the symptoms, manifestations and conditions named other than the temporary relief therefrom as may be afforded by an evacuation of the bowels. Carter's Little Liver Pills, the Commission concludes therefore, do not constitute a competent and effective treatment for these manifestations when they are associated with or caused by constipation.

The foregoing does not apply, however, in reference to "indigestion" and "lazy digestion." When indigestion; that is, a failure to digest or absorb food occurs in the human system, diarrhea rather than constipation frequently ensues. The use of respondent's preparation would not bring about digestion of food in either case. Furthermore, treatment of symptoms indicating 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. The expression "lazy digestion" has no scientific meaning but refers vaguely to retarded digestion. A laxative will not stimulate the digestion or absorption of food. It will, however, increase the rate of passage of indigestible and undigested masses through the large intestine for evacuation from the body, which refers to egestion not digestion. Discomforts of the gastrointestinal tract, examples of which are abdominal distress and gas, may result from constipation and such discomforts may be relieved temporarily by the release of pressure in the colon afforded by laxation. The Commission concludes that respondent's preparation is not an effective treatment for indigestion, or of "lazy digestion" or retarded digestion in any circumstances in which such conditions may occur.

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 evidence, to be caused by or due to disorders in the secretion and flow of bile. Constipation does not in any manner impair the flow of bile. Respondent's preparation will have no therapeutic action, effect, or influence on the secretion or flow of bile, and does not constitute an effective treatment for biliousness or for any symptoms or conditions, under whatever name or names designated, which are caused by or due to disorders in the secretion or flow of bile.

The subjective feeling of discomfort which sometimes accompanies constipation comes largely from abnormal stimulation of the sensory nerves in the mucous membrane and musculature. It has no connection with poison or auto-intoxication. Constipation does not poison the human body.

PAR. 17. Through and by use of the word "Liver" in the name Carter's Little Liver Pills, used by respondent in the advertising mate-

rial disseminated by it to identify and designate the medicinal preparation sold and distributed, respondent represents directly and by implication that the preparation Carter's Little Liver Pills will have some therapeutic action, effect, and influence on the liver, and is for use in the treatment of conditions, disorders, and diseases of the liver. Said representations are false and misleading. The ingredients in the preparation Carter's Little Liver Pills, alone or in any combination of one with the other, will have no therapeutic action, effect, or influence, corrective, or otherwise, on the liver. Respondent's preparation will have no therapeutic value in the treatment of any condition, disorder, or disease of the liver. Upon consideration of the remedy which should be applied in this connection, the Commission is of the opinion that only excision of the word "Liver" from the product name will serve to eliminate the deception engendered by its use.

PAR. 18. (*a*) The complaint charges also that respondent's advertisements constitute false advertisements for the further reason that they fail to reveal certain facts as to potential dangers inherent in the use of such preparation under conditions described in the advertisements or conditions as are customary and usual by persons suffering from abdominal pains, nausea, vomiting, or other symptoms of appendicitis. The Commission is unable to find, however, that the potential danger to the public health inherent in the use of respondent's preparation is so serious as to require a disclosure in the advertising of the matters to which this charge relates, and, in the circumstances, is of the opinion that dismissal of such charge without prejudice is warranted.

(*b*) Additional allegations of the complaint charge that respondent has falsely represented that calomel is a drastic and dangerous laxative compound, the use of which is an ordeal. Although testimony was introduced into the record directed to showing, among other things, that calomel, when taken in proper doses, would not be painful, it is not believed that these charges are supported by the record, and they are, accordingly, dismissed.

(*c*) Named also as a respondent in this proceeding is Street & Finney, a corporation, an advertising agency, which assisted respondent Carter Products, Inc., in the preparation and placing of the various advertisements used in promoting the sale of the preparation here involved. Its service to Carter Products, Inc., and participation, terminated, however, approximately 1 year prior to the institution of this proceeding. It does not appear, therefore, that the public interest now requires that respondent Street & Finney be included as a party to the order to cease and desist which is issuing herein, and the charges

of the complaint are, accordingly, being dismissed without prejudice as they relate to respondent Street & Finney.

PAR. 19. The Commission, therefore, finds that the representations concerning the preparation designated Carter's Little Liver Pills, as set forth in paragraphs 4 and 17 hereof, are misleading in material respects, and that the advertisements thus disseminated by respondent constitute "false advertisements," as that term is defined in the Federal Trade Commission Act. The use of such representations and of the word "Liver" in the name Carter's Little Liver Pills, by respondent has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony, and other evidence introduced before a trial examiner of the Commission theretofore designated by it, the report of the trial examiner upon the facts and the exceptions filed thereto, briefs and supplemental briefs in support of and in opposition to the complaint, and oral arguments; and the Commission having made its findings as to the facts and its conclusion that the respondent therein named has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Carter Products, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the product now designated Carter's Little Liver Pills, or any other product of substantially similar composition or possessing substantially similar properties under whatever name sold, do forthwith cease and desist from:

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

(*a*) That said preparation represents a fundamental principle of nature in self-treatment;

(*b*) That said preparation will bring on or restore regularity of bowel movement, or is a cure, remedy, or competent or effective treatment for constipation, or has any beneficial value in the treatment of any of the symptoms thereof in excess of the temporary relief afforded by its laxative action;

(*c*) That said preparation does not contain strong medicines;

(*d*) That said preparation is unqualifiedly safe;

(*e*) That said preparation is an effective treatment for sluggish liver function or that it will have any therapeutic action on any condition, disease, or disorder of the liver;

(*f*) That said preparation will make bile flow freely, increase or beneficially influence the formation, secretion, or flow of bile, or prevent or overcome discomforts caused by overindulgence in food or other pleasures;

(*g*) That said preparation will provide two-way relief or that it possesses therapeutic properties in addition to those afforded by laxative action;

(*h*) That said preparation will cause the proper flow of, or beneficially affect, the gastric juices or digestive juices, or lessen food decay;

(*i*) That said preparation is based on the fundamental principle of the operation of the digestive system;

(*j*) That said preparation will help food digestion, or regulate digestion or the digestive system;

(*k*) That said preparation will have any influence in inducing a state of "bounce," "vigor, or well-being except in those instances in which a lack thereof is due solely to constipation;

(*l*) That constipation poisons the body;

(*m*) That said preparation has any value in the treatment of headache, ugly complexion, bad breath, coated tongue, or a bad taste in the mouth, or for those conditions in which an individual feels "down-and-out," "blue," "down-in-the-dumps," "worn out," "sunk," "logy," "depressed," "sluggish," "all-in," "listless," "mean," "low," "cross," "tired," "stuffy," "heavy," "miserable," "sour," "grouchy," "irritable," "cranky," "peevish," "fagged out," "dull," "sullen," "what's-the-use," "bogged down," "grumpy," "run-down," or "gloomy"

in excess of such temporary relief therefrom as may be afforded by an evacuation of the bowels in those cases in which such symptoms or conditions are associated with and caused by constipation;

(*n*) That said preparation is a competent or effective treatment for indigestion or retarded digestion;

(*o*) That said preparation is a competent or effective treatment for biliousness.

(2) Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as commerce is defined in the Federal Trade Commission Act, in which the word "Liver" is used in the trade name for respondent's preparation.

(3) Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said product in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraphs (1) and (2) hereof.

If is further ordered, That the charges of the complaint as they relate to respondent Street & Finney, a corporation, be, and the same hereby are, dismissed without prejudice to the right of the Commission to take such further action as future conditions may warrant.

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

STATEMENT BY COMMISSIONER CARSON, TO ACCOMPANY ORDER AND FINDINGS OF FACT

Carter Products, Inc., and its predecessor company, have throughout scores of years advertised and sold Carter's Little Liver Pills. They have advertised that the pills would affect the liver, would cause a flow of bile, would remedy and regulate the digestive processes, would invigorate the consumer and give to him "bounce" and "pep" and relieve him of "the blues," et cetera, et cetera.

Carter's Little Liver Pills were and are, as the findings of fact show, nothing more than an irritative laxative compound. They have no effect on the liver, or on bile. They will not regulate the digestive processes, nor invigorate the consumer. They will, in some cases, purge the intestinal trace. As a matter of fact, all they will do is

to give the temporary relief growing out of laxation. The pills cannot be truthfully advertised as being unqualifiedly safe to consume.

This case parades before us the questionable flights of fancy of an advertising agency. Carter Products, Inc., through employing the agency and thus approving and condoning its work, cannot escape from its responsibility. The case is illustrative of scores of cases which flow across this bench, week in and week out. This Commission has encouraged and will encourage lawful business activity to the extent of its authority, that of Carter Products, Inc., as well as that of other corporations. But it is obligated to outlaw such conduct as is in evidence here.

The Commission does not believe that an opinion is justified in this case because no precedental issues are involved. But because of the importance of the case to the consumers, the Commission authorized me to make a statement relative to the case and in which would be set forth certain decisions as to future work of the Commission. The findings of fact and the order as approved by this Commission state clearly the inhibitions placed upon this company and its employees. The company will no longer be permitted to use the word "Liver" in its advertisements, will no longer be permitted to advertise that these pills affect the liver, will no longer be permitted to tell the consumer that the pills are unqualifiedly safe, will no longer be permitted to influence the consumer to believe that through taking the pills he will have any relief other than that accomplished through taking an irritant laxative compound.

In this case, as is all too often true when those who are guilty seek for escape, an effort was made to charge that the Commission was opposed to advertising. The Commission is not opposed to advertising. Nor is any Commissioner or employee of the Commission opposed to advertising. No rational man is opposed to advertising or to any other legitimate form of merchandising. Nor is the Commission opposed to self-medication, as was contended. Nor is it opposed to the manufacture and sale of laxative compounds when the consumer 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.

The consumer often is the unjust, and sometimes tragic victim in this general field of self-medication associated with the word "laxatives." There is evidence in this case, and it is impressive, that laxatives should not be taken continuously, or with regularity, and in certain conditions only with extreme caution and only when a skilled physician orders them to be taken. The evidence on this point, how-

ever, does not constitute a preponderance of evidence on which this Commission must proceed. But the Commission has acted, as will be hereinafter stated, to offer its cooperation to other Government agencies in making use of all this evidence to give additional protection to the consumer.

The advertising profession is an honorable profession. It has contributed, tremendously, to the sale and distribution of the products of business and thus has served the public interest.

Likewise, the manufacture and distribution of medical preparations is an honorable business. It has every right to the respect had for the profession of medicine and many will agree that the medical profession is generally and should always be the most honorable of professions. But the time is here, in fact it has long passed, when those engaged in the manufacture and distribution of such preparations and those engaged in associated advertising businesses must take steps again, 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. There is every reason to believe that the consumers who are victims of these practices are all too often the less-informed and the less able to protect themselves and their pocketbooks. They are all too often the consumers who are weakened by the fear of illness and burdensome medical expenses, and by unemployment, and who thus become the ready victims of those who would prey upon them by falsely advertising medicinal products.

This Commission is ready and anxious to cooperate in every way and at all times with everyone interested in protecting these honorable professions and businesses from the unlawful practices of the few.

The Commission was asked, in this case, to declare that it was unqualifiedly unsafe to consume this product. The Commission does not believe the evidence thus far adduced justifies such statements. The authority of this Commission extends only to false and deceptive advertising and practices in the sale and distribution in interstate commerce of such products. Other agencies of the Government are concerned with the advancement and welfare of the public health. Often the obligations of the authority conferred on the Commission and those of other agencies of Government become interrelated, and in some degree this case is an example.

The record in this case contains an exceptionally fine body of factual testimony relative to this product and to the effect of laxatives on the human system. Extensive research was done by some of the ablest of physicians and scientists who, without remuneration, contributed their skills that the public might be served. The Commission wishes

to honor them and their service to the public interest by specifically naming them. They are as follows:

Dr. Jesse L. Bollman, professor of physiology at the University of Minnesota and in the graduate school of the Mayo Foundation, as well as assistant director of the experimental research laboratory of the Mayo Foundation at Rochester, Minn.

Dr. Anton J. Carlson, former chairman of the department of physiology of the University of Chicago; author of many books and treatises on the stomach, intestines, salivary glands, digestion, etc.

Dr. James T. Case, professor of radiology and head of the X-ray department of Northwestern University Medical School at Chicago; former president of the American Roentgen-Ray Society, American Radium Society, and American College of Radiology; also an inventor of cholecystography, a method of visualizing the gall bladder by X-ray processes.

Dr. Andrew Conway Ivy, is now vice president of Illinois University Medical School at Chicago, and head of that university's medical school; for many years was head of the department of physiology of Northwestern University, and of pharmacology, materia medica, and toxicology of that University; organizer and director of the Naval Medical Research Institute at Bethesda, Md.; chairman of the section of physiology and pathology of the American Medical Association; managing editor of the Journal of Gastroenterology; discoverer of the hormone "cholesystokinin," the substance which causes the gall bladder to contract and evacuate upon ingestion of sufficient quantities of fats or fruit juices.

Dr. John Salem Lockwood, now a professor of surgery at Yale University, formerly assistant professor of research at the University of Pennsylvania and acting director of the Harrison department of surgical research at the University of Pennsylvania.

Dr. Walter Lincoln Palmer, professor of internal medicine at the University of Chicago; vice president of the American Gastroenterological Society.

Dr. Cecelia Riegel, biochemist of the Harrison department of surgical research of the University of Pennsylvania.

This body of factual testimony was obtained through expenditure of public funds, in part, and it should not be permitted to become buried in Government files. The Commission has decided that it will be called to the attention of all other Government agencies which are interested and that the Commission shall thus offer to cooperate in making use of it for the common good. The Commission will, hereafter, seek every opportunity to make use of comparable evidence

so that the maximum of possible contribution shall be made to the consumers. We think the evidence should convince anyone that 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.

The Commission was asked to include in its order to cease and desist, not only Carter Products, Inc., but the advertising agency, Street & Finney. The evidence seems to indicate that Street & Finney were equally culpable of the unlawful practices involved. The Commission has included advertising agencies in orders on some occasions, and on others it 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.

This case also is an example of the cases and experiences which induced the Commission to declare, as it recently did, that it will seek, in the future, to make every possible use of its authority to enjoin such practices as these whenever such action is warranted in the public interest. This case has been before the Commission for a long time. For some of the delay, the Commission may well be responsible, but the record in this case is a very long one, involved and intricate. The day of judgment and penalty must be brought nearer to the day of commission of fraud. The Commission is continuing to exert its efforts and to make use of its very limited funds to accomplish that purpose.

Syllabus

IN THE MATTER OF

C. HOWARD HUNT PEN CO.

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

Docket 4918. Complaint, Feb. 20, 1943—Decision, Mar. 29, 1951

Where a corporation engaged, among other things, in the manufacture and competitive interstate sale and distribution of inexpensive fountain pen points which it sold to manufacturers and assemblers of fountain pens for incorporation into fountain pens to be sold to the consuming public;

(*a*) Stamped on certain of its said points such inscriptions as "14 Kt. Gold Plated" or "14 K Gold Plated"; with tendency to deceive the purchasing public into the belief that said points were plated with a substantial amount of 14 karat gold alloy of substantial thickness, the minimum necessary to protect them from the corrosive effects of ink;

(*b*) Stamped certain pens "Iridium Point" or "Iridium Tipped," notwithstanding the fact that none of the tipping materials it used contained any iridium, noted for its hardness and wear-resistant properties; with tendency to deceive the purchasing public in such respect; and,

(*c*) For a time stamped on certain pen points, in accordance with instructions from a certain company to which it sold them the inscription "Waltham," notwithstanding the fact that the well-known manufacturer of high-grade watches and precision instruments had no connection with the pen points so marked; with tendency to deceive the purchasing public into the belief that said products were those of the Waltham Watch Manufacturing Co.;

With the result of furnishing manufacturers and assemblers of pens with the means of deceiving the public in the aforesaid respects, and with capacity to deceive and mislead a substantial portion of the purchasing public into the erroneous belief that aforesaid representations were true, and thereby into the purchase of substantial quantities of its said pen points, and to divert unfairly to it trade and commerce from its competitors who do not falsely represent their products, to the injury of competition in commerce:

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

As respects respondent's contention that the terms "Iridium Point" and "Iridium Tipped" had acquired a secondary meaning and now mean to the trade and to the public merely that pen points so designated are tipped with a hard, wear-resisting material: the Commission found that said contention was not supported by the record and that respondent's use of said terms to describe its products was erroneous and misleading.

As respects respondent's contention that since the word "Waltham" was inscribed only upon pen points ordered by the company above referred to and upon its instructions, and since respondent's last shipment of pen points thus marked was made about 2 years prior to the issuance of the complaint, no order to cease and desist should be entered as to such representations:

the Commission found that respondents by thus acting had placed in the hands of said company the means of deceiving the public and, in view of respondent's contention throughout the proceedings that it was not guilty of any deception since it was acting on instructions from its customer in using the name, was of the opinion that there was no assurance that respondent might not resume the practice, and therefore found that an order requiring it to cease and desist from inscribing the name on its pen points, under the circumstances, was in the interest of the public.

As respects respondent's contention that since it had entered into and abided by a stipulation, prior to the issuance of the complaint in the instant matter, to cease and desist representing that its pen points were solid gold, no order to cease and desist should be entered by the Commission as to such representation: the Commission was of the view that respondent's continued representation that its pen points were 14 karat gold plated, when they were in fact coated with such a thin covering, of such minute quantity, of gold alloy as not to constitute 14 karat gold plate as understood by the purchasing public, was so similar to its aforesaid prior false representation that said points were made of 14 karat gold, as to create a doubt as to whether respondent might not in the future resume the practice of falsely so representing, and that therefore an order requiring it to cease and desist from falsely representing that its pen points were made of an alloy of gold was in the interest of the public.

Before *Mr. Andrew B. Duvall* and *Mr. Henry P. Alden*, trial examiners.

Mr. Karl Stecher and *Mr. William L. Pencke* for the Commission.

Synnestvedt & Lechner, of Philadelphia, Pa., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, C. Howard Hunt Pen Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal place of business located in the city of Camden, State of New Jersey.

PAR. 2. Respondent is now and for some years last past has been engaged in the manufacture, sale, and distribution of stationery supplies, including cheap fountain-pen points. Respondent causes said

products, when sold, to be shipped from its said place of business in the State of New Jersey to the purchasers thereof located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said fountain-pen points, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its said fountain-pen points, respondent has caused and now causes certain descriptive words, figures, letters, and symbols to be stamped or imprinted upon the pen points which it sells in commerce as aforesaid. Typical of the symbols on respondent's said pen points, all of which pen points have the appearance of gold, are the following:

DURIUM
14 Kt. Gold
Plated
No. 4

Southern Pen
14K (large figures and letter)
gold plated (very small letters)
durium (very small letters)

ARNOLD
DURIUM
petersburg
va.

