machines of the competitor of respondent corporation with the purpose, intent, or effect of hindering or obstructing the business or sales of said competitor, or of impounding, or having impounded, moneys payable to or due said competitor, or of injuring the credit or reputation of said competitor; provided that nothing contained herein shall im-

pair any rights accorded respondents by state law openly and publicly to cooperate in, support, finance, or otherwise encourage or promote litigation affecting contracts or awards for said competitor's voting machines where the respondent corporation is the lower bidder for electrically operated voting machines as against the electrically operated voting machines of its competitor, or for manually operated voting machines as against manually operated voting machines of its competitor, and where such litigation is brought in good faith:

(a) To test and determine judicially the validity of any such contracts awarded to said competitor in any jurisdiction where the law now requires, or where in the future it may require, that the contract-awarding authority or governmental purchasing agency, without the right to exercise discretion, shall make its award only to the lowest bidder; or

(b) To test and determine judicially questions of fraud, deceit or trickery; or

(c) To question judicially the discretionary action of public officials in awarding a contract for voting machines to a higher bidder where it is apparent or in good conscience believed that such public officials acted arbitrarily or capriciously, and where, upon request by the losing bidder or by any taxpayer within the jurisdiction affected, such public officials fail or refuse to furnish a valid reason for making such award to the higher bidder.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to respondents Burton G. Tremaine III, George S. Stevenson, Burton G. Tremaine, Jr., and W. G. McKetterick in their individual capacities but not in their respective capacities as officers or directors of respondent corporation, and that the complaint be, and it hereby is, dismissed as to respondent William H. Staring, deceased since the institution of this proceeding.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That the respondents (except Burton G. Tremaine III, George S. Stevenson, Burton G. Tremaine, Jr., and W. G. McKetterick, in their individual capacities, and respondent William H. Staring, now deceased) shall, within 60 days after service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by aforesaid orders and decision of the Commission].

IN THE MATTER OF
SOUTHERN SPRING BED COMPANY ET AL.

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

Docket 5796. Complaint, July 12, 1950—Decision, Mar. 22, 1951

Where the name Red Cross and the emblem of the Greek red cross had long been familiar to the American public and were associated in their minds with the Red Cross organization; and thereafter a corporation engaged in the manufacture of mattresses, bedsprings, bedding, and related products and in the interstate sale and distribution thereof—

- (a) Used and displayed as a trade name for its wares the words "Red Cross" and in connection therewith a red Greek cross, in advertisements in newspapers and periodicals of general circulation, on letterheads, invoices, tags, labels, containers, and in radio continuities and advertising matter disseminated since 1904, and thereby represented that its products were designed, endorsed, approved, or sponsored by the American Red Cross; that the Red Cross was financially interested in their sale; that they were manufactured in accordance with sanitary standards or specifications set up by the Red Cross organization; or that they had some other connection with the Red Cross;

The facts being said use was unauthorized; and said products were in no way associated with the American Red Cross; and

Where said corporation, engaged in the manufacture and interstate sale and distribution of a mattress and box spring which were substantially more rigid than normal mattresses and boxsprings; through statements in advertising—

- (b) Represented that its said "orthopedic" mattresses and box spring were specially built and scientifically designed to meet the exacting specifications of leading orthopedic surgeons and physicians and had their approval;
- (c) Represented that they might be effectively used indiscriminately as a cure or competent treatment for lumbago, sacroiliac, sciatica, neuritis, or sprained back; and

(d) Represented through the use of said word "orthopedic" to describe or identify its said mattresses or springs that they were specially designed to and would correct certain deformities, diseases, and disorders of the body;

The facts being that while they were more rigid and provided a firmer and more level sleeping surface than conventional mattresses and springs, they were, nevertheless, stock mattresses and springs and could not be relied upon to correct any deformity, disease, or disorder of the body when used indiscriminately by the general public; their use did not constitute a cure or competent treatment for the aforesaid or any other ailment or condition, and their efficacy was limited to providing help in the alleviation of pain and in contributing to the comfort of the patient in cases in which a smooth, firm, and level sleeping surface is recommended or prescribed by a reputable physician;

Complaint

With capacity and tendency to mislead and deceive a substantial portion of the public in the various respects hereinabove set out:

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

As regards the use of the words "Red Cross" and the emblem of the red Greek cross, while respondent stated that it did not adopt the term and the depiction as a trade name and identification of its products for any unlawful purpose, that its use thereof had not been with the intent to appropriate any good will or identity of the American National Red Cross or to create confusion or deception, and that at no time within the memory of its present officers had use of such term and depiction led any of its dealers or members of the public to believe that it was in any way associated therewith; and that to their personal knowledge such dealers or the public had not been thereby led to believe that its products were manufactured, approved, or sponsored by or in any way connected therewith; it admitted that the Red Cross had not at any time authorized the use by it of the designation "Red Cross" or the emblem of a Greek red cross, that its products had never been manufactured in accordance with the specifications of the Red Cross, and that its use of said name and emblem, without the use of appropriate phraseology in conjunction therewith stating that its products were in no way so connected or associated, might create and cause among the members of the public confusion or deception; and the Commission accordingly so found.

In said proceeding in which the complaint also named as respondents certain persons who were alleged to have acted in conjunction and cooperation with each other in formulating, directing, and controlling the business, acts, practices, and policies of said corporation, no evidence was introduced to show that any of them actually ever participated in any of the practices concerned, and the Commission under the circumstances was of the opinion that insofar as it related to said respondents individually, the complaint should be dismissed.

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

Mr. Morton Nesmith for the Commission.

Smith, Kilpatrick, Cody, Rogers & McClatchey, of Atlanta, Ga., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, having reason to believe that Southern Spring Bed Co., a corporation; and Richard N. Schwab, Clarence S. Moeckel, Phillip L. Peebles, William P. Rucker, and Robert W. Schwab, Jr., individually and as officers and directors; Julian Price, J. B. Taylor, and Thomas H. Williams, individually and as officers; and Harrison Jones and Martin E. Kilpatrick, individually and as directors, respectively, of Southern Spring Bed Co., a cor-

poration, 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, Southern Spring Bed Co. is a corporation organized and doing business under and by virtue of the laws of the State of Georgia, having its principal offices and place of business located at 290 Hunter Street SE., Atlanta, Ga. Respondent, Southern Spring Bed Co., for more than 5 years last past, has been engaged in the manufacture, offering for sale, and distribution among other things of mattresses, bedsprings, bedding, and related products. Said products are labeled, advertised, and sold under the descriptive name of Red Cross accompanied by the representation of a red Greek cross. Corporate respondent has caused said products, when sold by it, to be transported from its said place of business in the State of Georgia to the purchasers thereof at their respective points of location in various States of the United States other than the State of Georgia. Corporate respondent maintains, and at all times mentioned herein has maintained, a course of trade in said mattresses, bedsprings, bedding, and related products in commerce among and between the various States of the United States. Corporate respondent's volume of business in said commerce is substantial.

PAR. 2. Corporate respondent's respective officers and directors are now, and for more than 1 year last past have been, the following respondents; namely, Richard N. Schwab, president and chairman of the board of directors; Clarence S. Moeckel, Phillip L. Peebles, William P. Rucker, vice presidents and directors, and Robert W. Schwab, Jr., secretary-treasurer and director; Julian Price and J. B. Taylor, assistant vice presidents, Thomas H. Williams, assistant secretary-treasurer; and Harrison Jones and Martin E. Kilpatrick, directors. The business address of said corporate respondent; namely 290 Hunter Street SE., Atlanta, Ga., is also the business address of its aforesaid officers and directors.

The said above-named individual respondents in their official capacities as officers and directors of corporate respondent now act, and for more than 1 year last past have acted in conjunction and cooperation with each other in formulating, directing, and controlling the business, acts, practices, and policies of corporate respondent, including the advertising claims made directly and indirectly by cor-

porate respondent in connection with the sale of its aforementioned products in commerce.

PAR. 3. The American National Red Cross has a distinct legislative history and factual background, based upon the original International Geneva Convention of August 22, 1864, held at Geneva, Switzerland, which was the first and original Red Cross Convention. The stated purpose of that convention was "The Amelioration of the Condition of the Wounded in Time of War." The flag or emblem adopted by the Geneva Convention was that of a Greek type or design of red cross on a white background, the same being the colors of Switzerland reversed. The civilized States of the world were invited to adhere to the Geneva Convention and most of such countries, located in all parts of the world, did so adhere, adopting thereby the name and emblem of the red cross and undertaking to implement the work and principles enunciated in the convention.

The Government of the United States on July 26, 1882, formally ratified and adhered to the International Red Cross Geneva Treaty of August 22, 1864. In August 1884, the President of the United States directed that the Geneva Treaty be observed by the Army of the United States and that the Red Cross insignia be displayed on ambulances, hospitals, and arm bands of the Army Medical and Hospital Service.

The provisions of a second Geneva Red Cross Convention, that of October 20, 1868, making the original 1864 convention applicable to naval warfare, were observed by the Government of the United States in the Spanish-American War of 1898. United States vessels of war were required to hoist, in connection with their national flag, the white flag with the red cross.

The United States was a party to and ratified a further International Red Cross Convention concluded at Geneva, Switzerland, on July 6, 1906, designed to improve and supplement the provisions agreed upon at Geneva on August 22, 1864. This convention, in article 18 thereof, provided:

Out of respect to Switzerland, the heraldic emblem of the Red Cross on a white ground, formed by the reversal of the federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies.

A still further Red Cross Convention, held at Geneva, Switzerland, on July 27, 1929, was participated in and ratified by the Government of the United States. This convention continued as a distinctive sign of the Red Cross, the "heraldic emblem of the Red Cross on a white ground," out of respect to Switzerland.

PAR. 4. The introduction and development of the Red Cross movement in the United States was chiefly due to the vision and zeal of Miss Clara Barton, founder of the American Branch and former nurse during the War of 1861-65 Between the States of the United States. On October 7, 1881, Miss Barton and four associates incorporated the American Association of the Red Cross in the District of Columbia. It was recited in the articles of incorporation that the incorporators desired to form an association for benevolent and charitable purposes to cooperate with the International Committee of the Red Cross in Switzerland. The term of the association's corporate existence was stated to be for 20 years. One of the objects of the association, it was recited in its charter, was "to organize a system of national relief and apply the same in mitigating the sufferings caused by war, pestilence, famine and other calamities."

The initial incorporation of the Red Cross in the United States by Miss Barton and her associates in 1881 inaugurated the broad pattern and Nation-wide scope of Red Cross relief work that first functioned in an organized manner in the United States in the period between 1881 and 1905.

A second incorporation of the Red Cross organization occurred in the District of Columbia on April 29, 1893, when Miss Barton and a number of associates recorded the charter of the American National Red Cross to carry on the benevolent and humane work of the Red Cross in accordance with the articles of the international treaty of Geneva, Switzerland, entered into on the 22d day of August 1864, and adopted by the Government of the United States, on the first day of March 1882, and also in accordance with the broader scope given to the humane work of said treaty by the American Association of the Red Cross, and known as the American amendment, whereby the sufferings incident to great floods, famines, epidemics, conflagration, cyclones, and other disasters of national magnitude might be ameliorated by the administration of necessary relief. Among other purposes stated in the articles of incorporation were those of "the advancement of sanitary science and the training and preparation of nurses." This second organization picked up and carried on the work authorized and conducted by the first. The principal office of the American National Red Cross was located in the city of Washington, D. C.

On June 6, 1900, the American National Red Cross was incorporated for a third time, this time by an act of Congress, it being recited in said act that the importance of the organization's work demanded a

reincorporation by the Congress of the United States, a permanent organization being needed in every nation to carry out the purposes of the Geneva Convention of August 22, 1864. It was recited that this new corporation succeeded to the rights and property held, and to all duties theretofore performed, by the American National Red Cross incorporated under the laws of the District of Columbia, the same being dissolved. It was further recited in the articles of incorporation that the American National Association of the Red Cross and its reincorporating successor had used the distinctive flag and arm badge specified by article 7 of the Treaty of Geneva. This incorporated organization of June 6, 1900, among other things, was authorized and empowered "to continue and carry on a system of national and international relief in time of peace and apply the same in mitigating the sufferings caused by pestilence, famine, fires, floods, and other great national calamities." This new national charter of 1900 provided that the American National Red Cross, among other rights and privileges, was "to have the right to have and to use, in carrying out its designated purposes," an emblem and badge, a Greek red cross on a white ground, as the same has been described in the treaty of Geneva, August twenty-second, eighteen hundred and sixty-four and adopted by the several nations acceding thereto."

The American National Red Cross was reincorporated by act of Congress on January 5, 1905. This corporation was empowered to succeed to the rights and property which had been hitherto held, and to all of the duties which had theretofore been performed, by the American National Red Cross as a corporation duly incorporated by the act of June 6, 1900, the latter being thereby repealed and the organization thereby dissolved. Various of the provisions of this act were contained in substance in the prior act of 1900, including the purpose of continuing and carrying on "a system of national and international relief in time of peace and apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other great national calamities, and to devise and carry on measures for preventing the same." The new corporation, like its predecessors, was given the right "to have and to use in carrying out its purposes hereinafter designated, as an emblem and badge, a Greek red cross on a white ground." Section 4 of the act of January 5, 1905, contained the following provision:

"* * * Nor shall it be lawful for any person or corporation, other than the Red Cross of America, not now lawfully entitled to use the sign of the Red Cross, hereafter to use such sign or any insignia

colored in imitation thereof for the purpose of trade or as an advertisement to induce the sale of any article whatsoever. * * *”

On June 23, 1910, the Congress passed an act amending and making more definite and specific the provisions of the said section 4 of the act of January 5, 1905, by adding the following proviso after the above inhibition against the use of the emblem for the purpose of trade or as an advertisement:

*“Provided, however, That no person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this act to continue the use thereof for the same purpose and for the same class of goods. * * *”*

PAR. 5. Following the adoption of the so-called American amendment of 1881 to the Geneva Treaty of 1864, the scope of the American Red Cross work was greatly enlarged and expanded so as to include, in addition to the relief of suffering by war, the new relief comprehended by the so-called American amendment covering and including suffering by pestilence, famine, flood, fires, and other calamities deemed national in extent. Due to this expansion that included relief work on a national scale in various types of disasters, the work and aim of the American Red Cross became Nation-wide and known likewise in many foreign countries.

Following the incorporation of the Red Cross in 1881, the American organization participated in relief work growing out of and necessitated by a large number of national disasters and the Red Cross name and insignia became known all over America. The beneficial work of this great charitable organization met with wide public acclaim, resulting in the commercial adoption and appropriation of the Red Cross name and emblem for distinguishing proprietary marks, there being no law during the period between 1881 and 1905 making unlawful such commercial appropriation.

PAR. 6. The American National Red Cross, hereinafter variously referred to as the American Red Cross and Red Cross, is the best-known benevolent organization in the United States. It is an organization that is close to the people, supported by the people. Its emblem of a Greek red cross on the field of white is familiarly known in every city, town, village, hamlet, and crossroad in the United States. The American Red Cross is now, and has always represented, typified, and constituted the organized effort of the American people directed

toward the amelioration of the condition of the sick and wounded in time of war and the relief and succor of those suffering from national disasters, such as floods, fires, pestilence, famines, cyclones, earthquakes, and similar disasters. From its inception in the United States, the Red Cross has always been, and is now, supported and financed by the general public. Funds for the support of the organization are contributed annually in Nation-wide campaigns conducted for such purpose. The American Red Cross has experienced a tremendous growth. Its adult, individual, contributing membership now comprises some 17 million persons, not counting millions of additional junior members. There are more than 3,738 Red Cross chapters functioning in the United States, these with some 4,567 branches, the members of which, many of them highly trained, devote their time and energies to the relief work of the organization. There is a Red Cross chapter in practically every county in every State in the United States.

To the average person, the Red Cross flag and emblem mean a helping hand to those who need help. It means and indicates to them mercy, charity, and benevolence freely given without cost. The name and emblem variously suggest to members of the general public hospital work, trained nurses, food, clothing, and medicines, medical attention, including blood plasma for those rendered homeless and injured by disaster. The name of the Red Cross is associated always with medical treatment, preservation of health, and sanitation, through the use of the latest and most scientific methods and appliances available.

PAR. 7. Notwithstanding the wide public knowledge and appreciation of the benevolent work of the American Red Cross in connection with national disasters in the United States and in foreign countries between 1881 and 1905, as alleged in paragraphs 5 and 6 herein, respondents herein, without notice to or making inquiry of the American Red Cross, or requesting its permission in such respect, appropriated and used and have simulated and imitated the emblem of a Greek red cross and the words "Red Cross" in connection with the advertisement and sale of the various products produced and sold by said corporate respondent in commerce.

In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of certain of their products, the respondents in advertisements, in newspapers and periodicals of general circulation, by letterheads, invoices, tags, labels, and containers, and by radio continuities reaching into States other than that from which radio broadcasts emanated, for more than 5 years last past,

have used and displayed and now use and display the words "Red Cross" and a Greek cross in red in connection with the aforesaid advertisement and sale of their said products.

Respondents advertise and have advertised extensively in large daily papers of general interstate circulation, but a substantial portion of the advertising done by respondents to effect the sale of their products is conducted on a so-called dealer-cooperative basis in connection with which latter method matrices of advertisements and advertising copy are prepared by respondents' advertising representatives and supplied to retail dealer-customers located in various States other than the State of Georgia. Said dealer-cooperative advertisements are published over the name of the retail dealer and the cost of the advertising space used is shared by respondent Southern Spring Bed Co. on a 50-50 basis with the retail dealer. Some dealers who prepare their own advertising are supplied by respondents with suggested advertising copy. Radio continuities are also supplied to dealers in connection with respondents' dealer-cooperative advertising plan and the cost of the radio broadcast time is shared by corporate respondent and its dealers on a 50-50 basis.

PAR. 8. Through the use of the words "Red Cross" and the emblem of the Greek cross in red in connection with the advertisement and sale of their products in commerce, respondents have represented, directly, and by implication, that such articles are designed, endorsed, approved, or sponsored by the American Red Cross; that the Red Cross has prescribed some sanitary or other standard or specification for products produced by respondents; that the Red Cross is financially interested in the sale of said products or that there is some connection between the Red Cross organization and corporate respondent; and that respondents' products, by reason of the manner in which they are marked, branded, labeled, and advertised are in some manner connected or associated with the American Red Cross.