DURIUM
14K (very large figures and letter)
gold plate (very small letters)

WARRANTED DURIDIUM
14KT. (very large letters and figures)
gold plate (very small letters)

DURIPOINT
14 (very large figures)
KT. (very large letters)
(large space)
gold plate (very small letters)

EVERLAST
MADE
IN
U. S. A.

DURIUM
14K (very large figures and letter)
gold plate (very small letters)

WARRANTED DURIUM TIPPED
14K (very large figures and letter)
gold plate (very small letters)

WALTHAM
DU-O-WAY
TIP
MADE IN
U. S. A.

WALTHAM
DU-O-WAY
TIP
14K
gold plate

DU-O-WAY
TIP
(STAR IN CIRCLE)
14 KT
GOLD PLATE

IRIDIUM
TIPPED

PAR. 4. The words "Durium," "Duridium," and "Duripoint" when used in the manner set forth in paragraph 3 above, either alone or in combination with "tip" or "tipped," constitute a representation

that respondent's pen points thus designated and described are tipped with some special substance of unusual hardness and wearing qualities. Respondent's use of the word "Everlast" as illustrated in paragraph 3 hereinabove constitutes a representation that respondent's pen point thereby referred to is made of especially durable materials and is everlasting or of unusual lasting qualities. The word "Waltham" used by respondent in the manner set forth in paragraph 3 above has the capacity and tendency to create and creates in the minds of a substantial portion of the purchasing public the impression that respondent's fountain pen points thereby referred to are products of the Waltham Watch Co., a long-established and well-known manufacturer of high-grade watches and precision instruments.. The coined word "Du-O-Way" used by respondent in the manner set forth in paragraph 3 above tends to create the impression in the minds of many members of the purchasing public that there is some connection between the pen points so designated and referred to and the "Duofold" pen, a favorably known and widely advertised product of the Parker Pen Co. Respondent's use of the words "Iridium tipped" stamped on its said pen points as illustrated in paragraph 3 hereinabove constitutes a representation that said pen points are tipped with a comparatively rare and expensive element known as iridium.

PAR. 5. In truth and in fact the words "Durium," "Duridium," and "Duripoint" are coined and are not known to science or the industry in question and the pen points which they are used to describe are not tipped with any material or element of unusual hardness or wearing qualities. The pen point called "Everlast" is not made of especially durable materials nor has it unusual lasting qualities. The Waltham Watch Co. has nothing to do with the manufacture of the pen point designated "Waltham Du-O-Way" and the Parker Pen Co. has nothing to do with the manufacture of pen points with reference to which the coined word "Du-O-Way" is used in the illustrations shown in paragraph 3 hereinabove. None of respondent's pen points are tipped with the element iridium.

PAR. 6. The inscription "14Kt. Gold" in the first combination of words and figures quoted in paragraph 3 hereof, in appearing on one and the same line, has the capacity and tendency to create and creates the impression in the minds of many members of the purchasing public that respondent's pen point described therein is made of 14-carat gold.

In the other illustrations set forth in paragraph 3 hereinabove the figures and letters "14K" and "14KT" are invariably stamped in large type in a conspicious place on respondent's pen points and under-

neath the same there is stamped the legend "Gold Plate" or "Gold Plated" in type so small in each instance as to be inconspicuous and even illegible to a large portion of the purchasing public without the aid of a magnifying glass; these words "Gold Plate" and "Gold Plated" are stamped so far down the shank of the pen point that they are hidden from view when the point is properly fixed in the barrel of the pen, so that the purchasing public can see only the symbol "14K" or "14KT" which is a representation, direct or implied, that respondent's said pen points are made of 14-carat gold.

PAR. 7. As a matter of fact none of respondent's pen points are made of 14-carat gold or gold of any fineness. Respondent's pen points are made of brass or steel thinly electroplated with gold of approximately 22-carat fineness which does not have the hardness and wearing qualities of genuine 14-carat gold.

PAR. 8. Pen points made of gold are considered by many to have exceptional durability and superior writing qualities and many believe that the most satisfactory alloy for high-grade pen points is 14-carat gold. Originally all fountain pen points were made of 14-carat gold.

For years many of the most prominent and largest manufacturers of high-grade fountain pens whose points were made of 14-carat gold put no carat marking at all on their pen points and this practice is still followed by some of said manufacturers of high-grade fountain pens, but the public has generally understood and still understands that said points were and are made of 14-carat gold. Other reputable manufacturers have truthfully stamped and do stamp the symbols "14K" or "14KT" on their pen points and the public has for years associated such symbols with gold pen points.

PAR. 9. Respondent's pen points which are stamped "Gold Plated" or "Gold Plate" are not in fact gold plated as that term is commonly used and understood by a substantial portion of the purchasing public. The amount of gold deposited on said pen points is insignificant both in quantity and value. It is so small as not to be worth the expense of attempting to salvage it from damaged pen points. Less than 8 cents' worth of gold is deposited on each gross of respondent's so-called gold plated pen points.

PAR. 10. Many purchasers of respondent's fountain pen points referred to in paragraph 2 hereof use said fountain pen points branded and stamped as hereinabove set out in manufacturing and assembling fountain pens sold by them to the consuming public.

By placing in the hands of manufacturers and assemblers of fountain pens its fountain pen points colored, stamped, and branded as

aforesaid, respondent furnishes said manufacturers and assemblers with the means of deceiving the public into the belief that said fountain pen points are made of genuine 14-carat gold and that they are tipped with iridium or some other durable material; that they have unusual lasting qualities; that those stamped with the name "Waltham" are made by the well-known watch manufacturer of that name; and that those points referred to or designated by the word "Du-O-Way" are products of the Parker Pen Co.; and with the further means of deceiving the public with respect to the value and quality of said fountain pens.

PAR. 11. There are among the competitors of respondent many persons, partnerships, and corporations that manufacture, sell, and distribute fountain pens and fountain pen points that truthfully brand, label, color, and represent their pen points.

PAR. 12. The aforesaid acts, practices, and representations of the respondent have had and now have the capacity and tendency to and did and do deceive and mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid false, misleading, and deceptive acts, practices, and representations are true and into the purchase of substantial quantities of respondent's fountain pen points, because of such erroneous and mistaken belief so induced, and they thereby have the capacity and tendency to divert unfairly and they have diverted to the respondent trade in commerce from its said competitors who do not falsely represent their products, and the capacity and tendency to cause injury to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 13. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 20, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, C. Howard Hunt Pen Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce in violation of the provisions of said act. After the filing of respondent's answer, testimony and other

evidence in support of and in opposition to the allegations of the complaint were introduced before 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. The report of the trial examiner upon the evidence and exceptions to such report having been filed, the proceeding came on for hearing before the Commission upon the record, and the Commission, being of the opinion that the evidence in the record was insufficient to enable it to determine the issues, ordered the proceeding reopened for the introduction of further evidence. In conformity with the directions contained in that order, additional testimony, and other evidence in support of and in opposition to the allegations of the complaint were introduced before a substitute trial examiner of the Commission theretofore duly designated by it, and such additional testimony and other evidence, together with the recommended decision of the substitute trial examiner and exceptions thereto, were duly reported and filed. Subsequently, the proceeding was submitted to the Commission upon the record, including a stipulation of counsel consenting to the issuance by the Commission of an order to cease and desist corresponding in form and substance with the draft of the order set forth in the trial examiner's recommended decision and waiving the filing of briefs and oral argument. The Commission being of the opinion that the said recommended order to cease and desist should be altered in certain material respects, however, declined to dispose of the proceeding by the issuance of the order recommended by the trial examiner and issued a tentative order to cease and desist, with leave to respondent to file a brief in opposition to such order and request oral argument thereon.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondent's answer thereto, the testimony, and other evidence, the report of the original trial examiner upon the evidence and exceptions to such report, the substitute trial examiner's recommended decision and the exceptions thereto of counsel for respondent, briefs in support of and in opposition to the complaint and oral argument thereon, and briefs and oral argument in opposition to and in support of the entry of the aforesaid tentative order to cease and desist; and the Commission 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 its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, C. Howard Hunt Pen Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at Seventh and State Streets, Camden, N. J.

PAR. 2. Respondent is now and for many years last past has been engaged in the manufacture, sale, and distribution of stationery supplies, including inexpensive fountain pen points. Respondent sold and is now selling such pen points to manufacturers and assemblers of fountain pens who incorporate the said pen points into fountain pens sold by it to the consuming public. Respondent causes its said products, when sold, to be shipped from its place of business in the State of New Jersey to the purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said fountain pen points, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business respondent is now and for many years last past has been stamping on certain of its said points inscriptions containing representations as to the composition and quality of the said points or the tips thereof. Among and typical of the representations stamped thereon are the following:

14 Kt Gold Plated
14 K Gold Plate
Iridium Point
Iridium Tipped

The use by respondent of the inscriptions "14 Kt Gold Plated" and "14 K Gold Plate" and others of similar import and meaning not set out herein, has the tendency and capacity to deceive and mislead the purchasing public into the belief that said fountain pen points so marked are plated with a substantial amount of 14 caret gold alloy of substantial thickness. In truth and in fact, respondent's fountain pen points so marked are not plated with a substantial amount of gold alloy and the plating on the said points is not of a substantial thickness. Its said points so marked are coated with a gold alloy of a thickness of less than 0.000007 of an inch. Certain of said points manufactured by respondent prior to 1938 were tested by the National Bureau of Standards and were found to be coated with a gold alloy of a thickness of from approximately 0.0000036 to less than 0.000002 of an inch, which gold alloy had a value of approximately 5 cents

per gross of pen points.[1] The coating of gold alloy on the pen points so tested consisted of such a minute quantity that its actual carat fineness could not be determined. There is no evidence that respondent's methods of gold plating their pen points have varied from the time of manufacture of the pen points so tested.

Fourteen carat is a standard of fineness representing that an object so marked consists of an alloy which contains $14/24$ pure gold by weight. Gold plating of 14 carat fineness is the lowest carat fineness of gold which will succesfully resist the corrosive effects of ink. A substantial thickness of gold plating of a fineness of not less than 14 carat is necessary to protect fountain pen points from such corrosion. One of the purposes of gold plating fountain pen points is to protect them from such corrosion. Fountain pen points which are covered with a substantial thickness of gold plating of a fineness of not less than 14 carat have great appeal to the consuming public because of the appearance, intrinsic value and known resistance to corrosion of the gold.

The use by respondent of the inscriptions "Iridium Point" and "Iridium Tipped" and other similar in import and meaning not set-out herein, has the tendency and capacity to deceive and mislead the purchasing public into the belief that the said fountain pen points are tipped with iridium, a metal which is noted for its hardness and wear-resistant properties. Actually, none of the tipping materials used by respondent for its pen points contain any iridium.

Respondent contends that the terms "Iridium Point" and "Iridium Tipped" have acquired a secondary meaning—that these terms now mean to the trade and the public merely that pen points so designated are tipped with a hard, wear resisting material. The Commission finds, however, that this contention is not supported by the record and that respondent's use of these terms to designate and describe its products is erroneous and misleading.

PAR. 4. In the course and conduct of the aforesaid business in 1941 and for several year prior thereto, respondent stamped the inscription "Waltham" on certain fountain pen points which it sold to the Starr Pen Co., of Chicago, Ill., in accordance with instructions from that company. The use by respondents of the inscription "Waltham" had the tendency and capacity to deceive and mislead the purchasing

[1] Although the record is silent as to what would constitutte a substantial thickness of gold alloy in gold plating, it is noted that the Commission on October 11, 1948, promulgated trade practice rules for the fountain pen and mechanical pencil industry. These rules provided, among other things, that the term "gold plated" is deceptive when used as descriptive of fountain pen parts which have a covering of gold or of gold alloy of a minimum thickness throughout of less than 0.000007 of an inch.

public into the belief that the said fountain pen points so marked were products of the Waltham Watch Manufacturing Co., a well-known manufacturer of high-grade watches and precision instruments. Actually, the Waltham Watch Manufacturing Co., had no connection with the manufacturing, sale, or delivery of the said fountain pen points so marked.

PAR. 5. In the course and conduct of the aforesaid business for several years prior to 1939, respondent stamped on certain of its pen points the inscription "14 K" or "14 Kt" in large type and underneath stamped the inscription "Gold Plate" or "Gold Plated" in type so small as to be inconspicuous and almost illegible. On certain of these pen points the inscriptions "Gold Plate" or "Gold Plated" were stamped so far down the shank of the pen point as to be hidden from view when the point was properly fixed in the barrel of the fountain pen. The use by respondent of such inscriptions in this manner has had the tendency and capacity to deceive and mislead the purchasing public into the belief that said fountain pen points so marked were made of an alloy of gold. In truth and in fact such pen points were made of other materials coated with an alloy of gold.

On July 31, 1939, respondent entered into an agreement with the Commission to cease and desist from continuing to mark its fountain pen points in any manner having the capacity or tendency to cause the belief that the pen points are of 14 carat solid gold when such is not the fact. Since that agreement, on all pen points manufactured by respondent marked with the incription "14 K Gold Plate" or "14 Kt Gold Plated," the said numerals and letters thereon have been of the same size, and the words "Gold Plate" or "Gold Plated" have been placed sufficiently far from the base of the pen point so as to always be clearly visible when the point so marked was assembled in the completed fountain pen.

PAR. 6. The evidence of record is not sufficient to sustain the allegations of the complaint that respondents use of the words "Durium," "Duridium," and "Duripoint," either alone or in combination with the words "tip" or "tipped," has the capacity and tendency to deceive and mislead a substantial portion of the purchasing public into believing that its pen points so marked were tipped with some special substance of unusual hardness and wearing qualities; that respondents use of the word "Du-O-Way" tends to create an impression in the minds of a substantial portion of the purchasing public that there is some connection between the pen points so marked and pen points inscribed with the word "Duofold," a mark used on pens manufactured and sold by the Parker Pen Co.; that the Parker Pen Co. used the

word "Duofold" before respondent used the word "Du-O-Way," or has any superior rights to the word; that respondent's pen points marked with the word "Everlast" were not made of especially durable materials and were not of unusual lasting qualities; or that the public has been misled, or is likely to be misled or deceived, by the golden color of respondent's pen points, into falsely believing that such points are either made of gold alloy or are gold-plated.

PAR. 7. Many purchasers of respondent's fountain pen points referred to in paragraph 2 hereof use said fountain pen points stamped and inscribed, as set out in paragraph 3, 4, and 5 hereof, in manufacturing and assembling fountain pens sold by them to the consuming public.

By placing in the hands of manufacturers and assemblers of fountain pens its fountain pen points stamped and inscribed as aforesaid, respondent has furnished said manufacturers and assemblers with the means of deceiving the public into the belief that certain of the said fountain pen points were made of genuine 14 carat gold, that certain other fountain pen points were plated with a substantial quantity of 14 carat gold of substantial thickness, that certain other fountain pen points were tipped with iridium and that certain other pen points were products of the Waltham Watch Manufacturing Co.

PAR. 8. Respondent contends that, inasmuch as the word "Waltham" was inscribed only upon its pen points ordered by the Starr Pen Co. upon its instructions, and inasmuch as the respondent's last shipment of pen points so marked was made in July of 1941, approximately 2 years prior to the issuance of the complaint herein, no order to cease and desist should be entered as to these representations. The Commission having found that by so acting respondent placed in the hands of the Starr Pen Co. the means of deceiving the public, and because respondent has contended throughout these proceedings that it was not guilty of any deception because it was acting on instructions from its customer in using the name "Waltham," it is of the opinion that there is no assurance that respondent may not resume this practice and therefore finds that an order requiring respondent to cease and desist from inscribing "Waltham" on its pen points, under the circumstances, is in the interest of the public.

Respondent further contends that, inasmuch as it entered into a stipulation with the Commission prior to the issuance of the complaint in this matter wherein it agreed to cease and desist from representing that its pen points are of solid gold, and inasmuch as it has complied with that agreement, no order to cease and desist should be entered by the Commission as to such representation. The Com-

mission has found that respondent has continued to represent that its pen points are 14 carat gold-plated when in fact they are coated with such a thin covering of such a minute quantity of gold alloy as to not constitute 14 carat gold plate as that term is understood by the purchasing public. In the view of the Commission the respondent's false representation that its pen points are plated with 14-carat gold and its prior false representation that the pen points are made of 14-carat gold are so similar as to create a doubt as to whether the respondent may not in the future resume the practice of falsely representing that its pen points are made of 14-carat gold. The Commission therefore finds that an order requiring respondent to cease and desist from falsely representing that its pen points are made of an alloy of gold is in the interest of the public.

PAR. 9. Respondent in the course and conduct of its aforesaid business has been and is now in active competition with many persons, partnerships, and corporations that manufacture, sell, and distribute fountain pens and fountain pen points and who truthfully brand, label, and represent their pen points.

PAR. 10. The acts, practices, and representations as found in paragraphs 3, 4, and 5 of these findings have had and now have the capacity and tendency to deceive and mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid false, misleading, and deceptive acts, practices, and representations are true, and into the purchase of substantial quantities of respondent's fountain pen points, because of such erroneous and mistaken belief so induced, and they hereby have the capacity and tendency to divert unfairly to the respondent trade in commerce from its said competitors who do not falsely represent their products, and the capacity and tendency to cause injury to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondent's

answer thereto, testimony, and other evidence introduced before trial examiners of the Commission theretofore duly designated by it, the report of the original trial examiner upon the evidence and exceptions to such report, the recommended decision of the substitute trial examiner and exceptions thereto, briefs in support of and in opposition to the complaint and oral argument thereon and briefs and oral argument in opposition to and in support of a tentative order to cease and desist attached to the Commission's order of May 22, 1950, rejecting the trial examiner's recommended order to cease and desist and affording the respondent an opportunity to show cause why said tentative order should not be entered as the Commission's order to cease and desist; and the Commission, having disposed of the exceptions to the trial examiner's recommended decision and having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, C. Howard Hunt Pen 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 in commerce, as commerce is defined in the Federal Trade Commission Act, of fountain pen points, do forthwith cease and desist from:

(1) Representing, through the use on fountain pen points of the term "14 Kt. Gold Plated" or "14 K. Gold Plate," or any other term or mark, that such points are coated or covered with an alloy of substantial thickness and not less than $^{14}/_{24}$ by weight of gold, when such is not the fact; or misrepresenting in any manner the quantity or quality of the gold coating or covering on any fountain pen points.

(2) Representing in any manner, direct or by implication, that fountain pen points are made of an alloy of gold when such points are in fact made of other materials and are merely coated or covered with an alloy of gold.