PAR. 9. The aforesaid representations are false, misleading, deceptive, and confusing. In truth and in fact, the Red Cross organization has never designed, endorsed, sponsored, or approved any product sold and distributed under the Red Cross name and emblem, by respondents or by any person, firm, or corporation, or otherwise. The Red Cross is not now and never has been interested directly or indirectly in the sale of any product, sold by corporate respondent under a Red Cross brand or otherwise, nor has the Red Cross ever prescribed any sanitary or other standard or specification for any article of commerce produced and distributed by corporate respondent, or otherwise. The Red Cross is not connected or associated with

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corporate respondent in any way, financially or otherwise, and the Red Cross has never been requested to give and has never given corporate respondent permission to use the Red Cross name and emblem for Commercial purposes.

PAR. 10. The science of orthopedics relates to and comprehends the correction or prevention of deformities of the body. Orthopedic procedures in certain cases may embrace the proper use by a physician of a firm or more rigid type of bedspring or mattress to give support to the back.

In the further course and conduct of respondents' aforesaid business and for the purpose of inducing the purchase of certain of their bedsprings and mattresses, respondents have described and designated the same by the descriptive name of "Red Cross Orthopedic" and have likewise in such connection referred to and designated said bedsprings and mattresses as "A Red Cross Creation."

The use by respondents of the words "Red Cross" in conjunction with the term "orthopedic" constitutes within itself a false and misleading representation that respondents' said bedsprings and mattresses are of a particular type and construction that have been selected and approved by, or used by, the American Red Cross for the treatment and relief of certain conditions and have the endorsement and approval of the American Red Cross.

The use by respondents of the words or expression "A Red Cross Creation" as applied to their said bedsprings and mattresses, is further, a direct representation that such products, so designated, were designed by and built according to specifications prescribed by the American Red Cross.

PAR. 11. Respondents in connection with the sale of their said "Red Cross Orthopedic Box Springs and Mattresses" have made the following, among other representations:

Approved by Leading Orthopedic Surgeons.

* * * * *

Built to specifications of leading doctors.

* * * * *

For you, if you require the firm, level sleeping surface doctors advise.

* * * * *

Does your doctor prescribe a firm sleeping surface?

* * * * *

Do you sleep on a board? Do you rest better on a mattress that supports every inch of your body evenly?

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The Red Cross Orthopedic Mattress gives you the firm support you need—plus comfort. Scientifically designed to meet the exacting specifications of leading orthopedic surgeons and physicians—made by bedding specialists with 66 years of know-how and experience, the Red Cross Orthopedic Mattress and Box Spring is an unbeatable combination for good health and good rest.

* * * * *

I have been among the many who suffer from back ailment. I experienced pain, and it was quite difficult to rest comfortably on inner-spring mattresses of competent make. A friend suggested that I procure an Orthopedic Red Cross Mattress and Box Spring. I have used this for a month and have rested well at night, and am confident that the spring and mattress have been contributing factors to my comfort and physical improvement.

* * * * *

Dear Doctor :

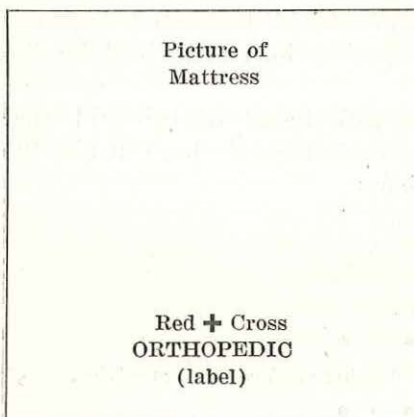
We know that you will be interested in the fact that we are now featuring the Red Cross Orthopedic Inner-spring Mattress and Box Spring, manufactured by the Southern Spring Bed Company of this city.

Several of the leading Orthopedic Surgeons and General Practitioners gave valued advice as to how a mattress and box spring to be used for Lumbago, Sacroiliac, sprained back, Sciatica, Neuritis, etc., should be made. Both of these items are specially built and are extra, extra firm. The finished products were examined by these doctors. They are what they want.

In recommending this outfit to your patients, please advise them to purchase both the mattress and springs as we are told desired results cannot be obtained otherwise.

* * * * *

Attention—DOCTORS !! Attention—PATIENTS !!



A
RED CROSS
CREATION!

IT GIVES A
FIRM SLEEPING
SURFACE AS
ORDERED BY
LEADING DOCTORS
FOR PATIENTS
WHO HAVE
LUMBAGO
SACROILIAC
SCIATICA
NEURITIS
SPRAINED BACK

Approved by leading orthopedic surgeons :

RED CROSS ORTHOPEDIC MATTRESS AND BOX SPRINGS, ANY SIZE.

PAR. 12. Respondents, through the use of the above set forth advertising representations, and others, of similar import not specifically

set out herein, represent, and have represented, directly and by implication, that their said Red Cross Orthopedic box springs and mattresses are openly and publicly approved and endorsed by leading orthopedic surgeons and physicians; that their said box springs and mattresses are built to comply with and do provide the extra firm support and firm level sleeping surface that leading doctors advise and prescribe, and that physicians and surgeons may safely accept the recommendations of respondents in prescribing Red Cross Orthopedic box springs and mattresses for their patients; that respondents' said box springs and mattresses provide better support and greater relief than that obtained by persons who have been sleeping on bedboards to secure firm, rigid body support; that their said Red Cross Orthopedic box springs and mattresses constitute a cure for or an adequate reliable treatment for back ailments, lumbago, sacroiliac, sprained back, sciatica, neuritis, etc., and that desired results in the treatment of these ailments will be obtained through the use of respondents' said Red Cross Orthopedic box springs and mattresses; and that these products can be effectively used indiscriminately by members of the public without the diagnosis and supervision of a physician or surgeon in each of the above conditions or ailments.

PAR. 13. The said representations of respondents as set forth and described in paragraphs 10, 11, and 12 of this complaint, are misleading and untrue in the following, among other, particulars:

Respondents' said Red Cross Orthopedic box springs and mattresses have not been approved by or openly or publicly endorsed by leading physicians. Said box springs and mattresses do not provide the support that is obtained by persons who sleep on bedboards. Said box springs and mattresses do not provide a cure for or an adequate, reliable treatment for back ailments, lumbago, sacroiliac, sprained back, sciatica, neuritis, etc. Respondents' so-called "orthopedic" box springs and mattress affords no other value in the treatment of any condition than such support as it may give to the patient, and each individual requiring support from the bed he lies on must have determined for him by his physician whether respondents' bedspring and mattress may be effective as a support in his particular condition.

Respondents' said "orthopedic" bedsprings and mattresses, either separately or in combination, are stock bedsprings and mattresses and are improperly designated as "orthopedic" bedsprings and mattresses.

Respondents' and said "Red Cross Orthopedic" box springs or bedsprings and mattress was not originated or designed by the American Red Cross, and is not a creation of the American Red Cross. Respondents' said "orthopedic" bedsprings and mattress has not been ap-

proved or endorsed by the American Red Cross, or ever sold or used in pursuance of any suggestion from or concurrence by the American Red Cross. The American Red Cross is not directly or indirectly responsible for the representations made by respondents concerning their said "Red Cross Orthopedic" bedsprings and mattresses and said representations are not now made and have never been made with the consent, approval, or permission of the American Red Cross.

PAR. 14. Respondents' use of the Red Cross name and emblem in connection with the sale of their said products in commerce is not and does not constitute, and has not been established as an actual and lawful use thereof in the United States or the various States thereof, under the act of Congress of January 5, 1905, or amendment thereof, above referred to.

PAR. 15. In the course and conduct of their said business as set forth and described in this complaint respondents are now, and for sometime past have been, engaged in substantial competition with various other persons and with corporations, firms, and partnerships, likewise engaged in the manufacture, and in the offering for sale and distribution in commerce, of mattresses, bedsprings, bedding, and related products. Among the competitors of the respondents, described in the paragraphs 1 and 2 herein, are many who do not misrepresent their products.

PAR. 16. The use by respondents of the said false and misleading representations in connection with the sale of their aforesaid products has, and has had, a tendency and capacity to mislead and deceive and confuse a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and into the purchase of substantial quantities of said products as the result of such belief so induced. As a result thereof substantial trade in said commerce has been unfairly diverted to respondents from respondents' competitors in said commerce who do not misrepresent their products, to the injury of said competitors, and to the injury of the public.

Corporate respondents further, by reason of the acts, practices, policies, and representations employed by it, by and with the advice, assistance, and cooperation of its said officers and directors named as respondents herein, in dealing with retailers, sales agents, sales representatives, or other distributors and outlets handling, advertising, and selling corporate respondent's said products under the name or designation Red Cross accompanied by the representation of a Greek red cross, has supplied to and placed in the hands of said retailers, sales agents, sales representatives, distributors, or outlets means and instrumentalities designed to enable and capable of en-

abling the latter to mislead and deceive members of the public in connection with the purchase of respondents' so-called Red Cross products.

PAR 17. The aforesaid acts and practices of said respondents as herein alleged are all to the prejudice of the public and the competitors of respondents and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 12, 1950, issued and subsequently served upon the respondents named in the caption hereof its complaint in this proceeding, charging said respondents with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of the respondents' answers to said complaint, a hearing was convened by a trial examiner of the Commission theretofore duly designated by it to take testimony and receive evidence in support of and in opposition to the allegations of the complaint, and at said hearing a stipulation of all of the facts in the case was entered into by and between counsel for the respondents and counsel in support of the complaint. On the basis of the record thus presented (all intervening procedure having been waived), the trial examiner on December 29, 1950, filed his initial decision.

The Commission, having reason to believe that the initial decision was deficient in certain material respects, on February 8, 1951, issued and thereafter served upon the respondent, Southern Spring Bed Co., its order placing this case on the Commission's own docket for review and affording said respondent an opportunity to show cause why the initial decision should not be altered in the manner and to the extent shown by the tentative decision attached to said order. The respondent not having appeared in response to the leave to show cause, this proceeding regularly came on for final consideration by the Commission upon the record herein on review; and the Commission, having duly considered the matter and being now fully advised in the premises, makes the following findings as to the facts, conclusion drawn therefrom, and order, the same to be in lieu of the initial decision of the trial examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Southern Spring Bed Co., hereinafter sometimes referred to as respondent and as respondent corporation, is a corporation organized and doing business under the laws of the State of Georgia, having its principal offices and place of business located at 290 Hunter Street SE., Atlanta, Ga.

Said respondent was incorporated in the year 1883 and, since its inception, has been engaged in the manufacture, offering for sale, sale, and distribution, among other things, of mattresses, bedsprings, bedding, and related products, which, when sold by it, have been transported from its place of business in the State of Georgia to purchasers thereof in other States of the United States. The respondent maintains and at all times mentioned herein has maintained a course of trade in the aforesaid products in commerce among and between the various States of the United States, and its volume of business therein is substantial.

PAR. 2. In the course and conduct of its business, the respondent corporation, in advertisements in newspapers and periodicals of general circulation, on letterheads, invoices, tags, labels, containers, and in radio continuities for a number of years last past, and in certain advertising matter disseminated since 1904, has used and displayed, and now uses and displays, as a trade name for its wares the words "Red Cross" and in connection therewith an emblem consisting of a red Greek cross. All of respondent's advertising and all of its activities have been designed and carried on for the purpose of inducing and promoting the sale of its products.

PAR. 3. The American National Red Cross, familiarly known as the Red Cross, was incorporated by an act of Congress on January 5, 1905 (33 Stat., pt. I, pp. 599-602). Its prior history goes back to 1881, since which time it has used the words "Red Cross" as a part of its name and in connection with its various activities and the emblem of a Greek red cross on a white background. It has a membership of many millions, and maintains active chapters in practically every county in the United States. Its reputation as a great charitable institution is of world-wide, as well as national, scope. It has expended and continues to expend many millions of dollars annually on behalf of humanity. One of its great functions is the provision of medical and nursing care to the suffering and needy in times of disaster, flood, war, pestilence, and famine. Both the name "Red Cross" and the emblem of the Greek red cross have long been familiar to the American public.

and are associated in the minds of the public with the Red Cross organization.

PAR. 4. The respondent's unrestricted use in advertising and elsewhere of the words "Red Cross" and the emblem of the Greek red cross to designate and refer to its products constitutes a representation that the respondent's products are designed, endorsed, approved, or sponsored by the American Red Cross; that the Red Cross is financially interested in the sale of the products; that said products are manufactured in accordance with sanitary standards or specifications set up by the Red Cross organization; or that there is some other connection between the respondent's products and the American Red Cross.

PAR. 5. The respondent, Southern Spring Bed Co., states that it did not adopt the term "Red Cross" and the depiction of a Greek cross as a trade name and identification of its products for any unlawful purpose, and that its use of said trade name and emblem since their adoption has not been with the intent or for the purpose of appropriating any good will or identity of the American National Red Cross or the creating of confusion or deception of the trade or public. Said respondent admitted, however, and accordingly the Commission finds, that the American National Red Cross has not at any time authorized the use by respondent of the designation "Red Cross" or the emblem of a Greek red cross, and that respondent's products have never been manufactured in accordance with specifications of the American National Red Cross. The respondent's representations to the contrary, made by the use, as aforesaid, of the words "Red Cross" and the emblem of the Greek red cross, have been and are, therefore, false.

PAR. 6. The respondent further states that at no time within the memory of any of its present officers has its use of the term "Red Cross" and the depiction of a Greek red cross led any of its dealers or members of the public to believe that respondent is in any way associated with the American National Red Cross; nor to their personal knowledge are such dealers or the public led to believe by the use of said trade name and emblem that the respondent's products are manufactured, approved, or sponsored by or in any way connected with the American National Red Cross. Nevertheless, the respondent admits, and the Commission finds, that the respondent's use of said name and emblem, without the use of appropriate phraseology in conjunction therewith, disclosing that the respondent's products are in no way connected or associated with the American National Red Cross, may create and cause among the members of the public such confusion or deception.

PAR. 7. During the past several years the respondent, Southern Spring Bed Co., has designed and manufactured a mattress and box

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spring, both of them substantially more rigid than normal mattresses and box springs, which were intended by it to be sold to those members of the public who prefer or need such mattresses and/or box springs. In connection with the interstate sale of said mattresses and box springs, respondent has used in advertising disseminated in interstate commerce the following statements:

The Red Cross Orthopedic Mattress gives you the firm support you need—plus comfort. Scientifically designed to meet the exacting specifications of leading orthopedic surgeons and physicians—made by bedding specialists with 66 years of know-how and experience, the Red Cross Orthopedic Mattress and Box Spring is an unbeatable combination for good health and good rest.

Approved by Leading Orthopedic Surgeons.

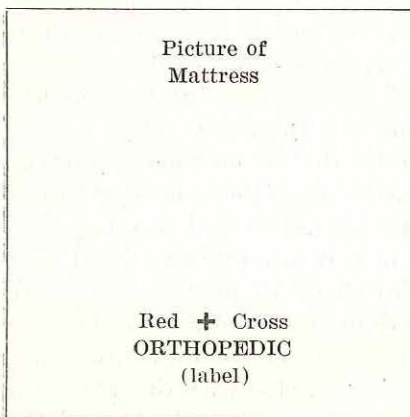
Built to specifications of leading doctors.

Dear Doctor:

We know that you will be interested in the fact that we are now featuring the Red Cross Orthopedic Inner-spring Mattress and Box Spring, manufactured by the Southern Spring Bed Company of this city.

Several of the leading Orthopedic Surgeons and General Practitioners gave valued advice as to how a mattress and box spring to be used for Lumbago, Sacroiliac, sprained back, Sciatica, Neuritis, etc., should be made. Both of these items are specially built and are extra, extra firm. The finished products were examined by these doctors. They are what they want.

Attention—DOCTORS!! Attention—PATIENTS!!



IT GIVES A
FIRM SLEEPING
SURFACE AS
ORDERED BY
LEADING DOCTORS
FOR PATIENTS
WHO HAVE
LUMBAGO
SACROILIAC
SCIATICA
NEURITIS
SPRAINED BACK

Approved by leading orthopedic surgeons: RED CROSS ORTHOPEDIC MATTRESS AND BOX SPRINGS, ANY SIZE.

PAR. 8. Through the use in advertising of the above statements the respondent has represented that its "orthopedic" mattresses and box springs are specially built and scientifically designed to meet the exacting specifications of leading orthopedic surgeons and physi-

cians and have their approval, and, further, that said mattresses and springs may be effectively used indiscriminately as a cure or competent treatment for lumbago, sacroiliac, sciatica, neuritis, or sprained back. Moreover, the word "orthopedic" alone, when used to describe or identify the respondent's mattresses or springs, serves as a representation that such mattresses or springs are specially designed to, and will, correct certain deformities, diseases, and disorders of the human body.

The respondent, Southern Spring Bed Co., admits, and on the basis of such admission the Commission finds, that while the respondent's mattresses and springs are designed and constructed in a manner different from conventional mattresses and springs in that they are more rigid, providing a firmer and more level sleeping surface, they, nevertheless, are stock mattresses and springs and cannot be relied upon to correct any deformity, disease, or disorder of the human body when used indiscriminately by the general public. The use of said springs or mattresses is not a cure or competent treatment for lumbago, sacroiliac, sciatica, neuritis, sprained back, or any other ailment or deformity of the body, and the efficacy of the mattresses and springs, from a remedial standpoint, is limited to providing help in the alleviation of pain and in contributing to the comfort of the patient in those orthopedic cases in which a smooth, firm, and level sleeping surface is recommended or prescribed by a reputable physician. Thus, the respondent's representations, as set forth in paragraph 7, have been and are false and deceptive.

PAR. 9. The use by the respondent, as aforesaid, of the words "Red Cross" and the emblem of the red Greek cross has had the capacity and tendency to mislead and deceive a substantial portion of the public in the respects enumerated in paragraph 4; and the use by said respondent of the representations set forth in paragraphs 7 and 8 has had the capacity and tendency to mislead and deceive a substantial portion of the public in the respects mentioned in said paragraph 8.

CONCLUSION

The acts and practices of the respondent, Southern Spring Bed Co., as herein found, have all been to the prejudice of the public and have constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

The complaint in this proceeding also named as respondents herein the following persons, alleging that said persons have acted in conjunction and cooperation with each other in formulating, directing,

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and controlling the business, acts, practices, and policies, of the respondent, Southern Spring Bed Co., including the advertising claims made in connection with the sale of the aforementioned products: Richard N. Schwab, Clarence S. Moeckel, Phillip L. Peebles, William P. Rocker, Robert W. Schwab, Jr., Julian Price, J. B. Taylor, Thomas H. Williams, Harrison Jones, and Martin E. Kilpatrick. No evidence was introduced to show that any one of these respondents ever actually participated in any of the practices described, however, and in the circumstances the Commission is of the opinion that insofar as it relates to these respondents individually the complaint should be dismissed.

ORDER

It is ordered, That the respondent, Southern Spring Bed Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the respondent's bed-springs and mattresses, or other products, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using (subject to the permissible limits prescribed by the act of January 5, 1905, as amended by section 4 of the act of June 23, 1910) the words "Red Cross," or any abbreviation or simulation thereof, or the mark of a Greek red cross or any other mark, emblem, sign, or insignia simulating a Greek red cross, on the respondent's products; or using said words or said mark in selling or advertising the same;

(a) Unless respondent uses upon the label, whether on the article, wrapper, or carton, and with equal clearness and conspicuousness, in immediate conjunction with said words or said mark, the legend, This product has no connection whatsoever with the American National Red Cross: *Provided*, That if said words or said mark appear on more than one side of the respondent's article, wrapper, or carton, the respondent shall use said legend, as aforesaid, on each such side; and

(b) Unless the respondent, in each of its written advertisements containing said words or said mark uses the said legend with equal clearness and conspicuousness: *Provided*, That if an advertisement covers more than one page, the respondent shall use said legend as aforesaid on each and every page on which said words or said mark shall appear; and

(c) Unless the respondent, in each of its radio advertisements containing said words or said mark, makes the statement contained in said legend with equal clearness and conspicuousness.

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2. Using the word "orthopedic," or any term or expression of like import, as a designation for or as descriptive of its stock bedsprings, or mattresses;

3. Representing, directly or by implication, that the respondent's bedsprings or mattresses are specially built and scientifically designed to meet the specifications of orthopedic surgeons or physicians, or that such springs or mattresses have the approval of any surgeon or physician for use, unless prescribed; or

4. Representing, directly or by implication, that the respondent's bedsprings or mattresses, when used indiscriminately, may be relied or depended upon to correct any deformity or disease of the human body, or that the use of any such spring or mattress will provide any beneficial effect in orthopedic cases except to the extent that it will help to alleviate the pain and contribute to the comfort of the patient.

It is further ordered, That the respondent, Southern Spring Bed Company, 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 it.

IN THE MATTER OF
HESMER, INC., ET AL

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1949, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5815. Complaint, Oct. 6, 1950—Decision, Mar. 22, 1951

Where a corporation engaged in the manufacture of certain food products and in the purchase of others, and in the wagon-jobbing under its own trade names or marks and otherwise of its condiments, oleomargarine, peanut butter, and other food products to retail grocers in the tri-State area of Indiana, Illinois, and Kentucky—

- (a) Received and accepted brokerage fees or commissions upon purchase orders which the individual who was its president, majority stockholder and intermediary, placed with the separate food brokerage business which he conducted under his own name; and

Where said individual, following the assumption by him of active control and management of said corporation, the organization by him of said separate brokerage business, his appointment—which he sought and secured—as broker for vendors of such food products, and the making of agreements between him and vendors to the effect that they would grant or pay to him their usual brokerage fees on all purchases made by said corporation as well as on all other transactions he handled with other vendees—

- (b) Received on its purchase orders—which as president and majority stockholder he caused to be prepared by said corporation, transmitted to himself doing business as aforesaid brokerage concern, and rewrote and forwarded the usual or customary brokerage fees or commissions paid by said vendees:

Held, That such acts and practices of said corporation and individual in receiving or accepting commissions, brokerage, etc., from vendors of food products, under the circumstances set forth, were in violation of subsection (c) of sec. 2 of the Clayton Act as amended.

Before *Mr. Frank Hier*, trial examiner.

Mr. Cecil G. Miles and *Mr. Edward S. Ragsdale* for the Commission.

Hatfield, Fine, Hatfield & Sparrenberger, of Evansville, Ind., for respondents.

COMPLAINT

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

PARAGRAPH 1. Respondent, Hesmer, Inc., hereinafter sometimes referred to as Hesmer, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana. Its office and principal place of business is located at 4300 Stringtown Road, Evansville, Ind.

Hesmer is now, and since several years prior to 1946 has been, engaged in the wholesale grocery business. It purchases some food products, such as canned fruits and vegetables, and manufactures others, such as potato chips, jelly, and condiments. Some of the food products purchased by Hesmer bear the trade names or marks of the vendors. Other food products which it purchases and all food products which it manufactures bear its own trade names or marks.

Said food products, so purchased or manufactured by Hesmer, are sold by it to retail grocers located principally within a 100-mile radius of Evansville, Ind.—the so-called tri-State area of Indiana, Illinois, and Kentucky. Said sales amount to approximately \$1,250,000 annually.

Prior to about 1946, about two-thirds of the capital stock of Hesmer was owned or controlled by one Clyde Hesmer who was president of and actively managed and controlled Hesmer during that period. Clyde Hesmer died about 1946.

PAR. 2. Respondent, Edward A. Mitchell, hereinafter sometimes referred to as Mitchell, is an individual residing at 1409 South Kentucky Avenue, Evansville, Ind.

Mitchell is now, and since several years prior to 1946 has been, a stockholder in Hesmer. During the period prior to 1946 when Clyde Hesmer was president of Hesmer and owned or controlled about two-thirds of its capital stock, Mitchell owned or controlled about one-third thereof. From about 1946, after the death of Clyde Hesmer, to the present time, Mitchell has owned or controlled about two-thirds of Hesmer's capital stock; and one R. C. Bon Seigneur and one Isadore J. Fine together have owned or controlled about one-third of said stock.

Also from about 1946, after the death of Clyde Hesmer, to the present time, Mitchell has been president of Hesmer; and R. C. Bon Seigneur and Isadore J. Fine, respectively, have been its general manager and counsel. During the period from about 1946 to about January 1949 although he was president of Hesmer, Mitchell did not undertake its active management and control as such, he being then engaged in performing other duties which required substantially all of his time and his almost continuous absence from Evansville, Ind.

Mitchell is now, and since about January 1949 has been, actively and principally engaged in the management and control of Hesmer as its salaried president and responsible for all of its policies, practices, and acts, including those in connection with its purchases. In addition to his salary, and as compensation for his services in connection with Hesmer's purchases, Mitchell receives the payments and grants herein after more particularly alleged.

PAR. 3. From about January 1949 to the present time, the same period during which, as above alleged, Mitchell was the salaried president of Hesmer, he was also doing business as the Ed. Mitchell Co., with office and place of business located at 201 East Illinois Street.

As the Ed. Mitchell Co., Mitchell engages in what he designates as the food-brokerage business. Said business consists almost exclusively of receiving from Hesmer, and forwarding to certain vendors, Hesmer's orders for its requirements of food products sold by said vendors, and of receiving, in connection with said purchases, brokerage fees and commissions paid or granted by said vendors, as hereinafter more particularly alleged.

A minor part of said business, not the subject of this complaint, consists in effecting purchase and sales transactions between said vendors and vendees other than Hesmer.

PAR. 4. In the course and conduct of their business, respondents are now, and since about January 1949 have been engaged in commerce, as commerce is defined in the Clayton Act, as amended by the Robinson-Patman Act. Continuously during said period, respondents purchased food products or caused food products to be purchased from vendors with places of business located in several States of the United States and caused said food products so purchased to be transported from said vendors' places of business to destinations in other States.

PAR. 5. In the course and conduct of said business in commerce, Hesmer is now, and continuously since about January 1949 has been purchasing food products from vendors who paid or granted to it, in connection with said purchases, commissions, brokerage, or other compensation, or discounts or allowances in lieu thereof, which said payments or grants it received or accepted.

Said payments or grants were so made to and so received or accepted by Hesmer through Mitchell, who, in the course and conduct of said business in commerce, doing business as the Ed. Mitchell Co. and acting in fact as an intermediary for Hesmer or in its behalf, or as its agent or representative, is now, and continuously since about January 1949

has been purchasing food products for the account of Hesmer from vendors who paid or granted to him, doing business and acting as aforesaid, in connection with said purchases, commissions, brokerage, or other compensation, which said payments or grants he, doing business and acting as aforesaid, received and accepted.

PAR. 6. To effectuate the making of said payments or grants and their receipt and acceptance, as alleged in paragraph 5, respondents engaged in, among others, the acts and practices hereinafter alleged.

During or about January 1949 the time when Mitchell, owning two-thirds of the capital stock of Hesmer, assumed its active management and control as salaried president, Mitchell established, and commenced doing business as, the Ed. Mitchell Co. At or about that time, and from time to time thereafter, Mitchell, doing business as the Ed. Mitchell Co., sought and received appointment as a broker for several vendors of the kinds of food products purchased and sold by Hesmer, including food products to bear the trade names or brands of Hesmer. With some of said vendors Mitchell had had a personal connection for many years. It was understood or agreed by and between said vendors and Mitchell that said vendors would grant or pay to Mitchell, doing business as the Ed. Mitchell Co., their usual or customary brokerage fees or commissions on all purchases made by Hesmer as well as on all other transactions handled by Mitchell with other vendees. There was the same understanding or agreement by and between Mitchell and R. C. Bon Seigneur and Isadore J. Fine, together the owners of one-third of the capital stock of Hesmer, and, respectively, its general manager and counsel.

Upon securing said appointments as broker, Mitchell, as president of and majority stockholder in Hesmer, prepared and transmitted to himself, doing business as the Ed. Mitchell Co., or caused to be prepared and so transmitted by or under the supervision of R. C. Bon Seigneur, general manager of and minority stockholder in Hesmer, Hesmer's purchase orders for its requirements of food products sold by vendors who had made said appointments. This was the case, in some instances, even though the prices of said food products, not taking into account the brokerage fees and commissions to be paid to Mitchell, would give Hesmer less profit than would be given to it by purchasing competing food products from others.

Doing business as the Ed. Mitchell Co., Mitchell rewrote said purchase orders, or caused them to be rewritten, onto the forms of said company, which forms Mitchell forwarded, or caused to be forwarded, to said vendors.

Pursuant to said orders, said vendors sold said food products to Hesmer, and, in connection therewith, paid or granted to Mitchell, doing business as the Ed. Mitchell Co. their usual or customary brokerage fees or commissions. Said fees and commissions were accepted or received, and, after payment of expenses, have so far, upon advice of counsel Isadore J. Fine, been retained by Mitchell, doing business as the Ed. Mitchell Co.

PAR. 7. The acts and practices of respondents in receiving or accepting commissions, brokerage, or other compensations, or allowances or discounts in lieu thereof, as hereinabove alleged, are in violation of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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, 1926 (the Robinson-Patman Act (15 U. S. C. sec. 13)), the Federal Trade Commission on October 6, 1950, issued and subsequently served its complaint in this proceeding upon the respondents named in caption hereof, charging said respondents with having violated subsection (c) of section 2 of said Clayton Act, as amended. After the filing of the respondents' answer a hearing was convened by a trial examiner of the Commission theretofore duly designated by it to take testimony and receive evidence in support of and in opposition to the allegations of the complaint, and at said hearing solely for the purposes of this proceeding a stipulation of all of the facts in the case was entered into by and between counsel for the respondents and the Director of the Commission's Bureau of Antimonopoly. On the basis of the record thus presented (all intervening procedure having been waived), the trial examiner on December 11, 1950, filed his initial decision.

The Commission, having reason to believe that the initial decision was deficient in certain material respects, on January 19, 1951, issued and thereafter served upon the parties its order placing this case on the Commission's own docket for review and affording the respondents an opportunity to show cause why said initial decision should not be altered in the manner and to the extent shown by the tentative decision attached to said order. The respondents not having appeared in response to the leave to show cause, this proceeding regularly came on for final consideration by the Commission upon the record herein

on review; and the Commission, having duly considered the matter and being now fully advised in the premises, makes the following findings as to the facts, conclusion drawn therefrom, and order, the same to be in lieu of the initial decision of the trial examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Hesmer, Inc., hereinafter sometimes referred to as Hesmer, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana. Its office and principal place of business is located at 4300 Stringtown Road, Evansville, Ind. Hesmer is now, and since several years prior to 1946 has been, engaged in the manufacturing and wagon-jobbing of food products. It purchases some food products, such as cheese, pickles, peanut butter, oleo-margarine, catsup and other condiments, and food specialties, and manufactures others, such as potato chips, jelly, carmel crisp, corn curls, salad dressing, mustard, horseradish, and other condiments. Some of the food products purchased by Hesmer bear the trade names or marks of the vendor. Other food products which it purchases and all food products which it manufactures bear its own trade names or marks. Said food products, so purchased or manufactured by Hesmer, are sold by it to retail grocers located principally within a 100-mile radius of Evansville, Ind.—the so-called tri-State area of Indiana, Illinois, and Kentucky. Said sales amount to approximately \$1,250,000 annually.

Prior to 1946, about two-thirds of the capital stock of Hesmer was owned or controlled by one Clyde Hesmer who was president of and actively managed and controlled Hesmer during that period. Clyde Hesmer died about 1946.

PAR. 2. Respondent, Edward A. Mitchell, hereinafter sometimes referred to as Mitchell, is an individual residing at 1409 South Kentucky Avenue, Evansville, Ind., and is now, and since several years prior to 1946 has been, a stockholder in Hesmer. During the period prior to 1946 when Clyde Hesmer was president of Hesmer and owned or controlled about two-thirds of its capital stock, Mitchell owned or controlled about one-third thereof. From about 1946, after the death of Clyde Hesmer, to the present time, Mitchell has owned or controlled about two-thirds of Hesmer's capital stock; and one R. C. Bon Seigneur and one Isadore J. Fine together have owned or controlled about one-third of said stock.

From about 1946, after the death of Clyde Hesmer, to the present time, Mitchell has been president of Hesmer; and R. C. Bon Seigneur

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and Isadore J. Fine, respectively, have been its general manager and counsel. During the period from about 1946 to about January 1949, although he was president of Hesmer, Mitchell did not undertake its active management and control as such, he being then engaged in performing other duties which required substantially all of his time and his almost continuous absence from Evansville, Ind.

Mitchell is now and since about January 1949 has been active in the management of Hesmer, Inc., as its salaried president, and has exercised substantial authority and control over the business, including its purchase and sales policy. In addition to his salary as president, and as compensation for his services in connection with Hesmer's purchases, Mitchell receives the payments and grants, hereinafter more particularly set out.

PAR. 3. From about January 1949 to the present time, the same period during which, as above set out, Mitchell was the salaried president of Hesmer, Inc., he was also doing business as the Ed. Mitchell Co., with office and place of business located at 201 East Illinois Street, Evansville, Ind.

As the Ed. Mitchell Co., Mitchell engages in what is designated as the food brokerage business, and at the present time approximately 15 percent of the business done by the Ed. Mitchell Co. consists of receiving purchase orders from Hesmer, Inc., for its requirements of food products and forwarding said orders to certain vendors, and in receiving and accepting brokerage fees from the vendors on said purchases of Hesmer, Inc., hereinafter more particularly set out. A year ago the percentage of the business of the Ed. Mitchell Co. done through sales to Hesmer, Inc., was much greater than 15 percent. The remainder of the business of the said Ed. Mitchell Co. consists of effecting purchase and sales transactions between said vendors and vendees other than Hesmer, Inc., and is not the subject of the complaint herein.

PAR. 4. In the course and conduct of their business, respondents are now, and since about January 1949 have been, engaged in commerce, as commerce is defined in the Clayton Act, as amended by the Robinson-Patman Act. Continuously during the said period, respondents purchased food products or caused food products to be purchased from vendors with places of business located in several States of the United States and caused said food products so purchased to be transported from said vendors' places of business to destinations in other State.

PAR. 5. In the course and conduct of said business in commerce, Hesmer, Inc., is now and continuously since about January 1949 has been purchasing food products from vendors through the Ed. Mitchell

Co., which vendors paid or granted to the Ed. Mitchell Co. in connection with said purchases, commissions, brokerage, or other compensation or discounts or allowances in lieu thereof, which said payments or grants were received or accepted by Edward A. Mitchell, doing business as the Ed. Mitchell Co. The acceptance of said brokerage fees or commissions by Edward A. Mitchell, doing business as the Ed. Mitchell Co., and also president and majority stockholder of Hesmer, Inc., was in effect and in fact a receipt by Hesmer, Inc., of said brokerage fees or commissions through its intermediary or agent acting for or in its behalf continually since January 1949 to the present time.

PAR. 6. To effectuate the making of said payments or grants and their receipt and acceptance, as found in paragraph 5 hereof, respondents engaged in, among others, the acts and practices hereinafter set-out.

On or about January 1949, at the time when Mitchell, owning two-thirds of the capital stock of Hesmer, Inc., became active in the management and control of Hesmer, Inc., as its salaried president, Mitchell established and commenced doing business as the Ed. Mitchell Co. At or about that time and from time to time thereafter, Mitchell, doing business as the Ed. Mitchell Co., sought and received appointment as a broker for several vendors of the kinds of food products purchased and sold by Hesmer, Inc., including food products to bear the trade names or brands of Hesmer, Inc. It was understood or agreed by and between said vendors and Mitchell that said vendors would grant or pay to Mitchell, doing business as the Ed. Mitchell Co., their usual or customary brokerage fees or commissions on all purchases made by Hesmer as well as on all other transactions handled by Mitchell with other vendees.