(3) Using the word "Iridium" or the words "Iridium Tipped," or any simulation thereof, either alone or in conjunction with other words, to designate, describe, or refer to any fountain pen points which are not in fact tipped with the element iridium.

(4) Using the word "Waltham" as an imprint on or in connection with the sale of any fountain pen points; or otherwise representing that any of the respondent's fountain pen points are the products of the Waltham Watch Manufacturing Co. of Waltham, Mass.

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

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IN THE MATTER OF

FASHION TOWNE, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5678. Complaint, July 12, 1949—Decision, Apr. 3, 1951

Where a corporation and two officers thereof who dominated its affairs, engaged in the introduction into commerce, and in the offer, sale, transportation, and distribution therein of wool products subject to the Wool Products Labeling Act and to the rules and regulations promulgated thereunder—

Misbranded certain ladies two-piece suits in violation of the provisions of said act in that coats of said suits were labeled as 100 percent wool when they contained 81½ percent wool and 18½ percent cotton, and the skirts thereof were not labeled in any manner nor provided with other means of identifying their fiber content:

Held, That such acts and practices, under the circumstances set forth, were in violation of said act and rules and regulations, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. Jesse D. Kash for the Commission.

Posner, Berge, Fox & Arent, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Fashion Towne, Inc., a corporation, and Morton Davis and Anna Davis, individually and as officers of Fashion Towne, Inc., hereinafter referred to as respondents, have violated the provisions of said acts and rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Fashion Towne, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 225 West Thirty-seventh Street, New York, N. Y.

Respondents Morton Davis and Anna Davis are president and secretary and treasurer, respectively, of respondent corporation, with their office and principal place of business located at 225 West Thirty-

seventh Street, New York, N. Y. Said individual respondents dominate the affairs of corporate respondent and are responsible for its acts and practices including those hereinafter referred to. Respondents Fashion Towne, Inc., a corporation, and Morton Davis and Anna Davis, are engaged in the manufacture for introduction and in the introduction into commerce, and in the sale, transportation and distribution in commerce of wool products, as such products are defined in the Wool Products Labeling Act of 1939, as "commerce" is defined in said act and in the Federal Trade Commission Act.

PAR. 2. Respondents' said wool products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since July 15, 1941, respondents have violated the provisions of said act and said rules and regulations in the manufacture for introduction, and in the introduction into commerce and in the sale, transportation, and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said act and said rules and regulations.

PAR. 3. Among the wool products manufactured for introduction into commerce by respondents and introduced into commerce, sold, transported, and distributed in commerce by respondents are ladies' suits. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid wool products in violation of the provisions of said act and the said rules and regulations by failing to affix to said wool products a stamp, tag, label, or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (*a*) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said per centum by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers; (*b*) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling, or adulterating matter; (c) the percentages in words and figures plainly legible by weight of the wool content of such wool product where said wool product contains a fiber other than wool; (d) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller of the product as provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of said act with respect to such wool product.

The misbranded wool products referred to above were introduced, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, by each of the respondents.

PAR. 4. The aforesaid acts, practices, and methods of the respondents, as alleged herein, were and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, on July 12, 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 those acts. No answer was filed by the respondents. On April 21, 1950, a stipulation as to the facts was entered into by and between Daniel J. Murphy, chief, Division of Litigation, of the Commission, and respondents, in which it was stipulated and agreed that subject to the approval of the Commission the statement of facts contained therein may be taken as the facts in this proceeding and in lieu of evidence in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding, without the presentation of argument or the filing of briefs. Respondents expressly waived the filing of a recommended decision by the trial examiner. The Commission having served upon the respondents its tentative decision, together with leave to show cause why such tentative decision should not be entered as the final decision of the Commission, and the respondents not having appeared in response to the leave to show cause, this proceeding regularly came on for final consideration before the Commission upon the complaint and stipulation, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Fashion Towne, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 225 West Thirty-seventh Street, New York, N. Y.

Respondents Morton Davis and Anna Davis are president and secretary-treasurer, respectively, of respondent corporation, with their office and principal place of business located at 225 West Thirty-seventh Street, New York, N. Y. Said individual respondents dominate the affairs of the corporate respondent and are responsible for its acts and practices, including those hereinafter referred to.

PAR. 2. The respondents are engaged in the introduction into commerce, and in the offering for sale, sale, transportation, and distribution in said commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939 and in the Federal Trade Commission Act, of wool products as such products are defined in said Wool Products Labeling Act of 1939. Certain of respondents' said products are composed, in whole or in part, of wool, reprocessed wool, or reused wool as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. During the months of February and March 1949, respondents violated the provisions of said act and rules and regulations in the introduction into commerce, and in the sale, transportation, and distribution in commerce, of said wool products, by causing said wool products to be misbranded within the intent and meaning of said act and rules and regulations.

PAR. 3. During the months of February and March 1949, respondents introduced into commerce, and sold, transported, and distributed in commerce, ladies' two-piece suits, styles 512 and 523, both pieces of which contained woolen fibers. The coats of these suits contained 81½ percent wool and 18½ percent cotton, but were labeled by respondents as 100 percent wool. The skirts of these suits were not labeled by respondents in any manner, nor did respondents provide any other means of identifying their fiber content. Both the coats and skirts of such suits were thus misbranded in that they did not have affixed to them a stamp, tag, label, or other means of identification showing the constituent fibers, and percentages thereof, of such products, and other information required by the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

CONCLUSION

The acts and practices of the respondents, as hereinabove found, were in violation of the provisions of the Wool Products Labeling

Act of 1939 and the rules and regulations thereunder, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and a stipulation as to the facts entered into by and between Daniel J. Murphy, chief, Division of Litigation, of the Commission, and respondents, in which stipulation the respondents waived all intervening procedure and further hearing as to said facts; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Wool Products Labeling Act of 1939 and the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Fashion Towne, Inc., a corporation, and its officers, and Morton Davis and Anna Davis, individually, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce as "commerce" is defined in the aforesaid acts, of ladies' suits or other wool products as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool" as those terms are defined in said act, do forthwith cease and desist from misbranding such ladies' suits or other products by failing to affix securely to or place on such products a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

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

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

(*c*) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (*a*) and (*b*) of section 3 of the Wool Products Labeling Act of 1939: *And provided further*, That nothing contained in this order shall be construed as limiting any applicable provisions of said act or the rules and regulations promulgated thereunder.

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

IN THE MATTER OF

EARL ARONBERG ET AL. TRADING AS THE RONALD CO.

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

Docket 5729. Complaint, Dec. 22, 1949—Decision, Apr. 5, 1951

Where two individuals engaged in the interstate sale of their "Shadz Color Shampoo"; in advertising in various periodicals and otherwise—

Falsely represented, directly and by implication, that their said product, used as directed, colored gray hair jet black and other colors; when in fact an acid medium is required to color hair, whereas the ingredients in said product produce an alkaline medium;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby induce its purchase of substantial quantities of said product:

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

As regards the charge in the complaint that respondents falsely represented their product to be a new discovery, no evidence was introduced with respect to such allegation, and no findings, consequently, were made with respect thereto.

Before *Mr. Frank Hier*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Frank E. & Arthur Gettleman, of Chicago, Ill., and *Mr. James B. Goding*, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Earl Aronberg and Lewis Potter, individuals trading as The Ronald Co., hereinafter referred to as respondents, have violated the provisions of the said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Earl Aronberg and Lewis Potter, are individuals trading as The Ronald Co. with their office and principal place of business located at 6605 Cottage Grove, Chicago, Ill.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the business of selling and distributing a cosmetic

product as "cosmetic" is defined in the Federal Trade Commission Act. The designation used by respondents for said product and the formula and directions for use thereof are as follows:

DESIGNATION

Shadz Color Shampoo.

FORMULA

Tallow—fine grade.
Coconut Oil.
Fatty acids.
Sodium Hydroxide Solution.
Detergent Agent.
Essential Oils (minute quantities).
Colors—D and C Orange No. 1.
D and C Black No. 1.
Cocoline Brown.
Sunset Yellow.
Tartazine.
FD and C No. 1. Yellow.

DIRECTIONS

Follow these directions to get the best results with SHADZ. Use warm water, and rinse hair completely, getting it wet from scalp to tip. Then rub SHADZ COLOR SHAMPOO cake right into the hair. Work up a rich, creamy lather with the finger-tips, then rinse. Now apply SHADZ COLOR SHAMPOO again. If you wish, leave this second lather right on your hair for about 15 minutes. Then rise thoroughly with clear, warm water, and dry. See how Colorful and Glamourous your hair looks, and how soft and silky it feels, after every shampoo. Easier to manage too. Won't hurt Permanents.

Use SHADZ every week or so, just as you would any shampoo.
SHADZ WILL NOT STAIN HANDS OR SCALP.
All shades made with certified colors only.

PAR. 3. Respondents cause and have caused said product when sold to be transported from their place of business in the State of Illinois to purchasers located in various other States of the United States and at all times mentioned herein maintained and have maintained a course of trade in said product in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their business respondents subsequent to March 31, 1938, disseminated and caused the dissemination of certain advertisements concerning said product by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements in True Romance Magazine, February and November

1948 issues; Chicago Defender newspaper, January 8, 1949, issue; Photoplay Magazine, October 1948 issue; Norfolk, Virginia, Journal and Guide, August 21, 1948, issue; Southern Farmer Magazine, June, August, and October 1948 issues; and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce the purchase of said product; and respondents have disseminated and caused the dissemination of advertisements concerning their said product, including but not limited to the advertisements referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among the statements and representations contained in the said advertisements disseminated as aforesaid are the following:

DON'T DYE GRAY HAIR! COLOR IT JET BLACK with this new STARTLING DISCOVERY! Now! You can actually give your hair New JET BLACK BEAUTY without dyeing. New amazing Color Shampoo gives dull, drab, Gray, faded discolored hair a rich JET BLACK COLOR that's full of life and sparkle, and at the same time washes out dirt, oily grime, grease and loose dandruff. So why go around with off-color hair? Get Shadz Color Shampoo and see how your hair becomes progressively blacker, softer, prettier and easier to dress with each shampoo. No messing around with dyes that may prove difficult. No test required. No dyed appearance; no harm to hair; will not stain hands or scalp. Helps you look years younger, helps invite romance, attract new friends, become more popular, or get a better job. Highly praised by users everywhere. Also comes in Light, Medium and Dark Brown, Auburn and Blonde. (State shade.)

Said advertisement carries the pictorial representation of a lady with long black hair.

PAR. 6. Through the use of advertisements containing the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents represented, directly and by implication, that their said product, used as directed, colors gray hair jet black and other colors and that Shadz Color Shampoo is a new discovery.

PAR. 7. That said advertisements are misleading in material respects and are "false advertisements," as that term is defined in the Federal Trade Commission Act. In truth and in fact, the use of Shadz Color Shampoo, as directed, will not color gray hair jet black nor any shade of black or other color. Said preparation is not a new discovery as it contains the same ingredients in the same forms as preparations of similar nature which have been on the market for many years.

PAR. 8. The aforesaid acts and practices of respondents, as herein

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

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 December 22, 1949, issued and subsequently served its complaint in this proceeding upon the respondents, Earl Aronberg and Lewis Potter, individuals trading as The Ronald Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence 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. On January 9, 1951, the trial examiner filed his initial decision, which was served on the respondents on January 20, 1951.

The Commission, having reason to believe that the initial decision was deficient in certain material respects, subsequently placed this case on its own docket for review, and on February 26, 1951, it issued, and thereafter served upon the parties, its order affording the respondents an opportunity to show cause why said initial decision should not be altered in the manner and to the extent shown in a tentative decision of the Commission attached to said order. 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, finds that this proceeding is in the interest of the public and makes this its 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. Respondents, Earl Aronberg and Lewis Potter, are individuals trading as The Ronald Co., with their office and principal place of business located at 6605 Cottage Grove, Chicago, Ill.

Par. 2. Respondents are now, and for more than 1 year last past have been, engaged in the business of selling and distributing a cosmetic product as "cosmetic" is defined in the Federal Trade Commis-

sion Act. The designation used by respondents for said product and the formula and directions for use thereof are as follows:

DESIGNATION

Shadz Color Shampoo.

FORMULA

Tallow—fine grade.
Coconut Oil.
Fatty Acids.
Sodium Hydroxide Solution.
Detergent Agent.
Essential Oils (minute quantities).
Colors—D and C Orange No. 1.
D and C Black No. 1.
Cocoline Brown.
Sunset Yellow.
Tartazine.
FD and C No. 1 Yellow.

DIRECTIONS

Follow these directions to get the best results with SHADZ. Use warm water, and rinse hair completely, getting it wet from scalp to tip. Then rub SHADZ COLOR SHAMPOO cake right into the hair. Work up a rich, creamy lather with the finger-tips, then rinse. Now apply SHADZ COLOR SHAMPOO again. If you wish, leave this second lather right on your hair for about 15 minutes. Then rinse thoroughly with clear, warm water, and dry. See how Colorful and Glamourous your hair looks, and how soft and silky it feels, after every shampoo. Easier to manage too. Won't hurt Permanents.

Use SHADZ every week or so, just as you would any shampoo.

SHADZ WILL NOT STAIN HANDS OR SCALP.

All shades made with certified colors only.

PAR. 3. Respondents cause and have caused said product, when sold, to be transported from their place of business in the State of Illinois to purchasers located in various other States of the United States, and at all times mentioned herein maintained and have maintained a course of trade in said product in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their business respondents, subsequent to March 31, 1938, disseminated and caused the dissemination of certain advertisements concerning said product by the United States mails and by various means in commerce as "commerce" as defined in the Federal Trade Commission Act, including but not limited to advertisements in True Romance Magazine, February and November 1948 issues; Chicago Defender newspaper, January 8, 1949, issue; Photoplay Magazine, October 1948 issue; Norfolk, Virginia, Journal and Guide, August 21, 1948, issue; Southern Farmer Magazine, June,

August, and October 1948 issues; and by other means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce the purchase of said product; and respondents have disseminated and caused the dissemination of advertisements concerning their said product, including but not limited to the advertisements referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among the statements and representations contained in the said advertisements disseminated as aforesaid are the following:

DON'T DYE GRAY HAIR! COLOR IT JET BLACK with this new STARTLING DISCOVERY! Now! You can actually give your hair New JET BLACK BEAUTY without dyeing. New amazing Color Shampoo gives dull, drab, Gray, faded discolored hair a rich JET BLACK COLOR that's full of life and sparkle, and at the same time washes out dirt, oily grime, grease and loose dandruff. So why go around with off-color hair? Get Shadz Color Shampoo and see how your hair becomes progressively blacker, softer, prettier and easier to dress with each shampoo. No messing around with dyes that may prove difficult. No test required. No dyed appearance; no harm to hair; will not stain hands or scalp. Helps you look years younger, helps invite romance, attract new friends, become more popular, or get a better job. Highly praised by users everywhere. Also comes in Light, Medium and Dark Brown, Auburn and Blonde. (State shade.)

Said advertisement carries the pictoral representation of a lady with long, black hair.

PAR. 6. Through the use of advertisements containing the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents represented, directly and by implication, that their said product, used as directed, colors gray hair jet black and other colors.

PAR. 7. Respondents' said advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. Actual tests of respondents' product on a number of swatches of human hair, purchased for the purpose, failed to show that said product, when used as directed, will change the color of the hair, as represented. Reliable and scientific opinion is that respondents' product will not color hair at all, because an acid medium is required to do so, whereas the ingredients in respondents' product produce an alkaline medium.

PAR. 8. The use by the respondents of the aforesaid false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' product and to cause such portion of the public to purchase substantial

quantities of said product as a result of the erroneous and mistaken belief so engendered.

PAR. 9. No evidence was introduced with respect to the allegation in the complaint that the respondents falsely represented their product to be a new discovery, and consequently no findings with respect to such allegation have been made.

CONCLUSION

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

ORDER

It is ordered, That respondents, Earl Aronberg and Lewis Potter, individually and trading as The Ronald Co., or under any other name, their employees, agents, and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of Shadz Color Shampoo, or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

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

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

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

IN THE MATTER OF

KIMBERLEY GIRL COATS, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5779. Complaint, May 24, 1950—Decision, Apr. 5, 1951

Where a corporation and the two officers and directors who formulated, controlled, and directed its policies and practices, engaged in the introduction into commerce and in the offer, sale, transportation, and distribution therein of wool products subject to the Wool Products Labeling Act—

Misbranded certain ladies' coats in violation of the provisions of said act in that said coats, composed wholly or in part of reprocessed wool, were labeled by them as 100 percent wool:

Held, That such acts and practices, under the circumstances set forth, were in violation of said act and the rules and regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. DeWitt T. Puckett and *Mr. Russell T. Porter* for the Commission.

Mr. George Feinberg, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Kimberley Girl Coats, Inc., a corporation, and Samuel Plotkin and Leon Waisman, individually and as officers of respondent Kimberley Girl Coats, Inc., hereinafter referred to as respondents, have violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Kimberley Girl Coats, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Its principal office and place of business are located at 270 West Thirty-eighth Street, New York, N. Y. The respondents, Samuel Plotkin and Leon Waisman, are officers and stockholders of the respondent, Kimberley Girl Coats, Inc., and as such they formulate, control, and direct its policies and practices.

PAR. 2. The respondents are engaged in the introduction and manufacture for introduction into commerce and in offering for sale, sale, transportation, and distribution of wool products, as such products are defined in the Wool Products Labeling Act of 1939, in commerce as "commerce" is defined in said act and in the Federal Trade Commission Act. Many of respondents' said products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since July 15, 1941, respondents have violated the provisions of said act and said rules and regulations in the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said act and the rules and regulations.

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported, and distributed in said commerce as aforesaid, were coats and other products. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid products in violation of the provisions of said act and said rules and regulations by failing to affix to said garments a stamp, tag, label, or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (*a*) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers; (*b*) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling, or adulterating matter; (*c*) the percentages in words and figures plainly legible by weight of the wool contents of such wool product where said wool product contains a fiber other than wool; (*d*) the name of the manufacturer of the wool product or the name of one or more persons subject to section 3 of said act with respect to such wool product, or the registered identification number of such person or persons as provided for in rule 4 of the regulations as amended.

PAR. 4. The aforesaid acts, practices, and methods of respondents as alleged were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, on May 24, 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 and deceptive acts and practices in commerce in violation of the provisions of those acts. No answer was filed by the respondents. On August 28, 1950, a stipulation as to the facts was entered into by and between Daniel J. Murphy, Chief, Division of Litigation, of the Commission, and counsel for respondents, in which it was stipulated and agreed that subject to the approval of the Commission the statement of facts contained therein may be taken as the facts in this proceeding and in lieu of evidence in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding, without the presentation of argument or the filing of briefs. The Commission having served upon the respondents its tentative decision, together with leave to show cause why such tentative decision should not be entered as the final decision of the Commission, and the respondents not having appeared in response to the leave to show cause, this proceeding regularly came on for final consideration before the Commission upon the complaint and stipulation, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Kimberley Girl Coats, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 270 West Thirty-eighth Street, New York, N. Y.

Respondents Samuel Plotkin and Leon Waisman are officers and stockholders of respondent corporation, and as such they formulate, control, and direct its policies and practices.

PAR. 2. The respondents are engaged in the introduction and manufacture for introduction into commerce, and in the offering for sale,

sale, transportation, and distribution in said commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939 and in the Federal Trade Commission Act, of wool products as such products are defined in said Wool Products Labeling Act of 1939. Many of respondents' said products are composed, in whole or in part, of wool, reprocessed wool, or reused wool as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. During the fall of 1949 respondents violated the provisions of said act and rules and regulations in the introduction into commerce, and in the sale, transportation, and distribution in commerce, of said wool products, by causing said wool products to be misbranded within the intent and meaning of said act and rules and regulations.

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported, and distributed in commerce, as aforesaid, were ladies' coats which were made wholly or in part of reprocessed wool, but which were labeled by the respondents as 100 percent wool. Said coats were thus misbranded in that they did not have affixed to them a stamp, tag, label, or other means of identification showing the constituent fibers, and percentages thereof, of such products, and other information required by the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

CONCLUSION

The acts and practices of the respondents, as hereinabove found, were in violation of the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations thereunder, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission for a stipulation as to the facts entered into by and between Daniel J. Murphy, Chief, Division of Litigation, of the Commission, and counsel for respondents, in which stipulation the respondents waived all intervening procedure and further hearing as to said facts; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Wool Products Labeling Act of 1939 and the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Kimberley Girl Coats, Inc., a corporation, and its officers, and Samuel Plotkin and Leon Waisman, individually, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce as "commerce" is defined in the aforesaid acts, of ladies' coats or other wool products as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool" as those terms are defined in said act, do forthwith cease and desist from misbranding such ladies' coats or other products by failing to affix securely to or place on such products a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

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

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

(*c*) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (*a*) and (*b*) of section 3 of the Wool Products Labeling Act of 1939: *And provided further*, That nothing contained in this order shall be construed as limiting any applicable provisions of said act or the rules and regulations promulgated thereunder.

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

IN THE MATTER OF

PACIFIC GAMBLE ROBINSON CO. ET AL.

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

Docket 5819. Complaint Oct. 18, 1950—Decision, Apr. 5, 1951

Where a corporation which was one of the largest wholesale grocers in the 15 Middle Western, Northwestern, and Far Western States in which it operated, doing an annual volume of business of about $150,000,000, conducted its retail grocery business through subsidiary corporations including the operator of a large chain of retail grocery stores, and purchased substantially all of its requirements through a concern whose capital stock was owned by three of its stockholders and with which it was so closely integrated that the two operated in said matter as a single business enterprise—

(*a*) Received from vendors from whom it purchased a substantial portion of its requirements of grocery products, commissions, brokerage, or other compensation or discounts in lieu thereof, in the form of purchasing and resale promotional services or facilities, through aforesaid intermediary concern acting for it or as its agent, which purchased said food products for its account from vendors who paid or granted said intermediary commissions, etc., in connection with said purchases; and,

Where said purchasing concern, nominally the broker for several vendors of the products purchased and sold by said corporation, but actually exclusively engaged in purchasing for the account of the latter substantially all of its requirements, from said vendors when available or, when not, from other vendors—

(*b*) Received and accepted payments made to it in connection with the purchases it made for said corporation, as a result of its close integration therewith in said matter, and made use of the payments or grants so received to pay the expense of furnishing to said corporation purchasing services which had to do with the availability, quality, prices, and terms of sale of grocery products generally, and with advice which was tendered to and acted upon by said corporation as to what, when and from whom to purchase grocery products, and the prices to pay and all other matters which assured as nearly as possible that said corporation purchased its requirements of grocery products at the most favorable prices, terms and conditions; and included the advertising agency continuously employed by said intermediary:

Held, That such acts and practices of said corporation and intermediary, in receiving and in transmitting commissions, brokerage, or other compensations or allowances or discounts in lieu thereof, as above set out, were in violation of subsection (c) of the Clayton Act as amended.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Edward S. Ragsdale for the Commission.

Ryan, Askren & Mathewson, of Seattle, Wash., for respondents.

Stinchfield, Mackall, Crounse & Moore, of Minneapolis, Minn., also represented International Brokerage Co.

COMPLAINT

The Federal Trade Commission, having reason to believe that the corporations 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 Pacific Gamble Robinson Co., hereinafter sometimes referred to as Pacific, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with an office and its principal place of business located at Occidental Avenue and King Street, Seattle, Wash.

Pacific is now, and for many years last past has been, under different corporate names, directly and through subsidiary corporations, engaged in the wholesale and retail grocery business, buying and selling a wide variety of grocery products, including fresh and canned or otherwise processed fruits and vegetables, sugar, other foods, and general household supplies. While some of said grocery products bore trade names or marks owned by the respective manufacturers, processors, or packers thereof, a very substantial portion of them, known in the trade as private brands, bore trade names or marks owned by Pacific directly or through one or more subsidiary corporations, such as Fine Foods, Inc.

Organized prior to 1936, the corporate name of Pacific from 1937 to 1942 was Pacific Fruit and Produce Company, Inc. In 1942 its corporate name was changed to that which it now bears upon there being merged into it Gamble-Robinson Co., a Delaware corporation, also organized prior to 1936 and similarly engaged in the wholesale grocery business.

Of substantial relative size prior to 1942, upon said merger in that year and thereafter Pacific became and is now one of the largest wholesale grocers in the Middlewestern, Northwestern, and Farwestern States, operating about 125 branch warehouses in about 15 States, utilizing about 1,500 trucks and trailers, employing about 5,000 persons, and doing an annual volume of business of approximately 150 million dollars. Some of said warehouses are now, and since said merger in 1942 have been, operated under the name of Gamble-Robinson Co., and the others under the name of Pacific Fruit and Produce Co., depending generally upon which of said names they were operated under prior to said merger.

Pacific conducts, and for several years last past has conducted its retail grocery business through one or more subsidiary corporations, such as Tradewell Stores, Inc., which operates a large chain of retail grocery stores from headquarters located in Seattle, Wash.

From 1942 to the present time, Pacific purchased all, or substantially all, of its requirements of grocery products, including private brands, through respondent International Brokerage Co., as hereinafter more particularly alleged.

PAR. 2. Respondent International Brokerage Co., hereinafter sometimes referred to as International, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 300 North Fifth Street, Minneapolis, Minn.

Organized in 1937, International is now, and since said merger in 1942, has been engaged in the business of purchasing for the account of Pacific all, or substantially all, of its requirements of grocery products, including private brands, as hereinafter more particularly alleged.

From 1937, until said merger in 1942, International was similarly engaged for the account of Gamble Robinson Co., the president of which during said period, one Donald Phelps Gamble, organized International, owned all of its capital stock from its organization until some time prior to said merger, and upon said merger became and is now the vice president of Pacific.

PAR. 3. In the course of and conduct of their said business, International, from 1937 until the present time, Gamble-Robinson Co., from 1937 until 1942, and Pacific, from 1942 until the present time, were engaged in commerce, as commerce is defined in the Clayton Act, as amended by the Robinson-Patman Act, purchasing grocery products or causing them to be purchased from vendors with places of business located in several States of the United States and causing grocery products so purchased to be transported from said vendors' places of business to destinations in other States.

PAR. 4. In the course of said business in commerce, Gamble-Robinson Co., from 1937 to 1942 until the present time, purchased a substantial proportion of their requirements of grocery products, including private brands, from vendors who paid or granted to them, in connection with said purchases, commissions, brokerage, or other compensation, or discounts or allowances in lieu thereof, which they received or accepted.

Some of said payments or grants were so made to and received or accepted by Gamble-Robinson Co. and Pacific through International, who, acting, in fact, as an intermediary for them or in their behalf,

or as their agent or representative, in the course of said commerce from 1937 until the present time, purchased said food products for the account of Gamble-Robinson Co. and Pacific from said vendors who paid or granted to Internatinal, in connection with said purchases, commissions, brokerage or other compensation or allowances in lieu thereof, which International, acting as aforesaid, received or accepted.

Some of said payments or grants made to and accepted or received by Gamble-Robinson Co. and Pacific through International, acting as aforesaid, were in fact made to and received or accepted by Gamble-Robinson Co. and Pacific, International having transmitted said payments or grants to Gamble-Robinson Co. and Pacific in the form of purchasing and resale promotional services or facilities.

PAR. 5. Some of said payments or grants in connection with said purchases in commerce from said merger in 1942 to the present time were made, received or accepted, and transmitted substantially in the following manner and under the following circumstances.

Nominally the broker for several venders of the kinds of grocery products purchased and sold by Pacific, International was exclusively engaged in purchasing for the account of Pacific all, or substantially all, of its requirements of grocery products from said vendors when they were available from them or from other vendors when they were not. Such other vendors, not having appointed International as their broker in connection with purchases by Pacific upon request of International or otherwise, usually found it necessary, nevertheless, to solicit and affect such transactions through International. International effected no purchase and sales transactions between any vendors and vendees other than Pacific. Vendors of grocery products, in soliciting and effecting sales to vendees other than Pacific, including Pacific's competitors and others located in the same cities and trade areas as Pacific, utilized services and facilities other than those of International.

International undertook to inform Pacific of the availability, quality, prices, and terms of sale of grocery products generally, and not merely of such information concerning those products sold by vendors from whom it was a nominal broker, although it sought to become and became such a broker in connection with purchases by Pacific for as many vendors as appeared desirable or possible. International's relationship with Pacific was such that it gave advice to Pacific, which Pacific acted upon, with respect to what, when, and from whom to purchase grocery products, the prices to pay, and all other matters which assured, as nearly as possible, that Pacific purchased its requirements of grocery products, at the most favorable prices, terms, and conditions.

International and Pacific were so integrated as to facilitate the performance of said purchasing services by International for Pacific, and to cause them to operate in substance as a single business enterprise. All of International's capital stock is now, and for several years last past subsequent to said merger, has been owned in equal shares by three stockholders of Pacific who at the time of acquiring International's stock were officers, directors and/or employees of Pacific. International's division offices, of which it had several, including its said principal office, usually consisted of desk space in one of Pacific's branch warehouses, often within the offices of Pacific, with International and Pacific jointly using many of the same services and facilities, including telephone numbers, post office boxes, and some employees. Each of International's division offices served several of Pacific's branch warehouses. Every month, upon instructions from and on forms furnished by Pacific, each of its branch warehouses reported to the appropriate division office of International its requirements of grocery products. From such reports, purchase requisitions or orders were prepared for Pacific and approved by International. International forwarded said requisitions to vendors for whom it was nominally a broker when the grocery products so requisitioned were available from them or to other vendors or their brokers when they were not.

Pursuant to said requisitions, said vendors sold grocery products to Pacific; and those of said vendors for whom International was nominally a broker paid or granted to International, in connection with said transactions, commissions, brokerage, or other compensation, or allowances in lieu thereof, which International received or accepted.

Substantially all of said payments or grants so received or accepted were used by International to pay its expenses in furnishing said purchasing services to Pacific and to pay for furnishing to or for the benefit of Pacific services or facilities in connection with its resale of grocery products. In 1947 and 1948, for example, International calculated its net earnings at less than 1 percent of its brokerage revenue.

Among such resale services and facilities was the advertising of Pacific's private brands, including those owned through its subsidiary corporation, Fine Foods, Inc., for which purpose International continuously employed and paid an advertising agency. In 1947 and 1948, for example, International expended approximately 30 percent of its brokerage revenue in furnishing advertising services or facilities to or for the benefit of Pacific.

PAR. 6. The acts and practices of respondents in receiving or accepting and in transmitting commissions, brokerage, or other compensation or allowances or discounts in lieu thereof, made or granted

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

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 April 5, 1951, the initial decision in the instant matter of trial examiner Webster Ballinger, as set out as follows, became on that date the decision of the Commission.

Initial decision by Webster Ballinger, trial examiner

Pursuant to the provisions of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C. Sec. 13), the Federal Trade Commission on October 18, 1950, issued and subsequently served its complaint in this proceeding upon respondents Pacific Gamble Robinson Co., a corporation, and International Brokerage Co., a corporation, charging them, and each of them, with violation of subsection (c) of section 2 of said act as amended. February 5, 1951, respondents filed a joint answer in which they, and each of them, admitted all material allegations of fact set forth in said complaint and waived all further hearings as to said facts and all intervening procedure, on the condition that said admissions were solely for the purpose of this proceeding before the Commission, or the courts on review, or for enforcement of any final order that may be entered, or to recover any penalty for violation thereof. Thereafter the proceeding regularly came on for consideration by the above-named trial examiner theretofore duly designated by the Commission upon said complaint and answer (all intervening procedure having been waived) and said trial examiner, having duly considered the record herein, makes the following findings as to the facts, conclusion drawn therefrom, and order:

Findings as to the facts

Paragraph 1. Respondent Pacific Gamble Robinson Co., hereinafter referred to as Pacific, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with an office and its principal place of business located at Occidental Avenue and King Street, Seattle, Wash. In 1942 two then existing corporations—the Pacific Fruit and Produce Co., Inc., and the Gamble-Robinson Co.—merged under the corporate name Pacific Gamble Robinson Co., one of the respondents herein.

PAR. 2. Respondent Pacific is now, and its immediate predecessors and subsidiary corporations, has been for many years last past, engaged in the wholesale and retail grocery business in the Middle Western, Northwestern, and Far Western States. It sells and has sold a wide variety of grocery products, including fresh and canned or otherwise processed fruits and vegetables, sugar, other foods, and general household supplies. It is one of the largest wholesale grocers in the territories in which it operates maintaining about 125 branch warehouses in 15 States, has about 1,500 trucks and trailers, employs about 5,000 persons and does an annual volume of business of approximately $150,000,000. Some of said warehouses are now, and since said merger in 1942 have been, operated under the name of Gamble-Robinson Co. and the others under the name of Pacific Fruit and Produce Co., depending generally upon which of said names they were operated under prior to said merger. Pacific conducts, and for several years last past has conducted, its retail grocery business through one or more subsidiary corporations, such as Tradewell Stores, Inc., which operates a large chain of retail grocery stores from headquarters located in Seattle, Wash. From 1942 to the present time, Pacific purchased all, or substantially all, of its requirements of grocery products, including private brands, through respondent International Brokerage Co., as hereinafter more particularly set forth.

PAR. 3. Respondent International Brokerage Co., hereinafter referred to as International, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 300 North Fifth Street, Minneapolis, Minn. Since 1942 International has purchased for the account of Pacific all, or substantially all, of its requirements of grocery products, including private brands.

PAR. 4. In the course and conduct of their said business respondents Pacific and International at all times subsequent to 1942 were engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, purchasing grocery products, or causing them to be purchased, from vendors with place of business located in divers States of the United States and causing said products so purchased to be transported from said vendors' places of business to destinations in other States.

PAR. 5. In the course of said business in commerce, Pacific at all times subsequent to 1942 purchased a substantial portion of its requirements of grocery products, including private brands, 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 it received or accepted.

Some of said payments or grants were so made to and received or accepted by Pacific through International, who, acting, in fact, as an intermediary for Pacific or in its behalf, or as its agent or representative, in the course of said commerce purchased said food products for the account of Pacific from said vendors who paid or granted to International, in connection with said purchases, commissions, brokerage, or other compensation or allowances in lieu thereof, which International, acting as aforesaid, received or accepted. Some of said payments or grants made to and accepted or received by Pacific through International, acting as aforesaid, were in fact made to, and received or accepted by, Pacific, International having transmitted said payments or grants to Pacific in the form of purchasing and resale promotional services or facilities.

PAR. 6. Some of said payments or grants in connection with said purchases in commerce to the present time were made, received or accepted, and transmitted substantially in the following manner and under the following circumstances.

Nominally the broker for several vendors of the kinds of grocery products purchased and sold by Pacific, International was exclusively engaged in purchasing for the account of Pacific all, or substantially all, of its requirements of grocery products from said vendors when they were available from them or from other vendors when they were not. Such other vendors, not having appointed International as their broker in connection with purchases by Pacific upon request of International or otherwise, usually found it necessary, nevertheless, to solicit and effect such transactions through International. International effected no purchase and sales transactions between any vendors and vendees other than Pacific. Vendors of grocery products, in soliciting and effecting sales to vendees other than Pacific, including Pacific's competitors and others located in the same cities and trade areas as Pacific, utilized services and facilities other than those of International.

International undertook to inform Pacific of the availability, quality, prices, and terms of sale of grocery products generally, and not merely of such information concerning those products sold by vendors for whom it was a nominal broker, although it sought to become and became such a broker in connection with purchases by Pacific for as many vendors as appeared desirable or possible. International's relationship with Pacific was such that it gave advice to Pacific, which Pacific acted upon, with respect to what, when, and from whom to purchase grocery products, the prices to pay, and all other matters

which assured, as nearly as possible, that Pacific purchased its requirements of grocery products, at the most favorable prices, terms, and conditions.

International and Pacific were so integrated as to facilitate the performance of said purchasing services by International for Pacific, and to cause them to operate in substance as a single business enterprise. All of International's capital stock is now, and for several years last past subsequent to said merger, has been owned in equal shares by three stockholders of Pacific who at the time of acquiring International's stock were officers, directors, and/or employees of Pacific. International's division offices, of which it had several, including its said principal office, usually consisted of desk space in one of Pacific's branch warehouses, often within the offices of Pacific, with International and Pacific jointly using many of the same services and facilities, including telephone numbers, post-office boxes, and some employees. Each of International's division offices served several of Pacific's branch warehouses. Every month, upon instructions from and on forms furnished by Pacific, each of its branch warehouses reported to the appropriate division office of International its requirements of grocery products. From such reports, purchase requisitions or orders were prepared for Pacific and approved by International. International forwarded said requisitions to vendors for whom it was nominally a broker when the grocery products so requisitioned were available from them or to other vendors or their brokers when they were not.

Pursuant to said requisitions, said vendors sold grocery products to Pacific; and those of said vendors for whom International was nominally a broker paid or granted to International, in connection with said transactions, commissions, brokerage, or other compensation, or allowances in lieu thereof, which International received or accepted.