Upon securing said appointment as broker, Mitchell, as president and majority stockholder in Hesmer, Inc., prepared, or caused to be prepared, and transmitted to himself, doing business as the Ed. Mitchell Co., Hesmer's purchase orders for a substantial amount of its requirements of food products sold by vendors who made said appointments. Doing business as the Ed. Mitchell Co., Mitchell rewrote said purchase orders, or caused them to be rewritten, onto the forms of said company, which forms Mitchell forwarded, or caused to be forwarded, to said vendors.

Pursuant to said orders, said vendors sold said food products to Hesmer, Inc., and, in connection therewith, paid or granted to Mitchell, doing business as the Ed. Mitchell Co., their usual or customary brokerage fees or commissions. Said fees and commissions were

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accepted or received, and, after payment of expenses, have been retained by Mitchell, doing business as the Ed. Mitchell Co.

CONCLUSION

The acts and practices of respondents in receiving or accepting commissions, brokerage, or other compensation or allowances or discounts in lieu thereof, from vendors of food products in the manner and under the circumstances hereinabove found, are in violation of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

ORDER

It is ordered, That the respondents, Hesmer, Inc., 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 commodities in commerce, as commerce is defined in the aforesaid Clayton Act, to 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 said respondent's own account.

It is further ordered, That the respondent, Edward A. Mitchell, individually and trading as the Ed. Mitchell Co., or trading under any other name or trade designation, and said respondent's agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of food products or 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 by or for the respondent, Hesmer, Inc., or purchases made by or for any other purchaser for or on whose behalf the respondent, Edward A. Mitchell is acting in fact as agent, representative, or other intermediary.

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 it.

Syllabus

IN THE MATTER OF
SAMSON CORDAGE WORKS ET AL.

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

Docket 5839. Complaint, Jan. 8, 1951—Decision, Mar. 26, 1951

Where seven corporations and the former president of four concerns which were merged into one of the seven; and who was also a former officer of the Solid Braided Cord Manufacturers Association, engaged in the interstate sale and shipment of their cordage products, including cotton sash cords, awning cords, clothes lines, and other similar cotton cordage; and a second individual who was a former secretary-treasurer of the Cotton-Textile Institute, Inc., and a former officer of said Manufacturers Association and other trade associations, and was for many years a co-conspirator with the others in carrying out the unlawful acts in commerce below set-out;

Engaged in organizing and developing a combination, agreement and planned common course of action to suppress and eliminate competition among themselves and others in said products; and pursuant thereto—

- (a) Agreed to and did fix and maintain prices, fix, modify, or eliminate certain trade discounts, and adopt and use uniform terms of conditions of sale;
- (b) Agreed to and did reduce the number of hours or shifts for work in their manufacturing plants, with the intent and effect of curtailing production;
- (c) Agreed to and did eliminate certain grades and weights of cordage products;
- (d) Agreed to and did formulate, adopt, and place in operation the practice of making uniform allowances from shipping charges;
- (e) Exchanged among themselves, directly or indirectly, information relating to current and future prices, terms, or conditions of sale, and freight charges and allowances or deductions made therefrom;
- (f) Agreed to and did adopt, maintain, and use uniform standards or specifications for sizes, weights, and descriptions for said products, for pricing purposes, and agreed to and did fix, establish, and maintain substantially uniform price differentials between products of uniformly varying sizes, weights, and descriptions;
- (g) Agreed to and did abandon the practice of guaranteeing prices against decline; and
- (h) Agreed to and did place in operation, from time to time, a plan of resale price maintenance whereby the customers were required to sell products concerned at prices and upon terms and conditions of sale which they fixed or which were agreed upon by or stipulated between them and the customers;

Effects of which practices and activities included the stifling of price competition among them; establishment of substantially uniform price differentials between products of uniformly varying sizes, weights and descriptions; and of substantially identical prices, trade discounts, terms or conditions of sale and freight allowances; and unlawful resale price maintenance and restraint of trade among their customers:

Held, That said combination, etc., and said acts, practices, pricing methods, devices, and policies were unfair and to the prejudice of the public; deprived it

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of the benefit of competition; had dangerous tendencies and capacities to unlawfully restrain commerce in said products and suppressed and eliminated competition therein; and that said acts and practices were all to the prejudice of the public and of their competitors, and constituted unfair methods of competition in commerce.

Before *Mr. Everett F. Haycraft*, trial examiner.

Mr. Leslie S. Miller and *Mr. J. Wallace Adair* for the Commission.

Mr. John Marshall, Jr., of Louisville, Ky., for Puritan Cordage Mills.

Mr. Young M. Smith, of Hickory, N. C., for Shuford Mills, Inc.

Knox, Jones, Woolf & Merrill, of Anniston, Ala., for Southern Mills Corporation.

Kramer, McNabb & Greenwood, of Knoxville, Tenn., for Rockford Manufacturing Co.

Edmonds, Obermayer & Rebmann, of Philadelphia, Pa., for Wm. E. Hooper & Sons Co. of Baltimore City.

Dorr, Hammond, Hand & Dawson, of New York City, for Paul B. Halstead.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof and more particularly described and referred to hereinafter as respondents, have violated the provisions of 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 as follows:

PARAGRAPH 1. Respondents named and described herein have combined and conspired to lessen and eliminate competition and restrain trade in commerce, as commerce is defined in the Federal Trade Commission Act in the sale of cordage products, including cotton sash cords, awning cords, clothes lines, and other cotton cordage similarly constructed or used for substantially similar purposes as any of the foregoing. Respondents accomplished the combination and conspiracy herein alleged through agreements, understandings, and concerted action among themselves and with others. Each respondent named herein has used trade-restraining and unfair methods and practices in furtherance of, and to make more effective, the objectives of the combination and conspiracy as alleged.

PAR. 2. The following is a description of the corporate respondents, including their respective corporate status and principal office and place of business:

1. Samson Cordage Works, a Massachusetts corporation, 89 Broad Street, Boston, Mass.
2. Puritan Cordage Mills, a Kentucky corporation, 1205 Washington Street, Louisville, Ky.
3. Shuford Mills, Incorporated, a North Carolina corporation, Hickory, N. C. Shuford Mills, Incorporated, represents a merger of A. A. Shuford Mills Co., Granite Falls Manufacturing Co., Highland Cordage Co., and Granite Cordage Co., said merger having become effective January 1, 1947.
4. Cleveland Mill & Power Co., a North Carolina corporation, Lawndale, N. C.
5. Southern Mills Corp., a Delaware corporation, Oxford, Ala.
6. Rockford Manufacturing Co., a Tennessee corporation, Rockford, Tenn.
7. Wm. E. Hooper & Sons Co., of Baltimore City, a Maryland corporation, 1319-23 Cherry Street, Philadelphia, Pa.

The following are individual respondents:

8. Paul B. Halstead, an individual, 271 Church Street, New York, N. Y., individually, in his former capacity as secretary-treasurer of the Cotton-Textile Institute, Inc., and in his former capacity as an officer of the Solid Braided Cord Manufacturers Association.
9. Bascom B. Blackwelder, an individual, Quaker Meadow Mills, Inc., Hildebran, N. C., individually, in his former capacity as president of A. A. Shuford Mills Co., Granite Falls Manufacturing Co., Highland Cordage Co., and Granite Cordage Co., and in his former capacity as an officer of the Solid Braided Cord Manufacturers Association.

PAR. 3. All of the aforesaid respondents, with the exception of individual respondent Paul B. Halstead, in the course and conduct of their business, have regularly sold and shipped their "cordage products" to purchasers at points in the several States of the United States and in the District of Columbia, other than the State of origin of the shipment, in a regular current and flow of commerce, as "commerce" is defined in the Federal Trade Commission Act.

Because of the adoption and use of methods, practices, and policies hereinafter described, active and substantial competition between the manufacturing and selling respondents and others engaged in the manufacturing and selling of cordage products has been lessened or eliminated.

Respondent, Paul B. Halstead, in his individual capacity and in his former capacity as an officer of trade associations not named herein as respondents, though not engaged in commerce himself, has been for many years engaged in cooperating as a co-conspirator with the other respondents named herein in carrying out the unlawful acts in commerce as hereinafter alleged.

PAR. 4. The aforesaid respondents have been engaged in organizing and developing a combination, agreement, and planned common course of action to suppress and eliminate competition as to prices, and otherwise, among themselves and others, for cordage products. As steps in and toward the accomplishment of this purpose and objective, and in furtherance of and pursuant to the combination, agreement, and planned common course of action engaged in by the respondents, each of said respondents has adopted and utilized one or more of the following methods or practices:

1. Respondents have agreed to fix and maintain, and, pursuant thereto, have fixed and maintained prices.

2. Respondents have agreed to fix, modify, or eliminate, and pursuant thereto have fixed, modified, or eliminated certain trade discounts.

3. Respondents have agreed upon, adopted, and used uniform terms or conditions of sale.

4. Respondent manufacturers have agreed to reduce, and, in pursuance thereof, did reduce the number of hours or shifts for work in their respective plants for the purpose or with the effect of curtailing production in furtherance of their program of concerted action to create scarcity of their products so as to further facilitate their acts and practices of fixing, raising, pegging, and stabilizing prices.

5. Respondents have agreed to eliminate, and, in pursuance thereof, have eliminated certain grades and weights of cordage products.

6. Respondents agreed to formulate, adopt, and place in operation, and, in pursuance thereof, did formulate, adopt, and place in operation the practice of making uniform allowances from shipping charges.

7. Respondents have exchanged among themselves, directly and indirectly, information relating to current and future prices, terms, or conditions of sale, and freight charges and allowances or deductions which are made therefrom.

8. Respondent manufacturers have agreed to adopt, maintain, and use, and in pursuance thereof have adopted, maintained, and used uniform standards or specifications for sizes, weights, and descriptions for cordage products for pricing purposes, and have agreed to fix, estab-

lish, and maintain, and, in pursuance thereof, have fixed, established, and maintained substantially uniform differentials in prices between cordage products of uniformly varying sizes, weights, and descriptions.

9. Respondents agreed to abandon, and, in pursuance thereof, did abandon the practice of guaranteeing prices against decline.

10. Respondents agreed to place in operation and did place in operation, from time to time, a plan of resale price maintenance whereby the customers of respondent manufacturers were required to sell cordage products at prices and upon terms and conditions of sale fixed by said respondents or agreed upon by or stipulated between the said respondents and their respective customers.

PAR. 5. The effects of the adoption and use by respondents of the practices and activities hereinabove alleged in connection with their sale of cordage products are that:

1. They stifle and eliminate price competition and restrain trade between respondents.

2. They result in substantially uniform differentials in price between products of uniformly varying sizes, weights, and descriptions.

3. They result in substantially identical prices, trade discounts, terms, or conditions of sale and freight allowances.

4. They result in unlawful resale price maintenance and restrain trade among respondent manufacturers' customers.

PAR. 6. The combination, conspiracy, agreements, and understandings of the respondents and the acts, practices, pricing methods, devices, and policies alleged herein are unfair and to the prejudice of the public; deprive the public of the benefit of competition; have dangerous tendencies and capacities to unlawfully restrain commerce in the said products; have hindered, frustrated, suppressed, and eliminated competition in said products in commerce and constitute unfair methods of competition and unfair or deceptive acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's rules of practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated March 26, 1951, the initial decision in the instant matter of trial examiner Everett F. Haycraft, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EVERETT F. HAYCRAFT, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 8, 1951, issued and subsequently served its complaint in this proceeding upon the respondents Samson Cordage Works, Puritan Cordage Mills, Shuford Mills, Inc., Cleveland Mill & Power Co., Southern Mills Corporation, Rockford Manufacturing Co., and Wm. E. Hooper & Sons Co. of Baltimore City, corporations, their officers, directors, agents, representatives, and employees, and Paul B. Halstead and Bascom B. Blackwelder, individuals, charging them with the use of unfair methods of competition and unfair or deceptive acts or practices in commerce in violation of the provisions of said act. On January 18, 1951, respondents filed their answers in which answers they admitted all material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to the said facts. Thereafter, the proceeding regularly came on for final consideration by the above-named trial examiner, theretofore duly designated by the Commission, upon said complaint and answers thereto (all intervening procedure having been waived) and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The following is a description of the corporate respondents, including their respective corporate status and principal office and place of business:

Samson Cordage Works, a Massachusetts corporation, 89 Broad Street, Boston, Mass.

Puritan Cordage Mills, a Kentucky corporation, 1205 Washington Street, Louisville, Ky.

Shuford Mills, Incorporated, a North Carolina corporation, Hickory, N. C. Shuford Mills, Incorporated, represents a merger of A. A. Shuford Mills Co., Granite Falls Manufacturing Co., Highland Cordage Co., and Granite Cordage Co., said merger having become effective January 1, 1947.

Cleveland Mill & Power Co., a North Carolina corporation, Lawn-dale, N. C.

Southern Mills Corp., a Delaware corporation, Oxford, Ala.

Rockford Manufacturing Co., a Tennessee corporation, Rockford, Tenn.

Wm. E. Hooper & Sons Co. of Baltimore City, a Maryland corporation, 1319-23 Cherry Street, Philadelphia, Pa.

PAR. 2. The following is a description of the individual respondents, including their respective office and place of business:

Paul B. Halstead, an individual, 271 Church Street, New York, N. Y., a former secretary-treasurer of the Cotton-Textile Institute, Inc., and a former officer of the Solid Braided Cord Manufacturers Association.

Bascom B. Blackwelder, an individual, Quaker Meadow Mills, Inc., Hildebran, N. C., a former president of A. A. Shuford Mills Co., Granite Falls Manufacturing Co., Highland Cordage Co., and Granite Cordage Co., and a former officer of the Solid Braided Cord Manufacturers Association.

PAR. 3. All of the aforesaid respondents, with the exception of individual respondent Paul B. Halstead, in the course and conduct of their business, have regularly sold and shipped their cordage products, including cotton sash cords, awning cords, clothes lines, and other cotton cordage similarly constructed, to purchasers at points in the several States of the United States and in the District of Columbia, other than the State of origin of the shipment, in a regular current and flow of commerce, as "commerce" is defined in the Federal Trade Commission Act.

Respondent Paul B. Halstead, in his individual capacity and in his former capacity as an officer of trade associations not named herein as respondents, though not engaged in commerce himself, has been for many years engaged in cooperating as a coconspirator with the other respondents named herein in carrying out the unlawful acts in commerce as hereinafter found.

PAR. 4. The aforesaid respondents have been engaged in organizing and developing a combination, agreement, and planned common course of action to suppress and eliminate competition as to prices, and otherwise, among themselves and others, for cordage products. As steps in and toward the accomplishment of this purpose and objective, and in furtherance of and pursuant to the combination, agreement, and planned common course of action engaged in by the respondents, each of said respondents has adopted and utilized one or more of the following methods or practices:

1. Respondents have agreed to fix and maintain, and, pursuant thereto, have fixed and maintained prices.

2. Respondents have agreed to fix, modify, or eliminate, and pursuant thereto have fixed, modified, or eliminated certain trade discounts.

3. Respondents have agreed upon, adopted, and used uniform terms or conditions of sale.

4. Respondent manufacturers have agreed to reduce, and, in pursuance thereof, did reduce the number of hours or shifts for work in their respective plants for the purpose or with the effect of curtailing production in furtherance of their program of concerted action to create scarcity of their products so as to further facilitate their acts and practices of fixing, raising, pegging, and stabilizing prices.

5. Respondents have agreed to eliminate, and, in pursuance thereof, have eliminated certain grades and weights of cordage products.

6. Respondents agreed to formulate, adopt and place in operation, and, in pursuance thereof, did formulate, adopt and place in operation the practice of making uniform allowances from shipping charges.

7. Respondents have exchanged among themselves, directly and indirectly, information relating to current and future prices, terms, or conditions of sale, and freight charges and allowances or deductions which are made therefrom.

8. Respondent manufacturers have agreed to adopt, maintain, and use, and in pursuance thereof have adopted, maintained, and used uniform standards or specifications for sizes, weights, and descriptions for cordage products for pricing purposes, and have agreed to fix, establish and maintain, and, in pursuance thereof, have fixed, established, and maintained substantially uniform differentials in prices between cordage products of uniformly varying sizes, weights, and descriptions.

9. Respondents agreed to abandon, and, in pursuance thereof, did abandon the practice of guaranteeing prices against decline.

10. Respondents agreed to place in operation and did place in operation, from time to time, a plan of resale price maintenance whereby the customers of respondent manufacturers were required to sell cordage products at prices and upon terms and conditions of sale fixed by said respondents or agreed upon by or stipulated between the said respondents and their respective customers.

PAR. 5. The effects of the adoption and use by respondents of the practices and activities hereinabove found in connection with their sale of cordage products are that:

1. They stifle and eliminate price competition and restrain trade between respondents.

2. They result in substantially uniform differentials in price between products of uniformly varying sizes, weights, and descriptions.

3. They result in substantially identical prices, trade discounts, terms, or conditions of sale and freight allowances.

4. They result in unlawful resale price maintenance and restrain trade among respondent manufacturers' customers.

PAR. 6. The combination, conspiracy, agreements, and understandings of the respondents and the acts, practices, pricing methods, devices, and policies found herein are unfair and to the prejudice of the public; deprive the public of the benefit of competition; have dangerous tendencies and capacities to unlawfully restrain commerce in the said products; have hindered, frustrated, suppressed, and eliminated competition in said products in commerce.

CONCLUSION

The aforesaid acts and practices of respondents as hereinabove set out 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

This proceeding having been heard by a trial examiner of the Federal Trade Commission upon the complaint of the Commission and the answers of the respondents, in which 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 said trial examiner having made his findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That Samson Cordage Works, a corporation, Puritan Cordage Mills, a corporation, Shuford Mills, Incorporated, a corporation, Cleveland Mill & Power Co., a corporation, Southern Mills Corp., a corporation, Rockford Manufacturing Co., a corporation, Wm. E. Hooper & Sons Co. of Baltimore City, a corporation, and Paul B. Halstead, an individual, and Bascom B. Blackwelder, an individual, their officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in connection with offering for sale, sale, and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of cordage products, including cotton sash cords, awning cords, clothes lines, and other cotton cordage similarly constructed or used for substantially similar purposes as any of the foregoing, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying

out any planned common course of action, understanding, mutual agreement, combination, or conspiracy between and among any two or more of said respondents, or between any one or more of said respondents and another or others not parties hereto, to do or perform any of the following:

Fixing, establishing, or maintaining prices, discounts, terms, or conditions of sale.