Substantially all of said payments or grants so received or accepted were used by International to pay its expenses in furnishing said purchasing services to Pacific and to pay for furnishing to or for the benefit of Pacific services or facilities in connection with its resale of grocery products. In 1947 and 1948, for example, International calculated its net earnings at less than 1 percent of its brokerage revenue.

Among such resale services and facilities was the advertising of Pacific's private brands, including those owned through its subsidiary corporation, Fine Foods, Inc., for which purpose International continuously employed and paid an advertising agency. In 1947 and 1948, for example, International expended approximately 30 percent of its brokerage revenue in furnishing advertising services or facilities to or for the benefit of Pacific.

CONCLUSION

The acts and practices of respondents in receiving or accepting and in transmitting commissions, brokerage, or other compensation or allowances or discounts in lieu thereof, made or granted as hereinabove found were 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 respondent Pacific Gamble Robinson Co. and its officers, agents, representatives, and employees, directly or through any corporate or other device in connection with the purchase of fruits, grocery, household and other products of whatsoever nature in commerce, as "commerce" is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from directly or indirectly—

1. Receiving or accepting from any seller anything of value as a commission or brokerage, or any compensation, allowance, or discount in lieu thereof on or in connection with purchases made for respondent's own account, either directly or by or through respondent International Brokerage Co.

2. Receiving or accepting from respondent International Brokerage Co. in the form of money, credit, services, or otherwise, any commission or brokerage or any compensation, allowance, or discount in lieu thereof, or any part thereof, received by said International Brokerage Co. as an intermediary or agent for said respondent or while subject to the direct or indirect control of said respondent.

It is further ordered, That respondent International Brokerage Co. and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of fruits, grocery, household, and other products of whatsoever nature in commerce, as "commerce" is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from directly or indirectly—

1. Receiving or accepting from any seller anything of value as a commission or brokerage, or any compensation, allowance, or discount in lieu thereof, on or in connection with purchases made by respondent International Brokerage Co. while acting under the control of and in fact for and on behalf of respondent Pacific Gamble Robinson Co.

2. Receiving or accepting from any seller, anything of value as a commission or brokerage, or any compensation, allowance or discount in lieu thereof, on or in connection with purchases made for respondent's own account or while acting for or in behalf of a purchaser as

an intermediary or agent or subject to the direct or indirect control of such purchaser.

3. Paying, transmitting, or delivering to or for the benefit of any such purchaser either directly or in any form of money, credit, advertising, or other services of whatsoever nature, any commission or brokerage, or any compensation, allowance, or discount in lieu thereof, or any part thereof, received from any seller while acting as an intermediary or agent for such purchaser or while subject to the direct or indirect control of such purchaser.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (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 April 5, 1951].

Complaint

IN THE MATTER OF

ACME BREWERIES, ALSO DOING BUSINESS AS CALIFORNIA BREWING ASSOCIATION: ACME BREWING CO.: AND BOHEMIAN DISTRIBUTING CO., LTD.

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

Docket 2888. Complaint, June 11, 1942 [1]*—Decision, Apr. 9, 1951*

Where three corporations engaged in the brewing and interstate sale and distribution of their "Acme" light beer which differed in no substantial respect from other high grade American beers; in advertising their said beer—

Falsely and misleadingly represented, through the use of the statement "Dietetically NON-FATTENING" that their beer would not increase the weight of the consumer and did not adequately disclose, through the additional words in much smaller type, "Relatively so, compared with other foods," the circumstances under which their said beer would not increase the weight of the consumer;

The facts being that while beer, as a food beverage with a relatively low caloric content, is for all practical purposes nonfattening, it has a tendency to stimulate the appetite of many consumers; and, if consumed so as to result in an increase in the drinker's caloric intake beyond his normal requirement, will probably result in a proportionate gain in weight;

With effect of misleading and deceiving a substantial portion of the purchasing public with respect to the contents and weight-increasing capacities of their said beer, and thereby inducing the purchase of substantial quantities thereof, and unfairly diverting trade and commerce to them from their competitors, to the injury thereof and that of the public; and with tendency and capacity so to do:

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

Before *Mr. Abner E. Lipscomb*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Cummings, Stanley, Truitt & Cross, of Washington, D. C., and *Mr. Norman A. Eisner*, of San Francisco, Calif., for respondents.

AMENDED AND SUPPLEMENTAL COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Acme Breweries, a corporation, also doing business as California Brewing Association, Acme Brewing Co., a corporation, and Bohemian Distributing Co., Ltd., a corporation, hereinafter referred to as respondents, have vio-

[1] Amended and supplemental.

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

PARAGRAPH 1. The respondent Acme Breweries, also doing business as California Brewing Association, is a California corporation with its principal office and place of business located at 762 Fulton Street, San Francisco, Calif. The respondent Acme Brewing Co. is a California corporation with its principal office and place of business located at 2080 East Forty-ninth Street, Los Angeles, Calif. Respondent Bohemian Distributing Co., Ltd., is a California corporation with its principal place of business located at 2060 East Forty-ninth Street, Los Angeles, Calif. All of the respondents are now, and for several years last past have been, engaged in the sale and distribution of beer sold under the brand name "Acme Beer." All of the respondents have acted together and in cooperation with each other in carrying out the acts and practices herein alleged.

In the course and conduct of their business, as aforesaid, the respondents cause, and for several years last past have caused, their said beer, when sold, to be transported from their respective places of business in California to the purchasers thereof located in various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in beer in commerce between and among the various States of the United States and in the District of Columbia.

The respondents are now, and at all times mentioned herein have been in substantial competition with other corporations, and with partnerships and individuals engaged in the sale and distribution of beer in commerce between and among the various States of the United States and in the District of Columbia. Among said competitors are many who do not use the acts, practices, and methods hereinafter alleged.

PAR. 2. In the course and conduct of their business as aforesaid, the respondents have disseminated and are now disseminating, by United States mails, by the use of newspapers, trade papers, circulars, and various other types of printed matter circulated generally among the public; and by advertisements broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners in various States of the United States other than the State in which said broadcasts originate and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said beer; and respondents

have disseminated, and are now disseminating, false advertisements concerning their said beer by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said beer in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in said advertisements, disseminated as aforesaid, are the following:

Only Acme beer combines a rich creamy head with its non-fattening formula. Enjoy Acme to stay slender.

Superior Non-Fattening Refreshment.

Acme Beer is the Prince of Pilsener * * * Acme is non-fattening due to its formula. * * * Acme Beer won't add pounds to your weight.

Medical tests have shown that Acme Beer absolutely will not increase weight.

The particular ingredients of Acme have a tendency to slenderize.

Acme Beer is non-fattening. You see the things that makes fat are carbohydrates, and Acme Beer contains no starches or carbohydrates, so you see there is a difference.

* * * * * * *

DIETETICALLY NON-FATTENING.

Relatively so, compared with other foods.

PAR. 3. Through the use of the aforesaid advertisements containing said statements disseminated as aforesaid, and others of similar import, the respondents have represented, among other things, that their said beer is substantially different from other beers in that their beer contains no fattening substances and it will not increase the weight of the consumers thereof. In truth and in fact said beer is not substantially different from other beers. It does contain fattening substances and it will increase the weight of the consumers thereof.

PAR. 4. The use by the respondents of the aforesaid false advertisements and said misleading and deceptive statements and representations has had, and now has, the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public with respect to the contents and weight-increasing capacities of their said beer and to induce the purchase of substantial quantities of said beer as a result of the erroneous and mistaken belief so engendered. Trade in said commerce is thereby unfairly diverted to the respondents from their competitors to the injury of said competitors and to the injury of the public.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission, on June 11, 1942, issued and subsequently served its amended and supplemental complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said amended and supplemental complaint and the filing of respondents' answer thereto, testimony and other evidence 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 regularly came on for final consideration by the Commission upon said amended and supplemental complaint, answer thereto, testimony and other evidence, recommended decision of the trial examiner with exceptions thereto filed by counsel for the respondents, and brief of counsel supporting the complaint (no brief having been filed by respondents, and oral argument not having been requested); and the Commission, having duly considered the matter and 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 its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Acme Breweries is a California corporation, which at times trades under the name of California Brewing Association. Its principal office is located at 762 Fulton Street, San Francisco, Calif. Respondent Acme Brewing Co. is a California corporation, having its plant located in the city of Vernon, Calif., its Post Office address being 2080 East Forty-ninth Street, Los Angeles 11, Calif., with its principal office at 762 Fulton Street, San Francisco, Calif. Respondent Bohemian Distributing Co., Ltd., is likewise a California corporation; its plant is located at Vernon, Calif., and its address is 2254 East Forty-ninth Street, Los Angeles 11, Calif.

PAR. 2. Respondent Acme Breweries owns 80 percent of the capital stock of respondent Acme Brewing Co., and respondent Bohemian Distributing Co., Ltd., owns the remaining 20 percent of the capital stock of Acme Brewing Co. Respondents Acme Breweries and Acme Brewing Co. are primarily brewers of beer, and respondents Acme Breweries and Bohemian Distributing Co., Ltd., are distributors thereof.

PAR. 3. All of the respondents are now, and for several years last past have been, engaged in the sale and distribution of beer sold under the brand name "Acme," and all have acted together and in cooperation with each other in carrying out the acts and practices hereinafter found to exist. In the course and conduct of their said businesses, respondents cause, and for some years last past have caused, their said beer, when sold, to be transported from their respective places of business in the State of California to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said product in commerce between and among the various States of the United States.

Respondents are now, and at all times mentioned herein have been, in substantial competition with other corporations and with partnerships and individuals likewise engaged in the sale and distribution of beer in commerce.

PAR. 4. In the course and conduct of their business as aforesaid, respondents have disseminated, and are now disseminating, false and misleading advertisements concerning their said beer by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said beer; and respondents have disseminated, and are now disseminating, false and misleading advertisements for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said beer in commerce as "commerce" is defined in the Federal Trade Commission Act. Said advertisements in addition to various picturizations contain in substance the statement "Dietetically NON-FATTENING" and, in much smaller type, the additional words "Relatively so, compared with other foods." In some of the advertisements this qualification appears in immediate conjunction with the words "Dietetically NON-FATTENING," and in others it appears in the lower part of the advertisements or in other inconspicuous locations to which attention is directed by means of an asterisk placed before the word "Dietetically."

PAR. 5. Through the use of the statement "Dietetically NON-FATTENING" respondents have falsely and misleadingly represented that their beer will not increase the weight of the consumer thereof, and the qualification heretofore used and the manner in which said qualification has been used, as aforesaid, do not adequately disclose the circumstances under which their said beer will not increase the weight of the consumer.

Respondents' said beer is not substantially different from other

beers, and its consumption will, under the circumstances and conditions hereinafter mentioned, result in increasing the weight of the consumer thereof. Acme Beer is what is known to the industry as a light beer, that is, a beer in which a medium volume of material is used, resulting in low extract and moderate alcoholic content. The analysis of Acme Beer is as follows:

Specific gravity at 20°/20° C	1.01325
Balling of beer	3.38
Alcohol by weight	3.74
Alcohol by volume	4.70
Extract, real	5.09
Dextrines, calculates	3.10
Reducing sugar (as maltose)	1.22
Protein	0.406
Total acidity as lactic	0.174
pH	4.52
Color (lovibond series 52½" cell)	3.06
Ash (minerals)	0.194
Original extract	12.31

Acme Beer possesses no substantial material analytical differences from other high-grade beers of a similar type brewed by American manufacturers.

Beer in itself is for all practical purposes a nonfattening beverage, for the reason that it is a food beverage with a relatively low caloric content. In the common and now generally accepted usage, the terms "fattening" and "nonfattening," as applied to any article of diet, signify a comparison. A food that is nonfattening is one which has a low caloric content. A food that is fattening is one which has a high caloric content. As compared with some other food beverages, beer has a relatively low caloric value. For example, beer has a lower caloric content than an equal amount of whole milk.

The chief factors to be considered in the question of whether or not an individual will gain weight are the amount of calories he consumes and the disposition made thereof by his body or physical system. Thus, barring pathological considerations, one's weight will increase if and when his caloric intake exceeds the caloric expenditure, regardless of the source of the calories. Beer has a tendency to stimulate the appetite of many consumers, and if a person consumes the required number of calories in food other than beer for his proper and healthful maintenance and also consumes beer in addition thereto, he will probably gain weight proportionate to the caloric increase supplied by the beer; and the converse is also true, that if the beer so consumed does not increase the drinker's caloric intake beyond his normal requirement of calories, then there will be no weight increase. In other words, if the beer is taken as a substitute for some other article of

diet of equal or greater caloric content, the beer so consumed will not cause the consumer to gain weight unless it stimulates his appetite to the extent of causing him to consume more calories by reason of heartier eating otherwise. If beer is consumed only as a portion of the normally required diet, rather than in addition thereto, it is not fattening in most cases. Due to the above facts, the question of whether a person will gain weight by reason of drinking beer depends to some extent on the individual. These scientific facts are applicable to Acme Beer and to other beers of similar type now on the American market.

PAR. 6. The use by the respondents of the aforesaid false and misleading advertisements has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public with respect to the contents and weight-increasing capacities of their said beer, and to induce the purchase of substantial quantities thereof as a result of the erroneous and mistaken belief so engendered. Trade in commerce is thereby unfairly diverted to respondents from their competitors, to the injury of said competitors and of the public.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission, respondents' answer thereto, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner with exceptions thereto, and brief of counsel supporting the complaint (no brief having been filed by respondents, and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Acme Breweries, a corporation, also doing business as California Brewing Association, Acme Brewing Co., a corporation, and Bohemian Distributing Co., Ltd., a corporation, and their respective officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their

product designated as Acme Beer, or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, by means of the United States mails, or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains the words "Dietetically Non-Fattening," or otherwise represents, directly or by implication, that their said beer will not increase the weight of the consumer, unless such representation be qualified by the statement, made clearly and conspicuously, in immediate conjunction therewith, "when taken in substitution for foods of equal or greater caloric value and not in addition to the normally required diet," or other statement of similar meaning.

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

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

Syllabus

IN THE MATTER OF

ARTHUR R. LEWIS AND BEN A. HENSLER, TRADING AS VAWNE FOUNDATIONS, 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 5106. Complaint, Sept. 17, 1946[1]*—Decision, Apr. 13, 1951*

Among the articles of wearing apparel made by the process known variously as "full-fashioned," "fashioned," and "fully fashioned" are underwear, sweaters, and hosiery.

The terms "full-fashioned" and "fashioned" as applied to articles of apparel are regarded as synonymous by members of the trade, and as descriptive of apparel knit on a flat bed or bar machine in the course of which flat fabric is shaped in the knitting to conform to the shape of the limb or body; and there is a preference for full-fashioned articles of feminine apparel on the part of a substantial segment of the purchasing public, to which full-fashioned hosiery is particularly well and favorably known for holding its shape and as being more expensive than hosiery produced by other methods.

There is also a preference among the purchasing public for apparel represented as made of silk; and products made from rayon, resembling silk, are accepted by the purchasing public as silk, even though they may not be designated by terms representing that they are made of silk.

Where a corporation and its three officers who controlled its advertising policies and business activities, engaged in the manufacture and interstate sale and distribution of their "Wispese" girdles;

Through statements adopted and used by one of said individuals, its president, in advertisements in newspapers and periodicals, and on labels and other advertising material distributed among the purchasing public and to dealers in ladies' apparel for distribution thereto; and through similar statements made by them and others at their instance and suggestion—

(*a*) Represented that said girdles were "full fashioned," namely, made of pieces of elastic fabric knit flat, of uniform texture, and permanently shaped in the knitting by the process known to the knitting trade as "narrowing" so as to conform to the shape of the body; and,

Where said individual, its president—

(*b*) Represented directly and by implication, through the statements in the advertising and labeling thereof above referred to, that the fabric of which said girdles were made was manufactured and shaped by the same process through which full-fashioned stockings were made;

The facts being that their girdles were made on a tubular knitting machine over a cylinder of uniform diameter, and not under the process known as "full-fashioned," nor were they shaped by the same process as full-fashioned stockings; and the shaped appearance imparted to their said product would not be retained under similar conditions of use for periods as long as would the shape of similar garments produced by the full-fashioned process;

[1] Amended and supplemental.

With capacity and tendency to deceive and mislead the public in aforesaid respects, and with the effect of thereby giving said products in the mind of the purchasing public a prestige and fictitious value which they would not otherwise have; and,

Where said corporation and individuals, in connection with the advertisement and sale of certain of their girdles which contained rayon resembling silk and with the feel thereof—

(c) Failed to disclose in the advertising thereof and on such garments that they were composed in whole or in part of rayon, and thereby represented that they were composed in whole or in part of rayon, and thereby represented that they were composed of silk;

With the result of placing in the hands of dealers in their said product a means of misleading and deceiving purchasers into the aforesaid mistaken beliefs, and with tendency and capacity to mislead and deceive a substantial portion of the purchasing public in the aforesaid respects and thereby induce the purchase of substantial quantities of their said girdles by dealers and members thereof:

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

As respects the charge in the amended and supplemental complaint that respondents falsely represented that their girdles would retain their shape when worn, when in fact they stretched easily at the waist and thus failed to function effectively as girdles: while it was true that they would not maintain their shape for periods as long as would girdles of identical gage made from similar yarns and knitted under the full-fashioned process, and while the qualitative superiority of garments made under said process as compared to others not so made is recognized by the public as substantial, the evidence supplied an insufficient basis for a conclusion that respondent's girdles failed to function adequately as such; and the charges relating to said issue in the proceeding were accordingly dismissed.

Before *Mr. W. W. Sheppard*, trial examiner.
Mr. John M. Russell for the Commission.
Weil, Gotshal & Manges, of New York City, for respondents.

Amended and Supplemental Complaint

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Arthur R. Lewis and Ben A. Hensler, individually and as copartners trading as Vawne Foundations, Arthur R. Lewis and Jean Lewis, individually and as copartners trading as Vawne Foundations Co., Wispese, Inc., a corporation and Arthur R. Lewis, Jean L. Gross and Harold B. Gross, individually and as officers of Wispese, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Arthur R. Lewis and Ben A. Hensler are individuals who were trading from on or about August 1, 1942, to on or about January 11, 1943, as copartners under the name Vawne Foundations.

Respondent Ben A. Hensler is an individual who has been since January 11, 1943, independently engaged in business similar to that of Vawne Foundations.

Respondents Arthur R. Lewis and Jean Lewis are individuals who were trading as copartners from on or about January 11, 1943, to on or about February 1, 1946, under the name Vawne Foundations Co.