Fixing, modifying, or eliminating trade discounts.

Curtailling, restricting, or regulating production by reducing the total number of work hours or by any other means.

Eliminating grades or weights of cordage products in conjunction with, pursuant to, or in furtherance of, the fixing or stabilizing of prices.

Making uniform deductions or allowances from actual shipping costs.

Establishing standards or specifications for sizes, weights, and descriptions for cordage products when the action taken or information exchanged is for the purpose of fixing or maintaining prices or differentials in prices or has the tendency to fix or maintain prices or differentials in price.

Denying purchasers the benefit of market price declines.

Exchanging, distributing, or relaying between or among the respondents, or between or among any of them, or between or among any of their representatives, agents, or employees, or through any medium or central agency the following information with respect to the business practices or sales policies of any particular respondent, to wit: Current or future prices, or terms or conditions of sale, or trade discounts, or freight charges or allowances therefrom, or price quotations submitted or to be submitted on any prospective piece of business.

It is further ordered, That the respondents herein, or any of them, their officers, representatives, agents, and employees, acting separately or in concert, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of cordage products in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into or continuing in operation any contract, agreement, or understanding with customers which provides that cordage products are not to be advertised, offered for sale, or sold by such customers at prices other than those specified or fixed by the respective respondents, acting separately or in concert.

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Order

It is further ordered, That nothing contained herein shall be construed to prohibit (a) any seller from independently entering into an agreement with a purchaser as to the price to be charged such purchaser, the terms or conditions of sale, trade discounts, weights, grades, standards, or specifications for cordage products, price differentials, and freight charges or allowances, independently determined and offered by either such seller or buyer and independently accepted by either such seller or buyer in any bona fide transaction, or (b) any prospective seller from making, or any prospective purchaser from receiving, an offer of sale in contemplation of a bona fide transaction between such prospective seller and prospective purchaser; provided that such agreement or offer of sale is not for the purpose nor has the effect of restraining trade.

It is further ordered, That nothing contained herein shall be construed to prohibit any of the respondents from entering into such contracts or agreements relating to the maintenance of resale prices as are permitted under the provisions of the Miller-Tydings Act.

It is further ordered, That nothing contained herein shall be construed to affect the duty, authority, or power of the Commission to reopen this proceeding, as provided for by law, and to alter, modify, or set aside, in whole or in part, any provision of this order whenever, in the opinion of the Commission, conditions of fact or of law have so changed as to require such action or if the public interest shall so require.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That respondents, Samson Cordage Works, Puritan Cordage Mills, Shuford Mills, Inc., Cleveland Mill & Power Co., Southern Mills Corp., Rockford Manufacturing Co., Wm. E. Hooper & Sons Co. of Baltimore City, Paul B. Halstead, and Bascom B. Blackwelder shall, within 60 days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of March 26, 1951].

IN THE MATTER OF
BIBB MANUFACTURING COMPANY ET AL.

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

Docket 5838. Complaint, Jan. 8, 1951—Decision, Mar. 27, 1951

Where nine corporations and the former president of four concerns which were merged into one of the nine, engaged in the interstate sale and shipment of twine products, including cotton wrapping twines, sewing twines, polished twines and tobacco twines, hose cords, and other similar cotton twines; and two trade association officers who, while not engaged in commerce themselves, had for many years cooperated with the others in carrying out the unlawful acts in commerce below setout;

Engaged in organizing and developing a combination, agreement, and planned common course of action to suppress and eliminate competition among themselves and others in said products; pursuant to which they—

- (a) Agreed to and did fix and maintain prices; fix, modify, or eliminate certain trade discounts; and adhere to their respective published prices;
- (b) Agreed to and did reduce the number of hours or shifts for work in their manufacturing plants;
- (c) Agreed to and did formulate, adopt, and place in operation the practice of making uniform allowances from shipping charges;
- (d) Agreed to and did adopt and use uniform terms and conditions of sale, and abandon the practice of guaranteeing prices against decline;
- (e) Exchanged among themselves, directly and indirectly, information relating to current and future prices, terms, or conditions of sale, and freight charges and deductions therefrom; and
- (f) Agreed to and did use uniform standards for sizes, weights, and descriptions for said products, and maintain substantially uniform price differentials between products of uniformly varying sizes, weights, and descriptions;

With effect of stifling price competition among them and restraining trade and of establishing substantially uniform price differentials between products of uniformly varying sizes, weights, and descriptions; and substantially identical prices, trade discounts, terms, or conditions of sale, and freight allowances:

Held, That said combination, etc., and said acts, practices, pricing methods, devices, and policies were unfair and to the prejudice of the public; deprived it of the benefit of competition; had dangerous tendencies and capacities to unlawfully restrain commerce in said products, and suppressed and eliminated competition therein; and that said acts and practices were all to the prejudice of the public and of their competitors, and constituted unfair methods of competition in commerce.

Before *Mr. Everett F. Haycraft*, trial examiner.

Mr. Leslie S. Miller and *Mr. J. Wallace Adair* for the Commission.

Jones, Jones & Sparks, of Macon, Ga., for Bibb Manufacturing Co.

Mr. Young M. Smith, of Hickory, N. C., for Shuford Mills, Inc.

Kramer, McNabb & Greenwood, of Knoxville, Tenn., for Rockford Manufacturing Co.

Mr. John Henry Lewin and *Mr. J. Crossan Cooper, Jr.*, of Baltimore, Md., for Mt. Vernon-Woodberry Mills, Inc.

Mr. A. Milton Vance, of Houston, Tex., for Houston Cotton Mills Co.

Tillett, Campbell, Craighill & Rendleman, of Charlotte, N. C., for E. Owen Fitzsimons.

Dorr, Hammond, Hand & Dawson, of New York City, for Paul B. Halstead.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated the provisions of 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 charge as follows:

PARAGRAPH 1. Respondents named and described herein have combined and conspired to lessen and eliminate competition and to restrain trade in commerce, as "commerce" is defined in the Federal Trade Commission Act in the sale of "twine products," including cotton wrapping twines, sewing twines, polished twines, tobacco twines, pea twines, bean twines, hop twines, hose cords, and other cotton twines similarly constructed or used for substantially similar purposes as any of the foregoing, but not including carded sales yarn except insofar as the same may be manufactured and sold for use as twine. Respondents accomplished the combination and conspiracy herein alleged through agreements, understandings, and concerted action among themselves and with others. Each respondent named herein has used trade restraining and unfair methods and practices in furtherance of, and to make more effective, the objectives of the combination and conspiracy as alleged.

PAR. 2. The following is a description of the corporate respondents, including their respective corporate status and principal office and place of business:

1. Bibb Manufacturing Co., a Georgia corporation, Main and Water Streets, Macon, Ga.

2. Shuford Mills, Inc., a North Carolina corporation, Hickory, N. C. Shuford Mills, Inc., represents a merger of A. A. Shuford Mills

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Co., Granite Falls Manufacturing Co., Highland Cordage Co., and Granite Cordage Co.; said merger having become effective January 1, 1947.

3. Oakdale Cotton Mills, a North Carolina corporation, Jamestown, N. C.

4. Cleveland Mill & Power Co., a North Carolina corporation, Lawndale, N. C.

5. January & Wood Co., a Kentucky corporation, Maysville, Ky.

6. Rockford Manufacturing Co., a Tennessee corporation, Rockford, Tenn.

7. Mount Vernon-Woodberry Mills, Inc., a Maryland corporation, Mercantile Trust Building, Baltimore 2, Md.

8. Houston Cotton Mills Co., a Texas corporation, 8100 Washington Avenue, Houston, Tex.

9. Samson Cordage Works, a Massachusetts corporation, 89 Broad Street, Boston, Mass.

The following are individual respondents:

10. E. Owen Fitzsimons, an individual, Johnston Building, Charlotte, N. C., individually; said E. Owen Fitzsimons has been president and treasurer of the Carded Yarn Association, Inc., since its organization in January 1946; he has previously served as treasurer of the Carded Yarn Association, as secretary of the Carded Yarn Group, as field representative or agent of the Cotton-Textile Institute, Inc., and as an organizer, sponsor, guide, and officer of the Twine and Cordage Group of the carded yarn group of the Cotton-Textile Institute, Inc.

11. Bascom B. Blackwelder, an individual, Quaker Meadow Mills, Inc., Hildebran, N. C., individually and in his former capacity as president of A. A. Shuford Mills Co., Granite Falls Manufacturing Co., Highland Cordage Co., and Granite Cordage Co.

12. Paul B. Halstead, an individual, 271 Church Street, New York, N. Y., individually and in his former capacity as secretary-treasurer of the Cotton-Textile Institute, Inc.

PAR. 3. All of the aforesaid respondents, with the exception of individual respondents E. Owen Fitzsimons and Paul B. Halstead, in the course and conduct of their business, have regularly sold and shipped their twine products to purchasers at points in the several States of the United States and in the District of Columbia, other than the State of origin of the shipment, in a regular current and flow of commerce, as commerce is defined in the Federal Trade Commission Act.

Because of the adoption and use of methods, practices, and policies hereinafter described, active and substantial competition between the manufacturing and selling respondents and others engaged in the manufacturing and selling of twine products has been lessened or eliminated.

Respondents, E. Owen Fitzsimons and Paul B. Halstead, in their individual capacities and in their former capacities as officers of organizations not named herein as respondents, though not engaged in commerce themselves, have been for many years engaged in cooperating as co-conspirators with the other respondents named herein in carrying out the unlawful acts in commerce, as hereinafter alleged.

PAR. 4. The aforesaid respondents have been engaged in organizing and developing a combination, agreement, and planned common course of action to suppress and eliminate competition as to prices, and otherwise, among themselves and others, for twine products. As steps in and toward the accomplishment of this purpose and objective, and in furtherance of and pursuant to the combination, agreement, and planned common course of action engaged in by the respondents, each of said respondents has adopted and utilized one or more of the following methods or practices:

1. Respondents have agreed to fix and maintain, and pursuant thereto have fixed and maintained prices.

2. Respondents have agreed to fix, modify, or eliminate, and have fixed, modified, or eliminated certain trade discounts.

3. Respondents have agreed to adhere, and in pursuance thereof have adhered, to their respective published prices.

4. Respondent manufacturers have agreed to reduce, and in pursuance thereof did reduce, the number of hours or shifts for work in their respective plants for the purpose or with the effect of curtailing production in furtherance of their program of concerted action to create scarcity of their products so as to further facilitate their acts and practices of fixing, raising, pegging, and stabilizing prices.

5. Respondents agreed to formulate, adopt, and place in operation; and, in pursuance thereof, did formulate, adopt, and place in operation the practice of making uniform allowances from shipping charges.

6. Respondents agreed upon, adopted, and used uniform terms and conditions of sale.

7. Respondents agreed to abandon, and, in pursuance thereof, did abandon the practice of guaranteeing prices against declines.

8. Respondents have exchanged among themselves, directly and indirectly, information relating to current and future prices, terms,

or conditions of sale, and freight charges and allowances or deductions which are made therefrom.

9. Respondent manufacturers have agreed to adopt, maintain, and use, and, in pursuance thereof, have adopted, maintained, and used uniform standards or specifications for sizes, weights, and descriptions for twine products for pricing purposes, and have agreed to fix, establish, and maintain, and, in pursuance thereof, have fixed, established, and maintained substantially uniform differentials in prices between twine products of uniformly varying sizes, weights, and descriptions.

PAR. 5. The effects of the adoption and use by respondents of the practices and activities hereinabove alleged in connection with their sale of twine products are that:

1. They stifle and eliminate price competition and restrain trade between respondents.

2. They result in substantially uniform differentials in price between products of uniformly varying sizes, weights, and descriptions.

3. They result in substantially identical prices, trade discounts, terms, or conditions of sale and freight allowances.

PAR. 6. The combination, conspiracy, agreements, and understandings of the respondents and the acts, practices, pricing methods, devices, and policies alleged herein are unfair and to the prejudice of the public; deprive the public of the benefit of competition; have dangerous tendencies and capacities to unlawfully restrain commerce in the said products; have hindered, frustrated, suppressed, and eliminated competition in said products in commerce and constitute unfair methods of competition and unfair or deceptive acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's rules of practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated March 27, 1951, the initial decision in the instant matter of trial examiner Everett F. Haycraft, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EVERETT F. HAYCRAFT, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 8, 1951, issued and subse-

quently served its complaint in this proceeding upon the respondents Bibb Manufacturing Co., Shuford Mills, Inc., Oakdale Cotton Mills, Cleveland Mill & Power Co., January & Wood Co., Rockford Manufacturing Co., Mount Vernon-Woodberry Mills, Inc., Houston Cotton Mills Co., and Samson Cordage Works, corporations, their officers, directors, agents, representatives, and employees, and E. Owen Fitzsimons, Bascom B. Blackwelder, and Paul B. Halstead, individuals, charging them with the use of unfair methods of competition and unfair or deceptive acts or practices in commerce in violation of the provisions of said act. On January 18, 1951, respondents filed their answers in which answers they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to the said facts. Thereafter, the proceeding regularly came on for final consideration by the above-named trial examiner, theretofore duly designated by the Commission, upon said complaint and answers thereto (all intervening procedure having been waived) and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The following is a description of the corporate respondents, including their respective corporate status and principal office and place of business:

Bibb Manufacturing Co., a Georgia corporation, Main and Water Streets, Macon, Ga.

Shuford Mills, Incorporated, a North Carolina corporation, Hickory, N. C. Shuford Mills, Inc., represents a merger of A. A. Shuford Mills Co., Granite Falls Manufacturing Co., Highland Cordage Co., and Granite Cordage Co., said merger having become effective January 1, 1947.

Oakdale Cotton Mills, a North Carolina corporation, Jamestown, N. C.

Cleveland Mill & Power Co., a North Carolina corporation, Lawndale, N. C.

January & Wood Co., a Kentucky corporation, Maysville, Ky.

Rockford Manufacturing Co., a Tennessee corporation, Rockford, Tenn.

Mt. Vernon-Woodberry Mills, Inc., a Maryland corporation, Mercantile Trust Building, Baltimore 2, Md.

Houston Cotton Mills Co., a Texas corporation, 8100 Washington Avenue, Houston, Tex.

Samson Cordage Works, a Massachusetts corporation, 89 Broad Street, Boston, Mass.

PAR. 2. The following is a description of the individual respondents, including their respective office and place of business:

E. Owen Fitzsimons, an individual, P. O. Box 869, Charlotte, N. C., a former president and treasurer of the Carded Yarn Association, Inc., secretary of the Carded Yarn Group, field representative of the Cotton-Textile Institute, Inc., also organizer, sponsor, guide, and officer of the Twine and Cordage Group of the Cotton-Textile Institute, Inc.

Bascom B. Blackwelder, an individual, Quaker Meadow Mills, Inc., Hildebran, N. C., a former president of A. A. Shuford Mills Co., Granite Falls Manufacturing Co., Highland Cordage Co., and Granite Cordage Co.

Paul B. Halstead, an individual, 271 Church Street, New York, N. Y., a former secretary-treasurer of the Cotton-Textile Institute, Inc.

PAR. 3. All of the aforesaid respondents, with the exception of individual respondents E. Owen Fitzsimons and Paul B. Halstead, in the course and conduct of their business, have regularly sold and shipped their twine products, including cotton wrapping twines, sewing twines, polished twines, tobacco twines, pea twines, bean twines, hop twines, hose cords, and other cotton twines similarly constructed, but not including carded sales yarn except in so far as same may be manufactured and sold for use as twine, to purchasers at points in the several States of the United States and in the District of Columbia, other than the State of origin of the shipment, in a regular current and flow of commerce, as commerce is defined in the Federal Trade Commission Act.

Respondents, E. Owen Fitzsimons and Paul B. Halstead, in their individual capacities and in their former capacities as officers of organizations not named herein as respondents, though not engaged in commerce themselves, have been for many years engaged in cooperating as co-conspirators with the other respondents named herein in carrying out the unlawful acts in commerce, as hereinafter found.

PAR. 4. The aforesaid respondents have been engaged in organizing and developing a combination, agreement, and planned common course of action to suppress and eliminate competition as to prices, and otherwise, among themselves and others, for said twine products. As

steps in and toward the accomplishment of this purpose and objective, and in furtherance of and pursuant to the combination, agreement, and planned common course of action engaged in by the respondents, each of said respondents has adopted and utilized one or more of the following methods of practices:

1. Respondents have agreed to fix and maintain, and pursuant thereto have fixed and maintained prices.

2. Respondents have agreed to fix, modify, or eliminate, and have fixed, modified, or eliminated certain trade discounts.

3. Respondents have agreed to adhere, and in pursuance thereof have adhered, to their respective published prices.

4. Respondent manufacturers have agreed to reduce, and in pursuance thereof did reduce, the number of hours or shifts for work in their respective plants for the purpose or with the effect of curtailing production in furtherance of their program of concerted action to create scarcity of their products so as to further facilitate their acts and practices of fixing, raising, pegging, and stabilizing prices.

5. Respondents agreed to formulate, adopt, and place in operation; and, in pursuance thereof, did formulate, adopt, and place in operation the practice of making uniform allowances from shipping charges.

6. Respondents agreed upon, adopted, and used uniform terms and conditions of sale.

7. Respondents agreed to abandon, and, in pursuance thereof, did abandon the practice of guaranteeing prices against decline.

8. Respondents have exchanged among themselves, directly and indirectly, information relating to current and future prices, terms, or conditions of sale, and freight charges and allowances or deductions which are made therefrom.

9. Respondent manufacturers have agreed to adopt, maintain, and use, and, in pursuance thereof, have adopted, maintained, and used uniform standards or specifications for sizes, weights, and descriptions for twine products for pricing purposes, and have agreed to fix, establish, and maintain, and, in pursuance thereof, have fixed, established, and maintained substantially uniform differentials in prices between twine products of uniformly varying sizes, weights, and descriptions.

PAR. 5. The effects of the adoption and use by respondents of the practices and activities hereinabove found in connection with their sale of twine products are that:

1. They stifle and eliminate price competition and restrain trade between respondents.

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2. They result in substantially uniform differentials in price between products of uniformly varying sizes, weights and descriptions.

3. They result in substantially identical prices, trade discounts, terms or conditions of sale and freight allowances.

PAR. 6. The combination, conspiracy, agreements, and understandings of the respondents and the acts, practices, pricing methods, devices, and policies found herein are unfair and to the prejudice of the public; deprive the public of the benefit of competition; have dangerous tendencies and capacities to unlawfully restrain commerce in the said products; have hindered, frustrated, suppressed, and eliminated competition in said products in commerce.

CONCLUSION

The aforesaid acts and practices of respondents as hereinabove set out 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

This proceeding having been heard by a trial examiner of the Federal Trade Commission upon the complaint of the Commission and the answers of respondents, in which answers respondents admit certain of the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts; and the said trial examiner having made his findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act,

It is ordered, That Bibb Manufacturing Co., a corporation, Shuford Mills, Incorporated, a corporation, Oakdale Cotton Mills, a corporation, Cleveland Mill & Power Co., a corporation, January & Wood Co., a corporation, Rockford Manufacturing Co., a corporation, Mount Vernon-Woodberry Mills, Inc., a corporation, Houston Cotton Mills Co., a corporation, Samson Cordage Works, a corporation, and E. Owen Fitzsimons, an individual, Bascom B. Blackwelder, an individual, and Paul B. Halstead, an individual, their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of twine products, including cotton wrapping twines, sewing twines, polished twines, tobacco twines, pea twines, bean twines, hop twines, hose cords, and other cotton twines similarly

construed or used for substantially similar purposes as any of the foregoing, but not including carded sales yarn except insofar as same may be manufactured and sold for use as twine, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, mutual agreement, combination, or conspiracy between and among any two or more of said respondents, or between any one or more of said respondents and another or others not parties hereto, to do or perform any of the following:

1. Fixing, establishing, or maintaining prices, discounts, terms, or conditions of sale.
2. Fixing, modifying, or eliminating trade discounts.
3. Curtailing, restricting, or regulating production by reducing the total number of work hours or by any other means.
4. Making uniform deductions or allowances from actual shipping costs.
5. Denying purchasers the benefit of market price declines.
6. Exchanging, distributing, or relaying between or among the respondents, or between or among any of them, or between or among any of their representatives, agents, or employees, or through any medium or central agency, the following information with respect to the business practices or sales policies of any particular respondent, to wit: Current or future prices, or terms or conditions of sale, or trade discounts, or freight charges or allowances therefrom, or price quotations submitted or to be submitted on any prospective piece of business.
7. Establishing standards or specifications for sizes, weights, and descriptions for twine products when the action taken or information exchanged is for the purpose of fixing or maintaining prices or differentials in prices, or has the tendency to fix or maintain prices or differentials in prices;

Provided however, That the prohibitions contained in subparagraphs 3 and 6 above shall not be applicable to nor operative against respondent, E. Owen Fitzsimons.

It is further ordered, That nothing contained herein shall be construed to prohibit (a) any seller from independently entering into an agreement with a purchaser as to the price to be charged such purchaser, the terms or conditions of sale, trade discounts, weights, grades, standards, or specifications for twine products, price differentials, and freight charges or allowances, independently determined and offered by either such seller or buyer and independently accepted by either such seller or buyer in any bona fide transaction, or (b) any pro-

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spective seller from making, or any prospective purchaser from receiving, an offer of sale in contemplation of a bona fide transaction between such prospective seller and prospective purchaser; *Provided*, That such agreement or offer of sale is not for the purpose nor has the effect of restraining trade.

It is further ordered, That nothing contained herein shall be construed to prohibit any of the respondents from entering into such contracts or agreements relating to the maintenance of resale prices as are permitted under the provisions of the Miller-Tydings Act.

It is further ordered, That nothing contained herein shall be construed to affect the duty, authority, or power of the Commission to reopen this proceeding, as provided for by law, and, as provided for by law to alter, modify, or set aside, in whole or in part, any provisions of this order whenever, in the opinion of the Commission, conditions of fact or of law have so changed as to require such action or if the public interest shall so require.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That respondents, Bibb Manufacturing Co., Shuford Mills, Inc., Oakdale Cotton Mills, Cleveland Mill & Power Co., January & Wood Co., Rockford Manufacturing Co., Mount Vernon-Woodberry Mills, Inc., Houston Cotton Mills Co., Samson Cordage Works, E. Owen Fitzsimons, Bascom B. Blackwelder, and Paul B. Halstead shall, within 60 days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of March 27, 1951].

Syllabus

IN THE MATTER OF
CARTER PRODUCTS, INC., ET AL.

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

Docket 4970. Complaint, May 28, 1943—Decision, Mar. 28, 1951

No rational man is opposed to advertising or to any other legitimate form of merchandising, nor is the Commission or any Commissioner or Commission employee so opposed.

The Commission is not opposed to self-medication, nor to the manufacture and sale of laxative compounds when the consumer—who is often the unjust, and sometimes tragic victim in the general field of self-medication associated with the word "laxative"—is warned and assured of protection against fraud or against any condition or practice which would be inimical to his health or which would result in the pilfering of his pocketbook.

As respects the false advertising of medicinal products, there is every reason to believe that the consumers who are victims of misrepresentation of such products are all too often the less-informed and less able to protect themselves and their pocketbooks, and that all too often, weakened by fear of illness and burdensome medical expenses, and by unemployment, they become the ready victims of those who would thus prey upon them; and the time has long passed when those engaged in the manufacture and distribution of medicinal preparations and in associated advertising must again take steps—as they did some years ago—to rid the house of those who have less regard for the truth of their representations to the public.

As regards such practices, the Commission is ready and anxious to cooperate in every way and at all times with everyone interested in protecting such honorable professions and businesses as the advertising profession, and the manufacture and distribution of medicinal preparations, from the unlawful practices of the few.

Unrestricted consumption of laxative compounds often invites injury to the health of the consumer; and the advertising columns in many publications now indicate all too clearly that the consumption of laxatives has become a fad or a craze induced by high-pressure advertising practices.

As respects the inclusion in cease and desist orders in false and misleading advertising cases of advertising agencies as involved therein and as concerned in the instant proceeding, it appearing that the Commission has included such agencies in orders on some occasions, and in others has not done so, the Commission will be asked to instruct its staff that hereafter advertising agencies will be cited in every case when the facts warrant such action.

Where a corporation engaged in the interstate sale and distribution of its Carter's Little Liver Pills through wholesale drug jobbers, chain stores, and department stores; through words, phrases, statements, and representations in advertising material, disseminated by it, directly and by implication—

(a) Represented that said preparation represented a fundamental principle of nature in self-treatment; the facts being that since laxation afforded by

an irritant laxative or cathartic is not a normal physiological method of evacuation and not based on any principle having relation to natural bowel motility, such representation was not true;

- (b) Represented that said preparation was a cure and remedy and an effective treatment for constipation and would bring on, help, and restore regularity of bowel movement;

The facts being that said product was incapable of curing or favorably influencing the underlying causes of constipation, and had no therapeutic effect other than to produce laxation or temporary greater frequency of bowel movement; it would tend to aggravate spasticity; and habitual use of irritant laxatives tends to produce irregularity rather than to restore regularity;

- (c) Represented that said preparation contained no strong medicine, and that it was harmless and safe for those who had constipation or were suffering from delay in bowel movement or in whom a failure to digest food had occurred;

The facts being that the ingredients thereof were irritant laxatives and the product was potentially injurious to those suffering from symptoms of appendicitis; might cause perforation of the intestine where delay in evacuation was due to obstruction in the tract; use thereof by some persons might be attended with griping and stomach discomfort; and might increase and aggravate constipation of the spastic type; and, as a laxative, was contra-indicated in many conditions;

- (d) Represented falsely that said preparation was a competent and effective treatment for sluggish liver functioning, which would make bile flow freely, increase or beneficially influence the formation, secretion or flow thereof, and prevent or overcome discomfort caused by overindulgence in food or other good times; that it provided two-way relief, and possessed therapeutic properties in addition to those afforded by laxative action;

- (e) Represented falsely that said preparation would cause the proper flow of the gastric juices and natural vital digestive juices, would lessen food decay and was based on the fundamental principle of the operation of the digestive system, and helped digestion, including the stopping of fatty indigestion; and would regulate digestion and the digestive system and thus follow nature's own order for regularity, and would so regulate the digestion that it made the user "fit as a fiddle" and full of "bounce";

The facts being that such value as it might have in inducing well-being would be limited to instances in which indispositions impairing such state were due solely to constipation;

- (f) Falsely represented that constipation poisoned the body;

- (g) Represented that said preparation had value in the treatment of headache, ugly complexion, bad breath, coated tongue, or a bad taste in the mouth, or for conditions in which an individual felt "down and out," "blue," "down in the dumps," etc.;

The facts being that such symptoms might occur in almost any condition affecting the body and said preparation would have no therapeutic value in their treatment when they were not associated with constipation, and then would afford only temporary relief;

- (h) Represented that said preparation was a competent or effective treatment for indigestion or retarded digestion;

The facts being that when failure to digest occurs, diarrhea rather than constipation frequently ensues; use of said preparation would not bring about digestion of food in either event; and while such discomfort of the gastrointestinal tract as may result from constipation may be relieved temporarily by the release of pressure in the colon afforded by laxation, treatment of disturbance or irritation of the intestines looks to soothing such conditions rather than the introduction of an additional irritant in the form of a laxative;

- (i) Represented falsely that said preparation was a competent or effective treatment for biliousness; and,
- (j) Represented falsely through the use of the word "liver" in the name of its said product, that it would have some therapeutic action on the liver and was for use in the treatment of disorders thereof;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby induce its purchase of said preparation:

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

As respects the charge in the complaint that said advertisements constituted false advertisements for the reason that they failed to reveal certain facts as to potential dangers inherent in the use of said preparation under prescribed or usual conditions, by persons suffering from habitual pains, nausea, vomiting or other symptoms of appendicitis: the Commission was unable to find that the potential danger to the public health inherent in the use of said preparation was so serious as to require a disclosure in the advertising of the matters concerned in said charge, and under the circumstances was of the opinion that dismissal thereof without prejudice was warranted.

With regard to the charge of the complaint that respondent falsely represented that calomel was a drastic and dangerous laxative compound, the use of which was an ordeal, and the fact that testimony was introduced to show, among other things, that calomel taken in proper doses would not be painful: it was believed that said charges were not supported by the record and they were accordingly dismissed.

As respects the inclusion in the proceeding as respondent, of an advertising agency which assisted respondent Carter Products in the preparation and placing of the various advertisements used in promoting the sale of the preparation involved: it appeared that its service and participation terminated about one year prior to the institution of the proceeding and therefore that the public interest did not require that said agency should be included as a party to the order to cease and desist, and the charges of the complaint were accordingly dismissed without prejudice as they related to said advertising agency.

As respects the request that the Commission declare it unqualifiedly unsafe to consume the product involved—a statement which the Commission did not believe was justified by the evidence—the authority of the Commission extends only to false and deceptive advertising and practices in the sale and distribution in interstate commerce of such products, and there are

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other agencies of the Government concerned with the advancement and welfare of the public health, involving, often, interrelated obligations of the authority conferred on the Commission and those of other agencies.

With regard to the fact that the record in the instant case contains an exceptionally fine body of factual testimony relative to the product involved and to the effect of laxatives on the human system, the Commission decided that said body of factual testimony which was obtained through expenditure of public funds, in part, should not be permitted to become buried in Government files, and that it would be called to the attention of all other Government agencies which were interested; that the Commission should thus offer to cooperate in making use of it for the common good, and would itself hereafter seek every opportunity to make use of comparable evidence so that the maximum of possible contribution should be made to the consumers.

As respects the public interest as involved and affected by false and misleading advertising of medicinal preparations, and as raised by the instant proceeding: the Commission will seek, as set forth in its recent statement of policy, to enjoin such practices whenever such action is warranted in the public interest, so that the day of judgment and penalty may be brought nearer to the day of commission of fraud.

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

Mr. Fletcher G. Cohn for the Commission.

Breed, Abbott & Morgan, 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 Carter Products, Inc., a corporation, and Street & Finney, 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, Carter Products, Inc., is a corporation existing under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 53 Park Place, New York, N. Y.

PAR. 2. Respondent, Carter Products, Inc., is now, and for more than 1 year last past has been, engaged in the sale and distribution of a medicinal preparation designated Carter's Little Liver Pills in commerce among and between the various States of the United States and in the District of Columbia. This preparation is distributed by respondent, Carter Products, Inc., through wholesale drug jobbers, chain stores, and department stores.

This respondent causes the said preparation, Carter's Little Liver Pills, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia.

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

PAR. 3. Respondent, Street & Finney, is a corporation existing under the laws of the State of New York with its principal place of business located at 330 West Forty-second Street, New York, N. Y. This respondent is an advertising agency and, as such, is engaged in formulating, editing, testing, selling, and advising, its clients on advertising matters.

This respondent is the advertising representative of respondent Carter Products, Inc., and prepares, edits, tests, and places all advertising material used by respondent, Carter Products, Inc., in promoting the sale of said medicinal preparation Carter's Little Liver Pills.

PAR. 4. The respondents act in conjunction and cooperation with one another in the performance of the acts and practices hereinafter alleged.

PAR. 5. In furtherance of the sale and distribution of the aforesaid medicinal preparation, the said respondents have disseminated, and are now disseminating, and have caused, and are now causing, the dissemination of, false advertisements concerning the said medicinal preparation, Carter's Little Liver Pills, and, disparaging statements and representations of the drug Calomel and of other laxative preparations, by the United States mails and by various means in commerce, as commerce is defined in the Federal Trade Commission Act; and these respondents have also disseminated, and are now disseminating, and have caused, and are now causing, the dissemination of false advertisements concerning the said medicinal preparation, designated as aforesaid, and disparaging statements and representations, as aforesaid, by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the said preparation Carter's Little Liver Pills in commerce, as commerce is defined in the Federal Trade Commission Act.

PAR. 6. Through the use of words, phrases, statements, and representations, appearing in the advertising material disseminated and caused to be disseminated by respondents as aforesaid, which purport to be descriptive of the preparation Carter's Little Liver Pills and

descriptive of the therapeutic action, the result, and value of such action of this said preparation, sold and distributed by the respondent, Carter Products, Inc., as aforesaid, respondents represent directly and by implication; among other things, that the preparation Carter's Little Liver Pills represents a fundamental principle of nature in self-treatment and that it is a competent and effective treatment for a condition designated by respondents as "a sluggish liver"; that Carter's Little Liver Pills will "wake up the flow of bile" and is effective in making "bile flow freely" by getting the liver back to normal and back to producing; that it will cause the proper flow of the gastric juices, the natural vital digestive juices, and the vital alkaline juices; that it is based on the fundamental principle of the operation of the digestive system and will "help food digestion," "lessen food decay," regulate digestion, and the digestive system, bring on, help, and restore regularity and is a cure and remedy, and constitutes a competent and effective treatment, for constipation; that it will clear away the "dark clouds of listlessness and despondency" and "give one's personality a chance"; that it will "keep up one's pep and vigor"; that it will "make one feel good and up to par again" and "keep one smiling and happy"; that it will "eliminate those uncomfortable feelings" that cause a bad disposition and will keep good dispositions "cheerful, happy, and a regular thing"; that it will help in more ways than one to make one feel better again fast and differently and will provide two-way relief.

Respondents further represent, among other things, in the manner, means, and method aforesaid, that the preparation Carter's Little Liver Pills follows nature's own order for regularity and so regulates the digestive process that, if it is taken as directed before retiring at night, one will awaken the following morning feeling the way one wants to feel, "full of normal old-time pep and vigor," "alive," "alert," "cheerful," "peppy," "eager," "robust," "bright," "lively," "full of pep," "bounce," "energy," "sparkle," "snap," "go and vigor," "spry and chipper again," "perked up," "up on your toes," "up to snuff," "up to par again," "fit as a fiddle," "chipper-as-a-chipmunk," "on top of the world," "up and up," "rarin' to go," a new person ready to "jump out," or "roll out," of bed, "singing like a lark," "singing a song for the sheer joy of living," "fresh as a daisy," "glad to be alive," "ready for a big breakfast."

Respondents further represent, among other things, in the manner, means, and method aforesaid, that the preparation Carter's Little Liver Pills will so influence the production or flow of liver bile that one can overeat and overindulge in "good times" without the usual

ordinary discomforts resulting therefrom; and, if one has overeaten or overindulged in "good times," that the preparation Carter's Little Liver Pills, by its influence on the production or flow of liver bile, will overcome the discomforts that usually and ordinarily follow such indiscretion and will enable one to wake up, "roll out of bed," "rosy and bright," "clear eyed and steady-nerved," "feeling just wonderful," "feeling like a million," free from that "blue-Monday feeling," "ready for a great big breakfast," "alert and ready for work."

Respondents further represent, among other things, in the manner, means, and method aforesaid, that the preparation Carter's Little Liver Pills will enable those engaged in war-production work to avoid awakening in the mornings "feeling bad" and "dragging along all day" and will enable them to "roll out of bed on their toes," "ready for a big breakfast and a bigger day's work."

Respondents further represent, among other things, in the manner, means, and method aforesaid, that the preparation Carter's Little Liver Pills does not contain any strong medicine; that it is safe to use; that it is not an ordinary laxative but possesses therapeutic properties over and above and in addition to its laxative action.