Respondent Wispese, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and respondents Arthur R. Lewis, Jean L. Gross, who was formerly respondent, Jean Lewis and Harold B. Gross are its president, treasurer, and secretary, respectively. The last three mentioned individual respondents have dominant control of the advertising policies and business activities of said corporate respondent and they have cooperated with each other and have acted in concert in doing the acts and things hereinafter alleged.

Respondents' office and principal place of business is located at 302 Fifth Avenue, New York, N. Y., except that respondent Ben A. Hensler's office and principal place of business is now located at 267 Fifth Avenue, New York, N. Y.

PAR. 2. Respondents are now, and have been for more than six months last past as aforesaid engaged in the business of manufacturing and selling and distributing women's garments designated "Wispese" girdles. Respondents sell their said product to retail dealers and other purchasers. Respondents cause their said product, when sold, to be transported from their aforesaid places of business in the State of New York, to the purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained a course of trade in their said product as above indicated in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their said "Wispese" girdles, respondents have made and are now making and have caused and are now causing, false and misleading statements and representations as to the texture of the fabric of which their said girdles are made, and as to their value to be printed in newspapers and magazines distributed throughout the United States and on labels, in catalogs, circulars, and other advertising material circulated and dis-

tributed by respondents among the purchasing public and to dealers in ladies' apparel for distribution by such dealers to the purchasing public throughout the several States of the United States and in the District of Columbia.

Among and typical of the said false, deceptive, and misleading statements and representations are the following:

Wispese Girdle that's seamless . . . Full-Fashioned (like your stocking) * * *. Seamless, full-fashioned, shaped in the knitting like your stockings * * *. Knit to fit the form as full-fashioned hosiery is knit.

Actually full-fashioned.

Wispese Girdles * * * Full-fashioned as expertly as a stocking of elastic and Bemberg Rayon * * *.

Your Girdles should be Full-fashioned (and seamless too) * * *. Wispese * * * fashioned to fit just like your stocking * * *.

Seamless Full-Fashioned
Knit-to-Fit
WISPESE
Girdle

The same full-fashioning that makes our stockings cling to our legs so perfectly is now being applied to girdles.

(On Labels)
Seamless—Full Fashioned.
Wispese

GIRDLES AND PANTIE GIRDLES Count on Wispese, to attract the youthful following which means so much to a successful Corset Department. VAWNE FOUNDATIONS CO. 302 Fifth Avenue, New York, Boston, Los Angeles, Chicago. * * * Wispese identifies the most desirable garments on the market. * * *

Wispese

GIRDLES AND PANTIE GIRDLES count on Wispese, to attract the youthful following which means so much to a successful Corset Department. WISPESE INC. 302 Fifth Avenue, New York 1, N. Y.

PAR. 4. Through the use of the said statements and representations and other statements and representations similar thereto not set out herein made by respondents and others at respondents' instance and suggestion, all of which purport to be descriptive of the texture of the fabric of which respondents' said "Wispese" girdles are made and of their construction, respondents represent, directly and indirectly, that their said girdles are "Full-Fashioned"; that the fabric of which they are made is manufactured and shaped by the same process through which full-fashioned stockings are made; that they are made of two pieces of elastic fabric knit flat, of uniform texture, permanently shaped in the knitting by the process known to the knitting trade as widening and narrowing so as to conform to the shape of the body, and joined together at their selvages by two stitched seams, one down each side of the girdle; that their shape is effected by dropping stitches from where the contour begins to narrow, thereby forming true gussets

or fashioned "marks" parallel with the selvages; that "Wispese" girdles retain their said shape when worn.

PAR. 5. The foregoing statements and representations used and disseminated by respondents in the manner above described are false, deceptive, and misleading. In truth and in fact, respondents' said "Wispese" girdles are not full-fashioned; they are not manufactured or shaped by the process by which full-fashioned stockings are made; they are not made of fabric knitted flat; they are not made of fabric of uniform texture; they are not made by the process known to the knitting trade or the purchasing public as widening and narrowing so as to conform to the shape of the body; they are not made of any fabric joined together; their shape is not accomplished by dropping stitches from where the contour begins to narrow; they have no seams or gussets; they do not retain their shape when worn.

The true facts are that the "Wispese" girdles offered for sale and sold by respondents as full-fashioned girdles are what is known to the trade and purchasing public as "seamless" girdles. They are made of fabric knitted over a Brinton tubular-type machine or cylinder and made to conform to the shape of the body by means other than the process used in the manufacture of full-fashioned garments. They are seamless, one-piece tubular girdles made of elastic fabric having an area of drop stitching and web weaving at the waist or top, which makes the fabric in said area looser and flimsier. They stretch easily at the waist and thus fail to function effectively as girdles. The size of each of said "Wispese" girdles is the same the entire length of the girdle as the size of the tubular machine or cylinder over which it is knit, but when removed therefrom, the elastic therein contracts and makes said girdles appear to be shaped at the waist. The process used in the manufacture of respondents' said girdles is not the same as or similar to the process used in the manufacture of "full fashioned" stockings.

PAR. 6. Respondents by failing to disclose the rayon content of their said garments which resembles silk represent that said garments are composed entirely of silk, the product of the cocoon of the silk worm whereas in truth and in fact said garments are composed entirely or in part of rayon.

PAR. 7. The word "silk" has been long and favorably known to the purchasing public as descriptive of goods made from the fiber derived from the product of the cocoon of the silk worm.

Rayon is a chemically manufactured fiber or fabric which may be so manufactured as to simulate silk. When manufactured to simulate silk it has the appearance and feel of silk. By reason of these qualities, rayon, when manufactured to simulate silk and not designated as

rayon, is by the purchasing public practically indistinguishable from silk. Products manufactured from rayon, resembling silk, are accepted by the public as silk, even though such products may not be designated by terms representing that they are silk.

There is a preference among the purchasing public for garments represented as made of "silk" as said product is generally known to the purchasing public for its superior quality and value.

PAR. 8. The use by the respondents of the words "Full-Fashioned," as aforesaid, deceives and misleads the public into the belief that respondents' said "Wispese" girdles are the type that is made of a fabric of uniform texture permanently shaped in the knitting by the process known to the knitting trade as widening and narrowing so as to conform to the shape of the body, which gives to them a prestige and fictitious value in the minds of the purchasing public, dealers, and salesmen which they do not merit and would not otherwise have. The terms "Full-Fashioned" and "Fashioned" as applied to girdles are regarded as synonymous by a majority of the trade and purchasing public and descriptive of that type of girdles manufactured by the process last above described. There is a preference among the purchasing public for full-fashioned girdles as they are well and favorably known for holding their shape and as being far more valuable and expensive than tubular shaped girdles.

PAR. 9. The respondents by the use of the said words "Full-Fashioned," and the other representations aforesaid and through their failure to affix such garments labels disclosing the rayon content thereof, have placed in the hands of others who deal in their said "Wispese" girdles a means and instrumentality whereby sellers may mislead and deceive purchasers into the aforementioned mistaken and erroneous beliefs.

PAR. 10. The use by the respondents of the aforesaid acts, practices, and methods has the tendency and capacity to and does mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that respondents' said statements or representations are true and as to the material from which said products are made and the manner in which they are constructed.

As a result thereof dealers and members of the purchasing public have purchased substantial quantities of respondents' said product in said commerce.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 17, 1946, issued and subsequently served its amended and supplemental complaint 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 that act. After the filing by respondents, Arthur R. Lewis, Jean L. Gross, Harold B. Gross, and Wispese, Inc., a corporation, of their joint answer to the amended and supplemental complaint, testimony and other evidence in support of and in opposition to the allegations of the amended and supplemental 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, the proceeding regularly came on for hearing before the Commission on the amended and supplemental complaint, answer, testimony and other evidence, recommended decision of the trial examiner, and briefs in support of and in opposition to the amended and supplemental complaint, oral argument not having been requested; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Arthur R. Lewis and Ben A. Hensler are individuals who from on or about August 1, 1942, to January 11, 1943, were trading as copartners under the name Vawne Foundations. Mr. Hensler, subsequent to January 11, 1943, continued independently to engage in business similar to that of Vawne Foundations but died in March 1949 during the period when this proceeding was pending. Respondents Arthur R. Lewis and Jean Lewis are individuals who were trading as copartners from on or about January 11, 1943, to on or about February 1, 1946, under the name Vawne Foundations Co.

Respondent Wispese, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and respondents Arthur R. Lewis, Jean L. Gross, who was formerly respondent Jean Lewis, and Harold B. Gross are its president, treasurer, and secretary, respectively. The last three mentioned individual respondents have dominant control of the advertising policies and business activities of said corporate respondent and they have cooperated with each other and have acted in concert in doing certain of the acts and things hereinafter alleged. Respondents' of-

fice and principal place of business is located at 302 Fifth Avenue, New York, N. Y. The word "respondents," as used hereinafter, designates and refers to all of the respondents above named except Mr. Hensler.

PAR. 2. Respondents have engaged, as aforesaid, in the business of manufacturing and selling and distributing women's garments designated "Wispese" girdles. Respondents have sold their said product to retail dealers and other purchasers and respondents have caused said product, when sold, to be transported from their aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondents maintain, and at the times mentioned hereinbefore have maintained, a course of trade therein in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of the sale and distribution of Wispese girdles and for the purpose of inducing the purchase thereof, respondents have made and caused to be made statements and representations concerning their products in newspapers and magazines distributed throughout the United States, and on labels and other advertising material circulated and distributed by respondents among the purchasing public and to dealers in ladies' apparel for distribution to the purchasing public throughout the several States of the United States and in the District of Columbia. In the advertising used by said respondents, such girdles have been designated as full-fashioned and as seamless. Among and typical of the statements and representations adopted by respondent Arthur R. Lewis and used by him in the advertising and sale of Wispese girdles, are the following:

WISPESE girdle that's seamless . . . full-fashioned (like your stocking) * * *

. . . girdles, without seams or bones . . . with the very shape of beauty woven into them . . . knit to fit the form as full-fashioned hosiery is knit * * *

Actually *full-fashioned* * * *

Wispese Girdles * * * Full-fashioned as expertly as a stocking, of elastic and Bemberg rayon * * *

Your GIRDLES Should Be FULL-FASHIONED (and Seamless too) * * *

WISPESE * * * Fashioned to fit, just like your stocking * * *

THE SAME FULL FASHIONING that makes our stockings cling to our legs so perfectly is now being applied to girdles * * *

On labels:

Seamless—Full Fashioned

PAR. 4. Through use of said statements and representations and other statements and representations similar thereto not set out herein

made by respondents and others at respondents' instance and suggestion, all of which purport to be descriptive of the fabric of which respondents' Wispese girdles are made and of their construction, respondents have represented directly or by implication that said girdles are "full-fashioned," that is, made of pieces of elastic fabric knit flat, of uniform texture, permanently shaped in the knitting by the process known to the knitting trade as narrowing so as to conform to the shape of the body. Through use of the statements and representations hereinbefore mentioned, respondent Arthur R. Lewis has represented directly and by implication that the fabric of which Wispese girdles are made is manufactured and shaped by the same process through which full-fashioned stockings are made.

PAR. 5. Among the articles of wearing apparel made by the process known variously as full-fashioned, fashioned, and fully fashioned are underwear, sweaters, and hosiery. Full-fashioned garments are knit on a flat bed or bar machine in the course of which flat fabric is shaped in the knitting to conform to the shape of the limb or body. The reduction in size looking to such shaping is effected by a process of "narrowing" under which the loops of various needles are "transferred" inward to an adjacent needle, which loops are then knit by the transferee needle. The flat fabric at the conclusion of the knitting operation, in the case of hosiery for instance, is joined at the edges or selvages to make a stocking which conforms to the shape of the leg.

As articles of feminine attire, girdles have a body-conforming function. The girdles offered for sale by respondents as full-fashioned girdles are made on a tubular knitting machine over a cylinder of fixed or uniform diameter. Several hundred needles arranged around the circumference thereof knit elastic yarn. At certain areas of the waist or upper portion there is a process of drop-stitching under which a specific number of needles are withheld from the knitting process and do not form loops. When these needles do not form loops, there results a series of drop-stitch stripes or web weaving terminating in holes. This variation in uniformity of texture is due to the fact that the loops are not actually transferred as in the knitting process known as full-fashioned. Below the waist the entire complement of needles is used so that the resulting garment is a one-piece tubular girdle without any vertical seam, which prior to removal from the knitting machine is uniform in diameter for the entire length of the knitting cylinder. When removed therefrom, the action of the elastic closes the areas where the stitches have been dropped and a shaped condition at the waist is afforded. The differences in widths as between upper parts of the girdle and as between them and lower areas

depend primarily on the elastic character of the yarn contained in the upper areas where the fabric is of lighter weight rather than on the actual dropping out of the needles from their loop-forming functions.

Respondents' girdles are not made under the process known as full-fashioned, nor are the girdles made on the circular knitting machines used by respondents manufactured and shaped by the same process through which full-fashioned stockings are made. The statements and representations contained in the advertising for Wispese girdles to which paragraph 4 hereof relates are false and misleading. Respondents' girdle is known in the trade as a shaped body garment and represents a modification or adaptation of what long has been known in the trade as tucked goods. The area of drop-stitching at the waist presenting a webbed appearance is essentially a lighter fabric than that forming the remainder of the garment. Although it appears that no elastic girdles made on flat bed machines by the process known as full-fashioned are being produced and offered for sale in the channels of trade, it is clear that the shaped appearance imparted to respondents' girdles will not be retained under similar conditions of use for periods as long as would the shape of other garments containing the same yarns and of identical gauge produced by the full-fashioned process.

PAR. 6. The use by the respondents of the word "full-fashioned" has the capacity and tendency to deceive and mislead the public into the belief that respondents' Wispese girdles are made of fabric of uniform texture, permanently shaped in the knitting by the process known to the knitting trade as narrowing so as to conform to the shape of the body, which gives to them, in the minds of the purchasing public, a prestige and fictitious value respondents' garments would not otherwise have. The terms "full-fashioned" and "fashioned" as applied to articles of apparel are regarded as synonymous by members of the trade and as descriptive of apparel which has been manufactured by the process last above described. There is a preference for full-fashioned articles of feminine apparel on the part of a substantial segment of the purchasing public to which full-fashioned hosiery is particularly well and favorably known for holding its shape and as being more expensive than hosiery produced by other methods.

PAR. 7. Some of the girdles advertised and sold by respondents have contained rayon which simulates and resembles silk in appearance and has the feel of silk. In the advertising therefor and on such girdles, respondents, in instances, have failed to disclose that these garments are composed in whole or in part of rayon. There is a preference among the purchasing public for apparel represented as made of silk.

Products manufactured from rayon, resembling silk, are accepted by the purchasing public as silk even though such articles may not be designated by terms representing that they are made of silk. By failing to disclose the rayon content of the aforesaid garments, respondents represent that their girdles are composed of silk.

PAR. 8. By use of the term "full-fashioned" and the other representations referred to hereinbefore and through their failure to affix to garments containing rayon labels disclosing the rayon content thereof, respondents have placed in the hands of others who deal in their Wispese girdles a means and instrumentality whereby sellers may mislead and deceive purchasers into the mistaken and erroneous beliefs aforementioned.

PAR. 9. The use by respondents of the aforesaid acts, practices, and methods has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' statements or representations are true as they relate to the material from which said products are made and as to the manner in which they are constructed, and as a result dealers and members of the purchasing public have purchased substantial quantities of respondents' girdles in commerce.

CONCLUSION

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

The amended and supplemental complaint charges in addition that respondents have represented that their girdles will retain their shape when worn, which representation, it is alleged, is false for the reason that respondents' girdles stretch easily at the waist and thus fail to function effectively as girdles. Respondents' products will not retain their shape for periods as long as would girdles of identical gage made from similar yarns and knitted under the full-fashioned process. This is due in great measure to the presence of lighter fabric in some areas of the girdle where shaping if afforded. Although the qualitative superiority of garments made under the knitting process known as full-fashioned as compared to others not so manufactured is recognized by the public as substantial, the evidence introduced in this proceeding is an insufficient basis for a conclusion that respondents' girdles fail to function adequately as girdles. The charges relating to this issue in the proceeding are accordingly being dismissed by the Commission.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission, the answer filed by certain of the respondents, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner, and briefs filed in support of and in opposition to the amended and supplemental complaint; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

I. *It is offered*, That respondent Wispese, Inc., a corporation, and its officers, agents, representatives, and employees, and respondent Arthur R. Lewis, individually and as an officer of Wispese, Inc., and trading as a copartner under the name Vawne Foundations, or under any other name, and his agents, representatives, and employees, and respondents Jean L. Gross (formerly known as Jean Lewis) and Harold B. Gross, individually and as officers of Wispese, Inc., and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of wearing apparel in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(*a*) Using the term "full-fashioned" or any other expression of similar import containing the word "fashioned" to designate, describe or refer to girdles which have not been shaped in the knitting by a narrowing process involving the transfer of loops or stitches from one needle to another during the dropping of needles in such knitting operation;

(*b*) Advertising, offering for sale, or selling garments composed in whole or in part of rayon made to resemble silk, or having the appearance and feel of silk, without clearly disclosing such rayon content or representing in any other manner that garments containing no silk are composed in whole or in part of silk.

II. *It is ordered*, That respondent Arthur R. Lewis, individually and trading as a copartner under the name of Vawne Foundations or under any other name, and his agents, representatives, and employees, in connection with the offering for sale, sale, or distribution of girdles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do cease and desist from representing, directly or by implication:

That girdles not shaped in the knitting by a narrowing process involving the transfer of loops or stitches from one needle to another

during the dropping of needles in such knitting operation are manufactured or shaped by the same process by which full-fashioned stockings are made.

III. *It is further ordered*, That this proceeding be, and the same hereby is, dismissed as to respondent Ben A. Hensler, deceased.

IV. *It is further ordered*, That the charges of this proceeding as they relate to the issue as to whether respondents' products function effectively as girdles be, and the same hereby are, dismissed.

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

IN THE MATTER OF

ELEANOR SCHULTZ BADEN ET AL. TRADING AS E. G. SALES & MANUFACTURING CO.