PAR. 7. Through the use of the words, phrases, statements, and representations appearing in the advertising material disseminated and caused to be disseminated by respondents, as aforesaid, which purport to be descriptive of various physical and mental conditions, respondents represent, directly and by implication, among other things, that if an individual feels "down-and-out," "blue," "down-in-the-mouth," "tired out," "sunk," "logy," "discouraged," "depressed," "headachy," "sluggish," "all-in," "listless," "mean," "low," "peevish," "cross," "tired," "stuffy," "heavy," "miserable," "fagged out," or "dizzy"; or if an individual is "sour," "grouchy," "cross," "bilious," "irritable," "low in spirit," "cranky," "peevish," "listless," "tired of life," or "tired-out"; or if an individual has "headaches," "an ugly complexion," "bad breadth," "coated tongue," "bad taste in the mouth," "nausea," "indigestion or sluggish lazy digestion," or "a cranky, dull, sluggish disposition"; or if an individual has that "fagged out," "all-in" "down-and-out," "dull," "low," "cranky," "sullen," "what's-the-use," "bogged-down," "grompy," "listless," "sour," "sunk," "tired," "run-down," "grouchy," "gloomy," "blue," "spring fever" feeling; or if an individual becomes "moody," "temperamental" or "tired out," or if an individual doesn't feel "up to par," "all to the good"; and, "the world looks black," then such person is exhibiting symptoms, manifestations, or conditions indicating irregularity of bowel movement or constipation; that irregularity of bowel

movement or constipation is the cause of such symptoms, manifestations, or conditions; and that the preparation Carter's Little Liver Pills is a competent and effective treatment for such symptoms, manifestations, and conditions.

Respondents further represent, among other things, in the manner, means, and method aforesaid, that constipation poisons one's body.

PAR. 8. Through the use of words, phrases, statements, and representations appearing in the advertising material disseminated and caused to be disseminated by respondents, as aforesaid, which purport to be descriptive of the therapeutic action, the result and value of such action, of calomel and other ordinary laxative preparations or compounds, sold on the market, as well as a comparison thereof with the action and result afforded by the preparation Carter's Little Liver Pills, respondents represent, directly and by implication, among other things, that calomel is a harsh, drastic, dangerous laxative, the use of which is "an ordeal" and "puts one through the wringer"; that other ordinary laxative preparations or compounds sold on the market do not possess the same therapeutic action, nor will the use thereof be as effective, or produce as beneficial results, as the preparation Carter's Little Liver Pills; and that the preparation Carter Little Liver Pills is superior to such laxative preparations or compounds.

PAR. 9. The foregoing representations and implications, and others of similar import not specifically set out herein, appearing in respondents' advertising material, disseminated and caused to be disseminated as aforesaid, are grossly exaggerated, false, and misleading.

The preparation Carter's Little Liver Pills does not represent a fundamental principal of nature in self-treatment. It will not wake up the flow of bile. It is not effective in making bile flow freely. It will not get the liver back to normal or back to producing. It will not cause the proper flow of the gastric juices, of the natural vital digestive juices or of the vital alkaline juices. It is not based on the fundamental principle of the operation of the digestive system. It will not help "food digestion." It will not lessen "food decay." It will not regulate digestion or the digestive system, but is likely to interfere with the digestive processes. It will not bring on, help, or restore regularity. It is not a cure or remedy, nor does it constitute a competent or effective treatment, for constipation. It will not clear away the "dark clouds of listlessness or despondency." It will not "keep up one's pep or vigor." It will not "make one feel good or up to par again." It will not "keep one smiling or happy." It will not keep one's disposition cheerful and happy or a cheerful happy disposition a regular thing. It will not help in more ways than one to

make one feel better again, fast and differently. It does not provide fast two-way relief.

There is no condition, disease, or disorder of the liver known, designated, or recognized by competent scientific or medical authority as a sluggish liver. The preparation Carter's Little Liver Pills will have no therapeutic action on the liver, and it is not a competent or effective treatment for any condition, disease, or disorder of the liver under whatever name designated.

The preparation Carter's Little Liver Pills does not follow nature's own order for regularity, and it does not so regulate the digestive processes that, if taken as directed before retiring at night, one will awaken feeling the way one wants to feel. It will not make one feel "full of normal old time pep and vigor," "alive," "alert," "cheerful," "peppy," "eager," "robust," "bright," "lively," "full of pep," "bounce," "energy," "sparkle," "snap," "go and vigor," "spry and chipper again," "perked up," "up on your toes," "up to snuff," "up to par again," "fit as a fiddle," "chipper-as-a-chipmunk," "on top of the world," "up and up," "rarin' to go," a new person ready to "jump out," or "roll out," of bed, "singing like a lark," "singing a song for the sheer joy of living," "fresh as a daisy," "glad to be alive," "ready for a big breakfast."

The preparation Carter's Little Liver Pills will not influence the production or flow of liver bile so as to enable one to overeat or overindulge in "good times" without experiencing the usual, ordinary discomforts resulting therefrom. If one has overeaten or overindulged in "good times," the preparation Carter's Little Liver Pills will not influence the production or flow of liver bile so as to overcome the discomforts that usually and ordinarily follow such indiscretion and enable one to wake up, "roll out of bed," "rosy and bright," "clear eyed and steady-nerved," "feeling just wonderful," "feeling like a million," free from that "Blue-Monday feeling," "ready for a great big breakfast," "alert and ready for work."

The preparation Carter's Little Liver Pills will not enable those engaged in war production work to avoid awakening in the morning "feeling bad" and "dragging along all day." It will not enable such persons to "roll out of bed on their toes," "ready for a big breakfast and a bigger day's work."

The preparation Carter's Little Liver Pills does contain strong medicines, and it is not safe to use under all circumstances. It is an ordinary laxative or cathartic and possesses no therapeutic properties over, above, or in addition to, its laxative action.

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PAR. 10. The disorders or conditions such as, an individual feeling "down-and-out," "blue," "down-in-the-mouth," "tired out," "sunk," "logy," "discouraged," "depressed," "all-in," "mean," "low," "peevish," "cross," "tired," "stuffy," "heavy," "miserable," "fagged out," or "dizzy"; or if an individual is "sour," "grouchy," "cross," "irritable," "low in spirit," "cranky," "peevish," "tired of life," or "tired-out"; or if an individual has "an ugly complexion," "bad breath," "bad taste in the mouth," "nausea," "indigestion or a sluggish lazy digestion," or "a cranky, dull, sluggish disposition"; or if an individual has that "fagged-out," "all-in," "down-and-out," "dull," "low," "cranky," "sullen," "what's-the-use," "bogged-down," "grumpy," "sour," "sunk," "tired," "run-down," "grouchy," "gloomy," "blue," "spring fever" feeling; or if an individual becomes "moody," "temperamental" or "tired out," or if an individual doesn't feel "up to par," "all to the good," and "the world looks black," are not symptoms, manifestations, or conditions indicating irregularity of bowel movement or of constipation. The existence of one or more of such symptoms, manifestations, or conditions does not indicate that the individual is suffering from irregularity of bowel movement or from constipation. The preparation Carter's Little Liver Pills is not a competent or effective treatment for such symptoms, manifestations, or conditions.

"Headache," "sluggishness," "listlessness," and "coated tongue" may, and sometimes do, accompany irregularity of bowel movement, and they are sometimes associated with, and are sometimes recognized as symptoms of constipation. When such symptoms, manifestations or conditions are caused by, or are associated with, irregularity of bowel movement or constipation, then the preparation Carter's Little Liver Pills will have no greater therapeutic value in the treatment thereof than the temporary relief afforded by an evacuation of the bowels.

On the other hand, however, "headache," "sluggishness," "listlessness," and "coated tongue" are symptoms of a symptom complex sometimes referred to as "biliousness." "Biliousness" is a general term often used in a broad sense to refer to a group of symptoms or conditions supposed by some—without any supporting scientific evidence—to be caused by or due to disorders in the secretion and flow of bile. Carter's Little Liver Pills will have no therapeutic action, effect, or influence on the secretion and flow of bile and will therefore have no therapeutic value, whatever, in the treatment of any symptom, manifestation, or condition, under whatever name or names designated, caused by or due to disorders in the secretion and flow of bile.

According to the consensus of opinion of recognized scientific and medical authority, constipation does not poison one's body.

PAR. 11. Calomel used with proper caution and given in proper doses for, and taken in a proper manner to act as, a laxative, is not dangerous; and it is no harsher or more drastic in its action, nor is the taking thereof any more of "an ordeal," nor does it "put one through the wringer" to any greater degree, than the preparation Carter's Little Liver Pills.

The preparation Carter's Little Liver Pills is an ordinary laxative or cathartic possessing no other therapeutic property. Its action is no different from, nor will the results obtained from its use be any more effective or beneficial than, that obtained from the use of many other ordinary laxative preparations or compounds, containing vegetable laxative or cathartic drugs, sold on the market. It is not superior to such other laxative preparations or compounds.

PAR. 12. In addition to the false and misleading representations appearing in the advertising material disseminated, as aforesaid, respondents are engaged in further false and misleading representation in reference to the preparation Carter's Little Liver Pills. Through, and by, the use of the word "Liver;" in the name Carter's Little Liver Pills used by respondents in the aforesaid advertising material to identify and designate the medicinal preparation sold and distributed, as aforesaid, respondents represent, directly and by implication, that the preparation Carter's Little Liver Pills, is for use in the treatment of conditions, disorders, and diseases of the liver and that said preparation will have some therapeutic action, effect, and influence on the liver.

The preparation Carter's Little Liver Pills contains no ingredient or ingredients, recognized by competent medicinal or scientific authority, either alone or in any combination of the one with the other, as having any therapeutic value in the treatment of any condition, disorder, or disease of the liver.

The ingredients in the preparation Carter's Little Liver Pills, alone or in any combination of the one with the other, will have no therapeutic action, effect, or influence, corrective or otherwise, on the liver.

PAR. 13. The advertisements, disseminated and caused to be disseminated by the respondents, as aforesaid, constitute false advertisements for the further reason that they represent the preparation Carter's Little Liver Pills as a competent, effective, safe, treatment for common and recurring pains and fail to reveal facts material in the light of such representations or material in respect to the consequences that may result from the use of the preparation under con-

ditions described in said advertisements or under such conditions as are customary or usual.

The preparation Carter's Little Liver Pills, sold and distributed by respondent, Carter Products, Inc., as aforesaid, is an irritant laxative or cathartic and is potentially dangerous if taken by persons suffering from abdominal pains, nausea, vomiting, or other symptoms of appendicitis.

PAR. 14. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations, and others of similar import not specifically set out herein, appearing in respondents' advertising material, disseminated and caused to be disseminated, as aforesaid, do not accurately disclose or describe the preparation Carter's Little Liver Pills, nor truthfully set forth, disclose, or describe the true therapeutic action, or the true results to be obtained from the use, of said preparation, and has had and now has the tendency and capacity to, and might easily, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief: That the use of the preparation Carter's Little Liver Pills will have the effect and accomplish the results claimed for it, by the respondents as set forth in paragraphs 6 and 7 hereinabove; and, as further represented by respondents, that calomel, when taken in proper doses for and as a laxative, is harsh and drastic in its action; that the preparation Carter's Little Liver Pills, is superior to calomel and superior to other ordinary laxative preparations or compounds sold on the market; that it is for use in the treatment of conditions, disorders, and diseases of the liver, and that it will have some therapeutic action, effect, and influence on the liver; that it is safe to take; and has had and now has the tendency and capacity to, and might easily, induce a substantial portion of the purchasing public, because of such erroneous and mistaken beliefs, to purchase the aforesaid preparation Carter's Little Liver Pills.

PAR. 15. 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 Commission on May 28, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Carter Products, Inc., a corporation, and Street & Finney, a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in

violation of the provisions of that act. After the filing by respondents of their joint 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, this proceeding came on for final hearing before the Commission on the complaint, answer, testimony, and other evidence, the report of the trial examiner upon the facts and the exceptions filed thereto, briefs and supplemental memoranda briefs in support of and in opposition to the complaint, and oral argument and supplemental oral argument; and the Commission, having duly considered the matter, including the exceptions filed by respondents, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Carter Products, Inc. (hereinafter referred to as the respondent), is a corporation organized and existing under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 53 Park Place, New York, N. Y.

PAR. 2. Respondent, Carter Products, Inc., is now, and for many years past has been, engaged in the sale and distribution through wholesale drug jobbers, chain stores, and department stores, of a medicinal preparation designated Carter's Little Liver Pills. When sold, respondent's product is transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia, and respondent maintains, and at all times mentioned herein has maintained, a course of trade in the aforesaid preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In furtherance of the sale and distribution of the aforesaid medicinal preparation, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning said preparation by the United States mails and various means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has disseminated and is now disseminating, and has caused and is now causing the dissemi-

nation of, advertisements concerning such preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase thereof in commerce, as commerce is defined in the Federal Trade Commission Act.

PAR. 4. (a) Through the use of words, phrases, statements, and representations, appearing in the advertising material disseminated and caused to be disseminated by the respondent, as aforesaid, which purport to be descriptive of the preparation Carter's Little Liver Pills and descriptive of the therapeutic action and result of such action of this preparation, respondent represents directly and by implication, among other things, that the preparation Carter's Little Liver Pills represents a fundamental principal of nature in self-treatment, that it is a cure and remedy and constitutes a competent and effective treatment for constipation, and will bring on, help, and restore regularity of bowel movement.

Respondent further represents, in the manner, means, and method aforesaid, that the preparation Carter's Little Liver Pills does not contain any strong medicine, and that it is harmless and safe for use by those individuals who have constipation or are experiencing delay in bowel movement or in whom a failure to digest food has occurred.

(b) Respondent further represents, in the advertising disseminated and caused to be disseminated in the manner aforesaid, that the preparation Carter's Little Liver Pills is a competent and effective treatment for sluggish liver function, liver ills, and disorders affecting the liver; that its use will "wake up the flow of bile," will make "bile flow freely" by getting the liver back to normal and back to producing; that its use will so influence the production or flow of liver bile that one can overeat and overindulge in "good times" without the ordinary discomforts resulting therefrom; that if one has overeaten and overindulged in "good times" that the preparation Carter's Little Liver Pills, by its influence on the production or flow of liver bile, will overcome the discomforts that usually and ordinarily follow such indiscretion and will enable such user to wake up "clear-eyed and steady-nerved," "feeling just wonderful," and "alert and ready for work"; that such preparation through its favorable influence on bile flow and in helping to restore regularity provides two-way relief, and that it is not an ordinary laxative but possesses therapeutic properties over and above and in addition to its laxative action.

(c) Through the use of the words, phrases, statements, and representations, appearing in the advertising material disseminated and caused to be disseminated by the respondent, as aforesaid, respondent

represents that use of its preparation will cause the proper flow of the gastric juices and natural vital digestive juices; that it will lessen food decay and is based on the fundamental principle of the operation of the digestive system; that such preparation will help food digestion including the stopping of fatty indigestion and will regulate digestion and the digestive system; and so follows nature's own order for regularity and so regulates digestion that it will make the user "fit as a fiddle," and full of "bounce."

Respondent further represents that constipation poisons the body.

(d) Through the use of the words, phrases, statements, and representations, appearing in the advertising material disseminated and caused to be disseminated by respondent, as aforesaid, which purport to be descriptive of various physical and mental conditions, respondent represents directly and by implication, among other things, that when caused by constipation or irregularity of bowel movement the preparation designated Carter's Little Liver Pills is a competent and effective treatment for those conditions in which an individual feels "Down-and-out," "blue," "down-in-the dumps," "worn out," "sunk," "logy," "depressed," "headachy," "sluggish," "all-in," "listless," "mean," "low," "cross," "tired," "stuffy," "heavy," "miserable," "sour," "grouchy," "bilious," "irritable," "cranky," "peevish," "fagged out," "dull," "sullen," "what's-the-use," "bogged down," "grumpy," "run-down," and "gloomy."

Respondent further represents that the preparation designated Carter's Little Liver Pills is a competent and effective treatment for headache, ugly complexion, bad breath, coated tongue, bad taste in the mouth, "lazy digestion," and "indigestion," when caused by constipation.

PAR. 5. The quantitative formula of Carter's Little Liver Pills is as follows: Podophyllum resin U. S. P., $\frac{1}{16}$ grain; podophyllum purified aloes, $\frac{1}{4}$ grain. Podophyllum resin, also known as podophyllin, is the resin of the dried root of the mandrake or mayapple plant. Aloes is the dried juice of the aloe plant. Podophyllin is used as a laxative, purgative or drastic cathartic, and aloes is one of the irritant cathartics ranking with senna, rhubarb, and cascara sagrada.

PAR. 6. Respondent's product, when used as directed, has laxative properties. Its use serves to increase temporarily the motility of the large bowel by irritation and thus induces partial evacuation of the large intestine. Inasmuch as the laxation afforded by an irritant laxative or cathartic is not a normal physiological method of evacuation and is not based on any principle having relation to natural bowel motility, it is not true as stated in respondent's advertising that

the preparation represents a fundamental principle of nature in self-treatment.

PAR. 7. In a scientific sense, constipation is a term used to connote a slower evacuation of the large bowel than the average normal evacuation of the individual. Although it has reference to delay in the passage of indigestible residues through the alimentary tract and to infrequency of bowel action, and may be used to describe the condition in which the stools are dry and hard, constipation has been described also as being that condition which causes a person to believe that a cathartic is necessary to cause a bowel movement. Normal frequency in bowel movement varies widely among individuals. Because varied notions obtain with respect to what represents normal frequency, the average layman may not diagnose constipation properly and there is a tendency for self-diagnosis to be made on the basis of symptoms having no relationship to constipation.

In its chronic form, there are two general types of constipation: (1) Spastic, and (2) atonic. The state of the musculature of the large bowel, and the neuromusculature system of the large bowel differs in the two conditions named. In the spastic variety, the musculature is abnormally contracted and rigid and does not propel the contents thereof forward in a normal manner. In the atonic condition usually associated with an enlargement of the large bowel due to tremendously increased content, the musculature does not contract and retain its tonus or state of partial contraction. Atonic constipation is attributable to constitutional weakness of the muscles of the colon and is supposed to occur principally in the rectum, while the spastic type is supposed to be due principally to anxiety, worry, or nervous strain. Among the causes of constipation or irregularity of bowel movement are improper diet and stool habits, insufficient intake of fluids and variations or obstructions of the alimentary tract such as fissure, cancer, and debilitating conditions. Factors predisposing to constipation are numerous and thorough study by the physician is necessary before comprehensive treatment is undertaken. Competent medical treatment for chronic constipation, therefore, varies in individual cases but is directed to correcting the basic conditions which are responsible. Respondent's product is incapable of remedying or curing the underlying causes of constipation, or favorably influencing them in any way. Carter's Little Liver Pills will have no therapeutic effect on constipation other than to produce laxation or temporary greater frequency of bowel movement. With regard to the type of constipation known as spastic, Carter's Little Liver Pills will tend to aggravate any state of spasticity which is present. It has no therapeutic

value in the treatment of any of the symptoms of constipation in excess of such temporary relief as may be afforded by laxation. The statements appearing in the advertising which represent that Carter's Little Liver Pills are a cure or remedy for and constitute a competent and effective treatment for constipation are false and misleading.