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

Docket 5563. Complaint, May 28, 1948—Decision, Apr. 18, 1951

Where two individuals engaged as partners in the manufacture and interstate sale of certain mechanical devices for use on internal-combustion motors with battery ignition, which they sold prior to 1946 under the trade designations of "E. G. Ssupercharger" and "Ignition Supercharger" and thereafter as "E. G. Super-Ignitioniter" and "Super-Ignitioner," in advertising in newspapers and periodicals of general circulation and in circulars, letters, and other printed matter, including that on the shipping cartons—

(*a*) Falsely represented that their said products would cause motors, regardless of age or condition, to operate better or at less expense, insure quick starting, and afford motors, irrespective of condition, more mileage, power, acceleration, and pickup;

The facts being that only in those rare circumstances where one or more plugs were fouled within certain limits by carbon, would their said devices have a temporary favorable influence in starting or operation, until the normal progression of the fouling process, due to the operational defect which caused such fouling in the first instance, within a short time rendered the ignition system ineffective;

(*b*) Falsely represented that said products would prolong the life of spark plugs and points, and extend motor life three or four times longer than if said devices were not attached;

(*c*) Falsely represented that said products would cause the spark to jump across spark plug points and cause sparks to occur irrespective of the degree to which the points might be fouled with oil and grease;

The facts being their said devices would not cause a spark to occur when plugs were badly fouled, and were not an effective substitute for cleaning the plugs or correcting the causes of fouling;

(*d*) Falsely represented that said products would reduce or prevent carbon;

(*e*) Falsely and misleadingly represented that said device afforded "atomic starting," and caused motors performing improperly to run quietly and smoothly;

(*f*) Falsely represented through the statement on the carton containers thereof "Tested and approved by Automotive Test Laboratories of America," that their products had been tested and approved by a laboratory or other organization possessing trained personnel and scientific facilities for the performance of automotive tests and experiments concerning commercial products;

The facts being that it had been the practice of the said "Automotive Test Laboratories," which had no laboratory or scientific equipment nor trained personnel, to accept without investigation of the truth or falsity thereof, suggestions and claims made by various manufacturers for their products, as the basis for so-called certificates or seals of approval or merit;

With tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken belief that such statements were true and thereby induce its purchase of their said products:

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

In said proceeding the Commission took official notice of certain facts found by the Commission on April 29, 1938, in the matter of Morris E. Newman, trading as Automotive Test Laboratories of America, Docket 3328, 26 F. T. C. 1234, and on April 28, 1938, in the matter of Ralph C. Curtiss et al., Docket 3329, 26 F. T. C. 1209, namely, that said Automotive Test Laboratories of America, at the time such purported approval was extended to respondents' products, had no laboratory or scientific equipment for conducting tests and experiments and employed no trained personnel for the purpose of performing tests on commercial products, but, instead, followed the practice of accepting the suggestions and claims made by various manufacturers as the basis for so-called certificates or seals of approval or merit, which were thereafter issued by it without investigation of the truth or falsity of the manufacturers' statements.

In said proceeding in which one of said respondents in the course of objections to the Commission's tentative decision, contended that the testimony of an automobile mechanic who testified that he installed one of respondents' devices during the period when the instant proceeding was pending and upon the basis of its use expressed the opinion that faster starting, smoother operation and greater gasoline economy were afforded—which tended to corroborate the testimony of said respondent—outweighed the testimony of various other witnesses in the proceeding, it appeared that the testimony of two automotive engineers, identified with the National Bureau of Standards—which was also generally in accord with the opinions expressed by another scientist connected with said Bureau—was to the effect hereinabove noted, and the Commission was of the opinion that the conclusions in question as set forth by it were in accord with the greater weight of the evidence adduced in the proceeding.

As regards respondents' assertion that a statement appeared in the tentative decision to the effect that their 1950 motor device did not improve engine performance, it appearing that the reception of evidence was completed on September 22, 1949, the Commission's findings in the instant matter related to the value and efficacy of the auxiliary spark gaps being sold under the representations challenged in the complaint, and the Commission's order required cessation of certain of said challenged representations in connection with the offer, etc., of the device to which such representations originally related or of other products substantially similar thereto, but without any determination, however, in the absence of an adequate basis in the record therefor, as to the inherent nature of such devices as are presently being marketed by respondents.

As regards respondents' objection to the statement that their product was not submitted to the aforesaid Automotive Test Laboratory of America, no statement to said effect appears in the tentative decision of the Commission or the findings as to the facts in the instant matter.

With respect to respondents' challenged use of the words, "Ssupercharger," "Super-Ignitioniter" and "Super-Ignitioner" to designate their products, the complaint alleging that the term "Supercharger" is misleading in that a super-charger signifies a device which increases the pressure as the explosive charge is supplied to the motor cylinder—a function which respondents' products will not perform, it appeared that respondents discontinued the use of said expression more than 2 years prior to the institution of the instant proceeding, and that there was no reason to believe that use of such or similar terms or words would be resumed, and the Commission was of the opinion that no further corrective action in respect to said matter was required in the public interest at this time, and said charges of the complaint were accordingly dismissed without prejudice.

As regards charges relating to the designations "Super-Ignitioniter" and "Super-Ignitioner," use of which was alleged to be misleading because the device, would not increase or improve the functions of the ignition system except in transitory instances as above noted, no evidence was introduced expressly directed to showing what consumer impressions might be engendered by the use of said expressions, and the Commission, under the circumstances was of the opinion that the evidence in the record was insufficient for an informed determination of the issues raised by such allegations, and said charges were therefore also dismissed without prejudice.

Before *Mr. Henry P. Alden*, trial examiner.
Mr. Clark Nichols for the Commission.
Arnstein & Schwartz, 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 Eleanor Schultz Baden, also known as Eleanor Schultz, and George Baden, as individuals, and as copartners trading as E. G. Sales & Manufacturing Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Eleanor Schultz Baden also known as Eleanor Schultz, and George Baden, as individuals and as copartners are trading as E. G. Sales & Manufacturing Co. with their principal place of business located at 355 East One Hundred Forty-ninth Street, New York, N. Y.

Said respondents are now, and for several years last past have been, engaged in the manufacture, sale, and distribution of certain devices for use on internal combustion motors, with battery ignition, in commerce as "commerce" is defined in the Federal Trade Commission Act. Prior to January 1946, said devices were sold under the trade name

of "E. G. Supercharger" and since January 1946 as "E. G. Super-Ignitioniter" and "E. G. Super-Ignitioner." Said devices, although sold under the above different names, are of substantially the same construction and possess substantially the same properties.

PAR. 2. Respondents cause, and have caused, said devices, when sold to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia, and at all times herein maintain and have maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia. Respondents' volume of business in said devices in such commerce is and has been substantial.

PAR. 3. In the course and conduct of their said business and for the purpose of inducing the sale of their said devices in commerce, respondents have made false and misleading statements and representations with respect to the value, usefulness, and functions of said devices in newspapers and periodicals of general circulation and in circulars, letters, and printed matter appearing on cartons in which said devices are packaged. Among and typical of the statements and representations appearing in said advertisements are the following:

RELATIVE TO THE DEVICE UNDER THE NAME SUPERCHARGER

1945 IGNITION Supercharger. $4.00. Pep, Mileage, Fast Starting. EG Mfg. Co.

MAKES ALL ENGINES DO MORE AT LESS EXPENSE.
EXTENDS LIFE OF ENGINE 3 to 4 TIMES LONGER
WITH GREATER SAVING AND EFFICIENCY.

E. G. Ssupercharger . . .
Quick starting wet or cold
Increases cylinder Power
More Mileage and Pep—
Reduces carbon and Quiets
Engine Performance—

Makes New and Old Engines Perform Better.

How would you like it if your engines would always start easy, wet or cold? Better mileage—Running idle you will notice the difference. The accelerator does not have to be pressed as far as before, the engine revolves faster. And on the road you will notice a faster pick-up, more power on hills—and higher speeds will feel like 10 miles less. Makes cheaper gas—and the best gas perform better—Less carbon and smoother operation. YES, that is the improvement and saving others tell us they got and you can get it, too—NEW & OLD engines better—Simply rush in money, money order or checks for all the Superchargers you can use. Spark plugs and points last longer at higher firing.

E. G. Ssupercharger has 7 distinct features:

1. QUICK STARTING—engine wet or cold.
2. MORE MILEAGE.
3. MORE PEP AND POWER.
4. RAPID ACCELERATION AND PICKUP.
5. FIRES THROUGH OIL AND GREASE.
6. REDUCES CARBON.
7. Quiets and Smooths Engine Performance.

Makes NEW and OLD engines BETTER

Tested and approved by Automotive Test Laboratories of America.

RELATIVE TO THE DEVICE UNDER THE NAME SUPER-IGNITIONITER OR SUPER-IGNITIONER

SUPER IGNITIONER $4.50

Faster starting, pep, mileage.

Our new 1946 model E. G. SUPER IGNITIONITER increases the tension, or pressure, at the spark plug point gaps, thus assuring a fast, hot spark at each and every cycle, under the highest compression, producing multiple combustion of the fuel charge.

Installing our new 1946 E. G. SUPER-IGNITIONITER is simplicity itself: Simply pull the wire out of the center hole of your distributor, and insert the male end of the Super-Ignitioniter into this middle hole of the distributor. Next insert the terminal of the wire you disconnected from the distributor middle hole into the female end of the Super-Ignitioniter. That's all there is to it. Now step on the starter and note the difference as your motor springs instantly into a new, surging power.

If your motor then idles too fast, close the throttle by unscrewing the idling screw on the carburetor until you get the desired idling speed, and you are ready to go. Check the increased efficiency, pep, power and gasoline mileage your motor now produces, with the aid of our E. G. SUPER-IGNITIONITER. Note the extra power on steep hills and in tough spots of mud or snow.

Order your new 1946 model E. G. SUPER-IGNITIONITER today so you can begin enjoying the new, amazing efficiency of your motor with its dazzling performance and power.

Quicker starting wet or cold.

Atomic starting, pep, mileage.

Makes all cars, trucks, motor boats, airplanes, or stationary engines with battery ignition step out and go with economy.

Helps some cases of carbon and oil shooting.

PAR. 4. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication:

That their said devices when atached to any motor, regardless of age or condition, will make said motor operate better at less expense; that they will extend the life of motors three or four times longer than if said devices were not attached, with less expense and more efficiency for the longer period; that they will insure quicker starting in motors, having battery ignition, when wet or cold; that they will give on all

such motors, regardless of condition, more mileage, cylinder power, rapid acceleration and pickup than is produced by regular equipment used in such motors by their manufacturers; that they prolong the life of spark plugs and points; that they will cause a spark to jump across spark plug points that are clogged with oil and grease, when the stock coil will not so do; that they will reduce and prevent carbon in such motors; that they produce "atomic starting" in such motors; that they quiet and smooth such motors not performing properly for any reason; that they make new or old cars perform better under all conditions; that they have been tested and approved for all of the above claims of merit by the Automotive Testing Laboratories of America, implying that said testing laboratories are equipped with personnel and apparatus, qualified and sufficient to make the necessary tests for said claims of merit.

PAR. 5. The said representations are false and misleading. In truth and in fact respondents' said devices when attached to motors having battery ignition will not make such motors operate better or at less expense and will not extend the life of such motors any length of time over its usual life, but tend to shorten the normal life of the motor's ignition coil. They will not insure quicker starting of such motor when it is wet or cold. They will not insure quicker starting, more mileage, cylinder power, rapid acceleration or pickup except in transitory instances confined to a condition where a plug is slightly fouled and will be no aid in the starting or operation of such motors if a spark plug is not fouled or is badly fouled. They will not cause a spark to jump across spark plug points that are clogged with oil and grease as well as the spark from the stock ignition coil of such motor. They will not prolong the life of spark plugs or points. They will have no effect on preventing the formation of carbon or of removing formed carbon in such motors. The use of the words "atomic starting" is confusing, exaggerated, and misleading as respondents' devices have no possible connection with the word "atomic" as it is commonly understood. They do not quiet or smooth motor operation nor make new or old cars perform better, except in the transitory instances above mentioned. The Automotive Testing Laboratories of America had no laboratory or testing equipment and had no engineers or experts employed or associated with it at the time of any so-called test of said devices.

PAR. 6. The use by the respondents of the trade names "Ssupercharger" and "Super-Ignitioniter" or "Super-Ignitioner" are false and misleading in that a supercharger, when descriptive of an attachment to internal combustion motors, means a device which increases the pressure as the explosive charge is supplied to the motor cylinder,

which the respondents' device does not do. The use of the words "Super-Ignitioniter" or "Super-Ignitioner" is misleading for the reason that the devices will not increase or improve the functions of the ignition system of a motor except in the limited manner and under the limited condition described in paragraph 5 hereof.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the meaning 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 May 28, 1948, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereinabove charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the issuance of said complaint and the filing by respondents of their joint answer thereto, hearings were held at which 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. On July 7, 1950, the trial examiner filed his initial decision.

The Commission, having reason to believe that the initial decision did not constitute an adequate disposition of the matter, on August 14, 1950, 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 in the tentative decision of the Commission attached to said order. Thereafter, this proceeding regularly came on for final consideration by the Commission upon the record herein on review, including the memorandum of objections filed on August 28, 1950, by respondent George Baden; and the Commission, having duly considered the matter and being now fully advised in the premises, 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, the same to be in lieu of the initial decision of the trial examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Eleanor Schultz Baden and George Baden, are and have been engaged since several years prior to 1946,

as copartners doing business as E. G. Sales & Manufacturing Co., 355 East One Hundred Forty-ninth Street, New York, N. Y., in the manufacture and sale of certain mechanical devices, for use on internal-combustion motors having battery ignition.

PAR. 2. Prior to January 1946, respondents' devices were sold under the trade designations of "E. G. Ssupercharger" and "Ignition Supercharger," and since 1946 as "E. G. Super-Ignitioniter" and as "Super-Ignitioner," which devices, although sold under the above different names, are functionally identical in operating principle and similar in construction. Respondents cause and have caused their devices when sold to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia, and at all times herein referred to have maintained a course of trade in said products in commerce, as aforesaid, in connection with which respondents' volume of business has been substantial.

PAR. 3. For the purpose of inducing the sale of their products in commerce, the respondents in newspapers and periodicals of general circulation and in circulars, letters, and other printed matter, including the carton containers in which said products are shipped, have represented that the use of their devices causes motors, regardless of age or condition, to operate better at less expense and insures quick starting; that such use affords motors, regardless of condition, more mileage, cylinder power, rapid acceleration and pickup, prolongs the life of spark plugs and points, and extends motor life three or four times longer than if said devices were not attached; and that such use causes the spark to jump across plug points that are clogged with oil or grease when a stock coil will not do so, reduces and prevents carbon, affords "atomic starting," and causes motors performing improperly to run quietly and smoothly. Through use on carton containers for said devices of the statement "Tested and approved by Automotive Test Laboratories of America," respondents also have represented that their products have been tested and approved by a laboratory or other organization possessing trained personnel and scientific facilities for the performance of authoritative tests and experiments concerning commercial products.

PAR. 4. In the ignition system regularly used on automobiles, the battery supplies the current and the current goes through a pair of contacts called breaker points which are opened by a cam. The timing of that opening is caused by the positioning of the crank shaft of the automobile. When the breaker points are closed, current flows through the remainder of the low tension circuit, the primary of the ignition coil, and back to the battery. With the breaker points open, that current is interrupted.

The high tension of the ignition coil passes through the secondary coil which is wrapped around the same core as the primary, and through a distributor which selects the cylinder to which the next spark shall go—through cable to the spark plug and through the engine back to ground and then to the point of origin. In operation, when the breaker points close, current flows through the primary and builds what is known as a magnetic field in the coil. When that current is interrupted, the field collapses, causing a rapid rise of potential in the secondary circuit. The extent to which this potential rises is determined by the possibility of breaking through resistance and causing the current to flow. This happens in an automobile ignition system whenever the potential gets high enough to jump across the spark plug gap, or any additional gaps also in the circuit.

The ignition coil changes the 6- or 12-volt current of the primary to current at a very much higher voltage in the order of 10,000 volts. The insulation of the ignition system in general and of the coil is intended to protect against normal stress.

When any of respondents' devices are used in the ignition system, installation is made in the line between the ignition coil and the distributor so that the device constitutes an additional series gap on all of the spark plugs, because it occurs before the distributor which connects successively to the different spark plugs. Accordingly, the electrical charge comes first through the ignition coil and passes through respondents' device and then into the spark plugs.

PAR. 5. The introduction of an additional spark gap as provided by respondents' devices into the ignition system serves to build up the voltage but thereby increases the stress and the insulation of the ignition coil and tends to hasten the breakdown of the coil. Respondents' devices will be of no benefit when starting failure or improper operation is due to a weak coil. When the spark plugs and the ignition coil in a car are in good condition, the use of respondents' devices will have no influence upon the combustion process of fuel in the cylinders.

The representations of the advertising as referred to in paragraph 3 hereof are false and misleading. Respondents' products will not cause motors, regardless of age or condition, to operate better or at less expense or insure quick starting, or irrespective of motor condition, afford more mileage, power, acceleration, or pick-up. Under no conditions of use will respondents' devices significantly increase the life of spark plugs and points, nor will they extend motor life three or four times longer, or for any period longer, than if said devices are not attached. Respondents' products will not be effective in causing sparks to jump across spark plug points and in causing sparks to

occur irrespective of the degree to which such spark plugs may be fouled with oil and grease, nor will such devices make all motors not performing properly, operate quietly and smoothly. They will not serve to reduce or prevent carbon.

On the basis of the evidence, it appears, however, that respondents' devices may have a favorable influence in starting or operation in those rare circumstances where one or more plugs are fouled within certain limits by carbon. A stock coil will cause spark to occur up to a certain stage of fouling but above such limits or values of shunting resistance, as referred to scientifically, the spark plug will miss firing and the motor will fail to start. Within narrow limits above this value, an auxiliary series gap may permit spark to occur. The value of an additional spark gap in these circumstances is temporary, however, inasmuch as normal continuation or progression of the fouling process due to the operational defect causing such fouling in the first instance, will render the ignition system ineffective within a short period of time. Respondents' devices will not cause a spark to occur when plugs are badly fouled and they are not an effective substitute for cleaning of the plugs or correcting the basic operational causes of fouling.

Atomic energy is the result of nuclear action and the operational principles of respondents' devices have no connection therewith. The use of the words "atomic starting" by respondents is confusing and misleading.