The habitual use of irritant laxatives tends to produce irregularity rather than to restore regularity, and the use of respondent's preparation will not restore regularity of bowel movement.

PAR. 8. The statements appearing in the advertising that respondent's product is composed of two simple vegetable medicines, and containing reference to gentle action purportedly afforded by use of respondent's product, imply that Carter's Little Liver Pills do not contain strong medicines. Carter's Little Liver Pills, however, do contain strong medicines. Although they are obtained by purification of members of the plant kingdom, the ingredients of respondent's pills are irritant purgatives. Aloes taken in sufficient amounts lead to some hyperemia and increased vascularity. Neither aloes nor podophyllin is absorbed to any great extent, and as long as they remain in the colon may be causative of local irritation. Podophyllin was removed from the U. S. Pharmacopoeia when the scientific group responsible for the preparation of this publication recognized it to be a "drastic," or member of that class of irritant drug which includes colocynth and jalap.

Respondent's product is not safe for and harmless to all individuals who are constipated or suffering from delay or irregularity of bowel movement and symptoms thereof, or from failure of digestion. It is potentially injurious if taken by persons suffering from abdominal pains, nausea, vomiting, or other symptoms of appendicitis. It may cause perforation of the intestine in instances where delay in evacuation is due to obstruction in the tract. In some persons, the use of Carter's Little Liver Pills may be attended with griping and stomach discomfort, and when used in the presence of constipation of the spastic type may serve to increase and aggravate such state of spasticity. The use of a laxative is contraindicated in many conditions.

PAR. 9. A determination of those charges of the complaint as relate to what influence, if any, the use of Carter's Little Liver Pills will have on sluggish liver function, the production and flow of bile and other digestive juices, involves consideration of the testimony and other evidence introduced herein which, among other things, describes the physiology of the alimentary tract, the essential nature of bile, and the pathological conditions impeding the formation and flow of bile.

The alimentary system extends from the mouth to the anus and its primary functions are the taking in of food, digestion thereof, and passage of the indigestible or undigested residues to the outside. From the stomach where ingested food has been changed to a thick liquid and subjected to the action of the gastric juices, food passes into the duodenum, which is the upper extremity of the small intestine. At the time of the food's entry into the duodenum, the pancreatic juice and the bile begin to flow and when the mass passes out of the small intestine into the large intestine more than 90 percent of the proteins, fats, and starches have been digested and absorbed into the blood stream. Food residues thereafter are conveyed through the large bowel for evacuation from the body.

The liver is a detoxifying organ and has an important role in the metabolism of proteins, carbohydrates, and fats. Formed in the hepatic cells of the liver and secreted by the liver in the bile are the bile salts, which are indispensable in the emulsification and digestion of fats. In addition to bile salts, bile contains pigment or coloring matter which has no function in digestion, fatty acids, and cholesterol, the latter being an excretion. The bile as normally secreted by the liver and as passed through the biliary system into the intestine is not a laxative fluid, but if extra bile salts are administered by mouth definite laxation can be obtained.

Bile drains from hepatic ducts, is propelled into a channel known as the common bile duct, and then passes into the gall bladder where it undergoes concentration in a degree depending upon the length of time it is permitted to remain in that muscular sac. When the gall bladder subsequently contracts, the fluid returns to the common bile duct and passes into the intestine when the sphincter of Oddi, certain rings of musculature at the end of the duct, relaxes. When this sphincter is contracted, bile does not flow out of the common duct.

PAR. 10. Among the diseases which may interfere with normal formation or flow of bile are stones in the common bile duct, parasites therein or in the hepatic duct, infections in the bile passages, and cancer or tumor. Other ailments interfering with the flow of bile are spasm of the sphincter of Oddi, and inflammation or cancer of the ampulla of Vater or in tissues of the common bile duct. In the presence of these ailments, increased bile flow would cause pain and distress. Carter's Little Liver Pills will have no therapeutic value whatsoever in the presence of the foregoing diseases affecting the liver or the biliary system.

The various ways in which an increase in the flow of bile into the duodenum could be brought about are the following:

- (1) To stimulate the formation or secretion of bile by the liver.
- (2) To cause the gall bladder to contract.
- (3) To cause the sphincter of Oddi to relax.
- (4) To irritate the intestine in such manner as to eliminate the reflex action which causes contraction of the sphincter of Oddi.
- (5) To milk the bile from the bile ducts or from the ampulla of Vater by increasing the motility of the duodenum.

PAR. 11. Received into the record in this proceeding were testimony and other evidence relating to experiments conducted by various scientists which, together with the opinions expressed in support of and in criticism of such experiments by other expert witnesses, are of great importance in determining what effects, if any, the ingestion of Carter's Little Liver Pills will have on the biliary system and the liver.

(a) The experiments conducted by Dr. Lockwood in collaboration with others, which are described in testimony and other evidence introduced into the record by counsel supporting the complaint, appear to have utilized methods permitting the collection by a T-tube, for precise measurement and analysis, of all bile passing through the upper portion of the common bile duct in each of the human subjects participating in the experiments who were patients in an eastern university hospital. The experiments entailed control periods of several days and subsequent periods of administration of Carter's Little Liver Pills. Testimony was received into the record to the effect that comparison of the analyses made for periods of control and administration of respondent's pills show that Carter's Little Liver Pills had no effect on bile volume or on the cholic acid content (bile salts) of the bile.

(b) Other experiments as conducted by Dr. Case were directed to visualization through X-ray examination of the gall bladders of human subjects who had ingested dye substances. X-ray films were taken prior to and subsequent to the ingestion of respondent's product, and visually observed also were the gall bladders of the subjects prior to and subsequent to the ingestion of fats which are known to cause the gall bladder to contract and to stimulate the flow of bile into the intestine. In this connection, evidence was offered tending to show, among other things, that respondent's product brought about no apparent reduction in size of the gall bladders as thus observed and had no effect thereon, whereas the fat meal, on the other hand, significantly reduced their size; other evidence was introduced by respondent tending to show that these experiments could not be so interpreted.

(c) Various of the experiments conducted by Dr. A. C. Ivy utilized dogs as subjects. As a method of collecting bile, in the animals used in several series of experiments, a biliary fistula or tract from the outside of the body to the bile duct itself was made and a catheter inserted. After a period of measurement and analysis of the bile to establish a standard or control, a mixture of aloes and podophyllin was administered and analyses were made of the biliary fluids. According to the exhibits and testimony relating to these experiments introduced by counsel supporting the complaint, the results show no increase in bile volume or cholic acid content during therapy, and generally similar appear to be the results of another series employing bile salts as the control and bile salts plus aloes and podophyllin during the period of therapy, and still another series entailing the repetition of the foregoing experiment on the same animal during various control diets. Respecting another experimental series using dogs, evidence was received to the effect that no significant increase in bile volume cholic acid content, cholesterol or pigment over the control period was afforded by respondent's product, and, according to the evidence adduced in such connection, similar results appeared when Carter's Little Liver Pills were administered to animals in which a condition of constipation had been induced through dietary means, which last referred to experiments, in the opinion of the witness conducting them, indicate also that constipation does not reflexly decrease the output of bile.

In the opinion of various witnesses, experiments on dogs regarding the liver, gall bladder, and bile, may be directly translated to man, since the fundamental mechanisms of the physiology of the liver, gall bladder, and bile ducts in dog and man are identical; consequently, these witnesses testified that the results of experiments to determine the effects of aloes, podophyllin, and Carter's Little Liver Pills on the secretion and flow of bile in dogs are transferable to human beings.

(d) Received into the record also and considered by the Commission are testimony and exhibits respecting a series designed for graphically recording the contractions of the gall bladders of experimental dogs as well as other experiments conducted by Dr. Ivy with human subjects, and those of Dr. Bollman with surgically obstipated dogs.

The data introduced into the record pertaining to the experiments of Dr. Ivy with a group of clinically normal people, in the opinion of the witness, show, among other things, that there is no essential difference in the concentration of bile constituents between drain-

ages of the duodenal fluid performed during the period when Carter's Little Liver Pills were administered and drainages conducted when they were not. Other experiments also utilizing duodenal drainages were made with a group of people giving histories of constipation in which there were alternating periods of control and therapy. As interpreted by the witness, the experimental results constitute a failure to show that the taking of Carter's Little Liver Pills increased the flow of bile into the duodenum.

In connection with the other experiments with human subjects who gave histories of constipation, data respecting a second series of such experiments gave results which, in the opinion of the witness, showed no statistically significant differences in drainages of the duodenal fluid made during the administration of Carter's Little Liver Pills than in drainages before its administration.

PAR. 12. (a) Introduced by respondent into the record also were testimony and data relating to experiments conducted by Dr. Morrison using human beings as subjects and by Dr. Hazleton with dogs. The experiments of Dr. Hazleton, in the opinion of this witness, indicate, among other things, increases in bile volume on the part of dogs receiving intravenous injections of aloes and in animals so injected with podophyllin given separately. Values definitely indicating a state of stimulation were not noted, however, in other experiments where the aloes and podophyllin were introduced into the duodenum itself rather than intravenously. Dr. Morrison testified as to five series of experiments incident to which aloes and podophyllin, Carter's Little Liver Pills, and other substances variously are reported to have been administered to normal and abnormal human subjects and the duodenal fluid collected. The witness expressed the opinion that the volume of duodenal fluid collected from the clinically normal subjects was greater and that such fluid contained higher concentrations of the various biliary constituents than appeared in the drainages of the subjects deemed clinically abnormal. He further stated that, under the conditions of such experiments, aloes and podophyllin and Carter's Little Liver Pills stimulate the flow of bile into the duodenum in response to direct stimulation.

(b) Respondent also introduced into the record testimony and data relating to four separate series of experiments conducted by Dr. Killian, a biochemist, the first series of which appear to have been directed to establishing appropriate procedures for further experiments. Dr. Killian testified that the data for the four human subjects participating in the second series of experiments indicated that the administration of aloes and podophyllin was accompanied by the

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presence of greater amounts of bile acids and cholesterol in the duodenal fluid than were observed in other drainages in which these ingredients were not administered.

The third series of experiments utilized four groups of human subjects giving histories of chronic constipation, which groupings in part were made on the basis of whether subjects' initial biliary values were relatively high or low in control periods. To these groups, there was administered as a stimulant to bile flow, peptone, which is a substance resulting from partial digestion of protein and is used in biliary drainage technique to stimulate the flow of bile in the duodenum. With respect to the two groups so segregated because they were deemed by the witness to display low biliary values during the control periods, in subsequent experimental drainages with peptone as a stimulant to bile flow during periods of control, and in others with peptone as a stimulant during periods of therapy with Carter's Little Liver Pills resulting in laxation, larger amounts of bile pigment, cholic acid, and cholesterol are reported by him to have been present during the periods of therapy among the group of subjects showing initially low values in response to peptone. On the other hand, no substantial increase was found in the other group of persons who initially showed comparatively low values without stimulation but displayed improved values upon the administration of peptone.

As to the fourth series of experiments, the data prepared by Dr. Killian and introduced by respondent in connection therewith indicates, among other things, that larger quantities of bile constituents were present in the duodenal fluids collected for 7 of the 10 subjects during periods of laxation induced by respondent's pills than were present during the periods of control. The scientific witness testifying on behalf of respondent asserted that, on the basis of the third and fourth series of experiments conducted by him, it was his opinion that continued administration of Carter's Little Liver Pills to subjects showing relatively low values for bile constituents in drainages during control periods in response to peptone increased their capacity to respond to the stimulating effect of peptone.

On the basis of the experiments, he expressed the opinion that Carter's Little Liver Pills will increase the flow of bile in persons who during periods when no Carter's Little Liver Pills are taken show low values of biliary constituents in the duodenal fluid in response to a stimulus introduced into the duodenum of the type of peptone and further show diminished rates of intestinal motility as evidenced by abnormal low fresh weight of stools and symptoms depending upon an abnormally low rate of intestinal motility. Such increase will be

contingent, however, upon the pills being given over a sufficient period of time to induce laxation either within the normal limits of fresh weight stools or the maximum laxative effect.

Seven of the subjects in the fourth series who, according to certain exhibits having reference to the histories and progress notes, experienced chronic constipation accompanied by conditions of headache, sluggishness, coated tongue, and gas, respondent contends, were relieved of such associated conditions when therapy with Carter's Little Liver Pills relieved the constipation, and these are the subjects for whom larger amounts of bile constituent were reported during periods of laxation in the experimental data. On the basis of the experiments and all the evidence, respondent contends that a large number of those individuals who suffer from chronic constipation and simultaneously display symptoms such as headache, gas, and listlessness are, in fact, suffering also from subnormal levels of biliary constituents, and that, in such case, a significant increase in biliary levels will ensue with the alleviation of constipation and disappearance of the associated conditions.

PAR. 13. The testimony and evidence relating to the experiments conducted by the scientists who testified at the request of counsel for respondent when viewed in the light of the other evidence adduced is an inadequate basis for a conclusion that the administration of respondent's product alone, without bile stimulant such as peptone, will affect the flow of bile. Even though there were control drainages without therapy when the subjects were constive, it was in only 16 drainages out of several hundred performed during the experiments of Dr. Killian that the witness who conducted such experiments believed any direct relationship was demonstrated between delays in the passage of fecal matter and low values of biliary constituents. The record contains testimony that there is no condition which could arise in a nondiseased liver which would prevent it from forming sufficient bile to properly complement the normal function of the hepatic system and to furnish an ample supply of bile to discharge the role which bile plays in the human system. Constipation does not injure the liver and there is no relationship between constipation and the secretion of bile by the liver.

Duodenal drainages, the experimental method employed by the scientists whose testimony was introduced by respondent, are widely used for diagnostic purposes which look to ascertaining whether bile is present qualitatively but are less reliable for quantitative determination. Such drainages disclose only the concentration of biliary ingredients recovered from the duodenal fluid itself and present also

in the duodenum, in addition to bile, are other digestive fluids. As between different individuals and in the same individual, the secretion of bile is subject to great variation and even a small amount of bile flowing from the gall bladder into the duodenum would give an identical finding with a much larger amount, of hepatic bile. There is nothing to assure that all hepatic fluids are being collected during the period of duodenal drainage inasmuch as some bile may be absorbed into the walls of the duodenum, and there is nothing to prevent some portion of the fluid from passing on into the jejunum of the intestine. The variations to which bile secretion may be subjected make interpretations of experimental results obtained from duodenal drainages extremely hazardous.

In the opinion of the Commission, the greater weight of the testimony and other evidence introduced into the record bearing on the question of what influence, if any, respondent's product may have upon the liver and the biliary system, including that relating to the scientific experiments conducted with various chemical substances and respondent's product, shows that the preparation Carter's Little Liver Pills will not stimulate the formation of the bile by the liver or increase the secretion of bile by the liver. Inasmuch as respondent's product will not cause the gall bladder to contract or cause relaxation of the sphincter of Oddi or serve in any way to milk bile from the ampulla of Vater or the bile duct, the Commission further concludes that respondent's product will not increase the flow of bile into the duodenum.

PAR. 14. The preparation Carter's Little Liver Pills is not an effective treatment for sluggish liver function and will have no therapeutic action on the liver or diseases thereof. It will not wake up the flow of bile, cause the bile to flow freely or favorably influence the formation or flow of bile either as to quantity or the vital and effective constituents thereof. The use of respondent's product therefore will not influence the production or flow of bile so that an individual can overeat and overindulge in "good times" without such ordinary discomforts as may result therefrom, nor enable one who has overeaten and overindulged in "good times" to overcome the discomforts usually incident thereto and enable the user to wake up "clear-eyed and steady-nerved," "feeling just wonderful," and "alert and ready for work." Diarrhea rather than constipation may result from certain of these excesses. Respondent's product will not influence bile flow. Such laxation as may be induced will not prevent or overcome disturbances caused by overindulgence and may serve to further disturb the digestive process. Respondent's product does not provide

two-way relief and has no therapeutic effect beyond that of an ordinary laxative that is to say, of any substance which increases the movements of the large bowel either through irritation, bulk or fluid content.

PAR. 15. Only in the extreme condition where very great quantities of food as such arrive in the large bowel in an undigested state and there remain until bacterial action and putrefaction ensue, can it be said that food decay is present. In such case, the use of respondent's product, as is true of any laxative, will only aid in the outward passage of the food. Normally over ninety percent of digested food is digested before reaching the large bowel and putrefaction is not a factor in food digestion. Respondent's preparation has no chemical action on food which will prevent decay thereof. The representation that respondent's product lessens food decay is misleading. The use of such product will not increase the effectiveness of the gastric juices, cause the proper flow of any of the vital digestive juices, and will not help digestion. The action afforded by respondent's product is not based on a fundamental principle of the operation of the digestive system and its use will not stop fatty indigestion or favorably influence the symptoms thereof, or regulate the digestive system or digestion, or have any salutary effect upon the gastro-intestinal tract aside from affording temporary partial evacuation of the colon. In some instances, the use of respondent's preparation may interfere with and disturb digestion. The representations contained in the advertising, as are made directly and by suggestion, to the effect that use of respondent's product will cause an individual to feel "fit as a fiddle" and full of "bounce," and have a vigorous state of well-being, by reason of the fact that it follows nature's order for regularity and regulates digestion, are false and misleading. Its use does not induce natural regularity. Such value as it may have in inducing well-being would be limited to instances in which indispositions impairing such state were due solely to constipation.

PAR. 16. Excluding the conditions of biliousness, "lazy digestion," and indigestion, which are hereinafter separately discussed, the symptoms, manifestations, and conditions, referred to in Paragraph Four, subparagraph (d), hereof, may occur in almost any condition affecting the human body, and, when they are not associated with and due to constipation, respondent's preparation will have no therapeutic value in the treatment thereof. When they are associated with and due to constipation, respondent's preparation will not correct or favorably influence in any way the basic conditions causative of constipation, and it will have no therapeutic value in the treatment of