When respondents' business was instituted, the specifications for their products and samples thereof were sent by them to a concern known as Automotive Test Laboratories and a certificate or seal of approval was thereafter received by respondents from this source. Such statement has been the basis for the representations formerly appearing on respondents' cartons that their products had been "Tested and approved by Automotive Test Laboratories of America." Findings as to the facts, conclusion, and orders to cease and desist were issued by the Commission respectively on April 29, 1938, and April 28, 1938, in the matters of Morris E. Newman, trading as Automotive Test Laboratories of America, Docket Number 3328, and Ralph C. Curtiss, et al., Docket Number 3329. Official notice has been taken herein of certain facts therein found by the Commission, namely, that Automotive Test Laboratories of America, at the time such purported approval of respondents' products was extended to respondents, had no laboratory or scientific equipment for conducting tests and experiments and employed no trained personnel for the purpose of performing tests on commercial products. Instead, the proprietor of such concern followed the practice of accepting the

suggestions and claims made by various manufacturers as the basis for so-called certificates or seals of approval or merit which thereafter were issued by Automotive Test Laboratories of America without investigation of the truth or falsity of the manufacturers' statements. It does not appear that respondents were aware of all the circumstances under which the operations of Automotive Test Laboratories were conducted. In the circumstances, however, the Commission is of the view that the implications of respondents' advertising to the effect that its products have been scientifically tested and thereafter approved by a laboratory or organization possessing adequate personnel and scientific facilities for the performance of tests and experiments concerning commercial products are erroneous and misleading.

PAR. 6. In the memorandum filed by respondent George Baden containing objections to the tentative decision heretofore issued by the Commission, respondents contend that the opinions expressed by the witness Hunt, an automobile mechanic whose testimony was introduced into the record by respondents, outweighs the testimony of various other witnesses whose testimony was received in this proceeding. The witness Hunt testified that he installed one of respondents' devices procured by him during the period when this proceeding was pending, and, upon the basis of its use, expressed the opinion that faster starting, smoother operation, and greater gasoline economy were afforded. This testimony tends to corroborate the testimony of the respondent George Baden. Called by counsel supporting the complaint, however, were other witnesses including two automotive engineers each of whom has been identified with the National Bureau of Standards. Upon the basis of his examination of both of respondents' devices which were received as exhibits herein, one testified that the effect of such devices on the ignition system and motor was limited in the respects noted in paragraph 5 hereof. The other testified similarly with respect to the device designated "E. G. Ssupercharger," which was offered for sale prior to 1946. The opinions expressed by another scientist also connected with the Bureau of Standards are generally in accord. The Commission is of the opinion that the conclusions set forth in paragraph 5 hereof are in accord with the greater weight of the evidence adduced in this proceeding.

Respondents assert also that a statement appears in the tentative decision that their 1950 model device does not improve engine performance. The reception of evidence was completed in this proceeding on September 22, 1949. The Commission has made no findings herein which expressly relate to the device presently offered for sale by respondents. The findings of the Commission relate to the value and efficacy of the auxiliary spark gaps being sold under the repre-

sentations challenged in the complaint. Two representative types of such devices, the only ones offered in evidence, were received into the record, and, according to the greater weight of the evidence, they are functionally identical and similarly limited in value. The order now issuing requires cessation of certain of the representations challenged in the complaint in connection with the offering for sale, sale or distribution of the devices to which such representations originally related or of other products substantially similar thereto. Because no adequate basis is afforded therefor in the record, no determination has been made by the Commission as to the inherent nature of such devices as presently are being marketed by respondents.

Respondents assert also that they are objecting to such statement as has been made that their product was not submitted to the Automotive Test Laboratories of America. No statement to this effect appears in the tentative decision of the Commission or the foregoing findings as to the facts.

PAR. 7. The use by respondents of the aforesaid statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements are true and to induce such portion of the purchasing public because of the mistaken and erroneous belief so engendered to purchase respondents' products.

CONCLUSION

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

Additional allegations of the complaint pertain to respondents' use of the words "Ssupercharger," "Super-Ignitioniter," and "Super-Ignitioner" to designate their products, it being alleged in such connection that the term "Ssupercharger" is misleading in that a supercharger signifies a device which increases the pressure as the explosive charge is supplied to the motor cylinder, a function which respondents' products will not perform. The evidence adduced in this proceeding, as stated hereinbefore, indicates that use of the expression "Ssupercharger" was discontinued by respondents in January 1946, more than two years prior to the institution of this proceeding. In view of such discontinuance and there being no reason to believe that use of the term "Ssupercharger" or other words of similar import will be resumed, the Commission is of the opinion that no further corrective action in respect thereto is required in the public interest at this time,

and the charges of the complaint in respect thereto are accordingly being dismissed without prejudice.

With respect to other charges relating to the designations "Super-Ignitioniter" and "Super-Ignitioner," it is alleged that their use in the advertising is misleading for the reason that such devices will not increase or improve the functions of the ignition system except in transitory instances confined to a condition of slight fouling of the spark plug. Such temporary improvements in starting or operation as may be afforded by use of respondents' devices in comparatively rare instances have been discussed hereinbefore, and reference has been made also to certain adverse effects on the ignition coil which tend to result from use of one of respondents' devices. No evidence was introduced in this proceeding expressly directed to showing what consumer impressions may be engendered by the use of the expressions "Super-Ignitioniter" and "Super-Ignitioner." In the circumstances here, the Commission is of the opinion that the evidence contained in the record is insufficient for an informed determination of the issues raised by such allegations, and these charges are therefore being dismissed without prejudice in the order hereinafter set forth.

ORDER

It is ordered, That the respondents Eleanor Schultz Bader and George Baden, individually and trading as E. G. Sales & Manufacturing Co., or trading under any other name, and their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' mechanical devices designated "E. G. Ssupercharger," "Ignition Supercharger," "E. G. Super-Ignitioniter," and "E. G. Super-Ignitioner," or any substantially similar devices whether sold under the same name or any other name, do forthwith cease and desist from representing directly or by implication:

(1) That said products will cause motors, under all conditions, to operate better or more economically, will insure quick starting, or, under all conditions, afford increased mileage, power, acceleration, or pickup;

(2) That said products will prolong motor life or increase the life of plugs or points;

(3) That said products will reduce or prevent carbon;

(4) That said products will afford "atomic starting";

(5) That said products will have any value in improving motor starting or operation, or in causing a spark to be produced when

plugs are fouled by oil or grease unless said statements be expressly limited to such temporary value as may be afforded when starting failure, or impaired operation, is caused by failure of the spark to occur due to fouling of one or more spark plugs by carbon within those rarely encountered and narrow limits of fouling in which an auxiliary spark gap may be of assistance in causing a spark to occur;

(6) That said products have been tested or approved by a laboratory or other organization equipped with trained personnel and scientific facilities for the performance of authoritative tests and experiments on commercial products when such is not the case.

It is further ordered, That those additional charges of the complaint pertaining to respondents' use of the terms "Ssupercharger," "Super-Ignitioniter" and "Super-Ignitioner," be, and the same hereby are, dismissed without prejudice to the right of the Commission to take such further or other action in the future as may be warranted by the then existing circumstances.

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

IN THE MATTER OF

THE MIAMI MARGARINE CO. AND THE RALPH H. JONES CO.

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

Docket 5353. Complaint, July 7, 1945—Decision, Apr. 19, 1951

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of margarine under the trade name or brand "Nu-Maid," and an advertising agency; in advertising in newspapers and periodicals and by radio announcements—

(*a*) Represented that their said margarine was the only one adapted for table use, and that all margarines sold by competitors were inferior thereto for such use;

The facts being that said product, like margarines sold by competitors, contained no ingredients other than those set out in the regulations as to standards of identity of oleomargarines, promulgated by the Food and Drug Administration on June 6, 1941; all margarine products manufactured in accordance with these regulations are adapted for table use; and its said false representation unfairly disparaged the products of its competitors;

(*b*) Represented that their said product when consumed in the ordinary manner at the table would provide pep because of its vitamin A content, and that vitamin A was properly characterized as the "Pep-Up" vitamin;

The facts being that it would not thus provide "pep" as the word is commonly understood, i. e., activity, vitality, vigor, strength, and endurance, and there is no scientific basis for the claim that Vitamin A is the "pep-up" vitamin; and,

(*c*) Falsely represented that their said margarine when consumed in the ordinary manner at the table had therapeutic value in the treatment of digestive troubles;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and thereby into the purchase of said margarine, and to divert unfairly to said manufacturer from its competitors substantial trade in commerce:

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

As respects the charge in the complaint that respondents disseminated the false representation that said margarine had been graded or classified as a kind or quality of margarine expressly adapted for table use: the Commission was of the opinion and found that the allegations of the complaint with respect to such charge had not been sustained by the greater weight of the evidence.

Before *Mr. Andrew B. Duvall*, *Mr. John P. Bramhall*, and *Mr. Clyde M. Hadley*, trial examiners.

Mr. Clark Nichols for the Commission.

Graydon, Head & Ritchey, of Cincinnati, Ohio, 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 Miami Margarine Co., a corporation, and The Ralph H. Jones Co., a corporation, hereinafter referred to as the respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Miami Margarine Co., is a corporation, organized and existing under the laws of the State of Ohio with its principal office and place of business located at 107 East Pearl Street, Cincinnati, Ohio, and respondent, The Ralph H. Jones Co., is a corporation organized and existing under the laws of the State of Ohio, with its principal office and place of business located at 3100 Carew Tower, Cincinnati, Ohio.

PAR. 2. Respondent, The Miami Margarine Co., is now, and for more than 3 years last past has been, engaged in the sale and distribution of margarine under the trade name of Nu-Maid. Said respondent causes its said margarine, when sold, to be transported from its place of business in the State of Ohio to the purchasers thereof located in various other States of the United States and in the District of Columbia.

Said respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said product, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 3. This respondent has been, and is now, and at all times mentioned herein, has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture, sale, and distribution of margarine for the same use and purpose as the product advertised, sold, and distributed by this respondent.

PAR. 4. The respondent, The Ralph H. Jones Co., is a corporation conducting an advertising agency from its place of business, as aforesaid, and as such is engaged in formulating, editing, and selling advertising matter and advising its clients with regard thereto. Said respondent prepared and placed for respondent, The Miami Margarine Co., the advertising matter hereinafter mentioned and set forth.

PAR. 5. The respondents act in conjunction and cooperation with each other in the performance of the acts and practices hereinafter alleged.

PAR. 6. In the course and conduct of their aforesaid businesses, said respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning the aforesaid Nu-Maid margarine by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and the respondents, as aforesaid, have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning the aforesaid product, by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the aforesaid product, in commerce, as commerce is defined in the Federal Trade Commission Act.

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

Table Grade NU-MAID is 97% digestible and is rich in Vitamin "A" (The Pep-Up Vitamin). It is a high energy food.

Though NU-MAID is the *only* margarine plainly labeled "Table Grade," it costs so little you can use it freely.

Table-Grade NU-MAID is a high-energy food (3300 calories per LB.) enriched with 9,000 USP units of the "Pep-up Vitamin 'A'."

NU-MAID, the only margarine certified by its makers to be "Table Grade."

At your table, use NU-MAID, the only margarine certified by its makers to be "Table Grade" margarine.

Pure, Sweet, Wholesome, NU-MAID, only. The "Table Grade" margarine.

I said NU-MAID—is *table grade* margarine, made especially for use on the TABLE.

Though NU-MAID is the *only* margarine plainly labeled "Table Grade" * * *

NU-MAID The Table-Grade margarine.

Serve only margarine that's labeled "Table Grade."

Doctors some time tell patients suffering with digestive troubles to eat a fine margarine such as NU-MAID.

PAR. 7. Through the use of the aforesaid statements and representations, and others of the same import but not specifically set out herein, respondents represent, directly and by implication, that Nu-Maid margarine, when consumed in the ordinary manner at the table, will provide pep because of its vitamin A content and has therapeutic value in the treatment of digestion troubles; that vitamin A is properly characterized as the "Pep-Up" vitamin; that said product has been graded or classified as a kind or quality of margarine especially adapted for table use; that it is the only margarine adapted for that purpose and that all margarines sold by competitors are inferior to said product for table use.

PAR. 8. The aforesaid statements and representations are false, misleading, and deceptive and those representing or implying that all margarines sold by the competitors of respondent, The Miami Margarine Co., are inferior to and less desirable than said respondent's product, unfairly disparage the products of its competitors.

In truth and in fact, the vitamin A contained in the product, Nu-Maid margarine, when said product is consumed in the ordinary manner at the table will not provide "pep" in the sense that this word is commonly understood, that is, activity, vitality, vigor, strength, and endurance. The consumption of this product has no therapeutic value in the treatment of digestive troubles. There is no scientific basis for the claim that vitamin A is the "pep-up" vitamin. Nu-Maid margarine is not processed, graded, or classified in any manner which renders it especially adaptable for table use and many competitive brands of margarine are not inferior to said product, for table use.

PAR. 9. The use by the respondents of the aforesaid statements and representations in connection with the offering for sale and sale of said product, in commerce, has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said statements, representations, and implications are true, and causes such members of the purchasing public to purchase substantial quantities of said product as a result of such erroneous belief, with the result that trade in commerce has been unfairly diverted to the respondent, The Miami Margarine Co., from its competitors. In consequence thereof, substantial injury has been and is being done to said respondent's competitors in commerce.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 7, 1945, issued and subsequently served its complaint in this proceeding upon the respondents, The Miami Margarine Co., a corporation, and The Ralph H. Jones Co., a corporation, charging said respondents with the use of unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce in violation of the provisions of that Act. After the filing of respondents' answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before trial examiners of the Commission theretofore

duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the respondents' answer thereto, the testimony and other evidence, and the recommended decision of a substitute trial examiner duly designated by the Commission for the purpose of preparing and submitting his recommended findings and conclusion upon all of the material issues of fact, law, or discretion presented on the record, the trial examiner previously designated to take testimony and receive evidence herein being unavailable (briefs having been waived and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Miami Margarine Co., is an Ohio corporation, with its principal office and place of business located at 107 East Pearl Street, Cincinnati, Ohio. Respondent, The Ralph H. Jones Co., is an Ohio corporation with its principal office and place of business located at 3100 Carew Tower, Cincinnati, Ohio.

PAR. 2. Respondent, The Miami Margarine Co., is now and for some years last past has been engaged in the manufacture, sale and distribution of margarine under the trade name or brand of Nu-Maid. The said respondent causes, and at all times mentioned herein has caused, its said product, when sold by it, to be transported from its place of business in the State of Ohio to purchasers in various other States of the United States and in the District of Columbia. Said respondent maintains and at all times mentioned herein has maintained a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia. Said respondent is now and at all times mentioned herein has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the sale and distribution of margarine for the same use and purpose as the products advertised and sold and distributed by the said respondent.

PAR. 3. Respondent, The Ralph H. Jones Co., is an advertising agency engaged in formulating, editing, and selling advertising matter and advising its clients with regard thereto. Said respondent prepared and placed for The Miami Margarine Co. the advertising matter hereinafter set forth. Respondents have cooperated with each other in performing the acts and practices hereinafter described.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of the product designated Nu-Maid margarine, respondents have disseminated, and have caused the dissemination, by the United States mails, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, of many advertisements concerning said product, and they have also disseminated, and have caused the dissemination, by various means, of many advertisements for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in said advertisements, disseminated and caused to be disseminated as hereinabove set forth, principally by insertions in newspapers and periodicals and by radio announcements, have been the following:

At your table, use only margarine that's plainly labeled "Table-Grade."

NU-MAID is the only margarine certified by its maker to be a "Table-Grade" margarine.

Pure, Sweet, Wholesome only
NU—MAID buy it now!
The "Table-Grade" Margarine.

Serve *only* margarine that's labeled "*Table-Grade.*"

"Table-Grade" NU-MAID is 97% digestible and is rich in Vitamin "A" (The "Pep-Up" Vitamin). It is a high energy food.

"*Table-Grade*" NU-MAID is a high-energy food (3,300 calories per LB.), enriched with 9,000 USP units of the "Pep-Up" Vitamin "A."

Doctors sometimes tell patients suffering from digestive troubles to eat a fine margarine such as NU-MAID.

PAR. 5. Through the use of the foregoing statements and representations, and others of similar import, the respondents have represented, directly or by implication: (*a*) that Nu-Maid margarine is the only margarine adapted for table use and that all margarines sold by competitors are inferior to said product for table use; (*b*) that Nu-Maid margarine, when consumed in the ordinary manner at the table, will provide pep because of its vitamin A content; (*c*) that vitamin A is properly characterized as the "pep-up" vitamin, and (*d*) that Nu-Maid margarine, when consumed in the ordinary manner at the table, has therapeutic value in the treatment of digestive troubles.

PAR. 6. (*a*) Respondents' Nu-Maid margarine, as well as margarines sold by their competitors, contains no ingredients other than those set out in the regulations as to standards of identity of oleomargarines promulgated by the Food and Drug Administration on June 6, 1941. All margarine products manufactured in accordance with this regulation are adapted for table use. Respondents' representation that Nu-Maid margarine is the only margarine adapted

for table use was false and misleading and unfairly disparaged the margarine products of its competitors.

(*b*) Nu-Maid margarine, when consumed in the ordinary manner at the table, will not, because of its vitamin A content, provide "pep" in the sense that this word is commonly understood, that is, activity, vitality, vigor, strength and endurance, and that respondents' representations to the contrary were untrue.

(*c*) There is no scientific basis for the claim that vitamin A is the "pep-up" vitamin, and respondents' advertisements wherein such claim was made constituted false advertisements.

(*d*) Nu-Maid margarine, when consumed in the ordinary manner at the table, has no therapeutic value in the treatment of digestive troubles, and respondents' representations to the contrary were untrue.

PAR. 7. The complaint in this proceeding also charged that respondents disseminated the false representation that Nu-Maid margarine has been graded or classified as a kind or quality of margarine especially adapted for table use. The Commission is of the opinion, and finds, that the allegations of the complaint with respect to the falsity of these representations have not been sustained by the greater weight of the evidence.

PAR. 8. The use by the respondents of the false, misleading, and deceptive statements and representations referred to in paragraphs 4 to 6, inclusive, disseminated as aforesaid, has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and into the purchase of Nu-Maid margarine as a result of such erroneous and mistaken belief. By reason of the erroneous and mistaken belief so engendered such statements and representations have also had the tendency and capacity to unfairly divert to the respondent, The Miami Margarine Co., from its competitors, substantial trade in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The acts and practices of the respondents as herein found (excluding those referred to in paragraph 7) are all to the prejudice and injury 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 oppo-

sition to the allegations of the complaint introduced before trial examiners of the Commission theretofore duly designated by it, the recommended decision of a substitute trial examiner duly designated by the Commission for the purpose of preparing and submitting his recommended decision upon the record, the trial examiner previously designated being unavailable (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 the respondent, The Miami Margarine Co., a corporation, and The Ralph H. Jones Co., a corporation, and their respective officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of Nu-Maid margarine, or any other product of substantially similar composition or possessing substantially similar properties whether sold under the same name or under any other name, do forthwith cease and desist from:

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

(*a*) That the said product is the only margarine product suitable for table use.

(*b*) That a margarine product is not suitable for table use unless it is labeled "Table-Grade."

(*c*) That the said product, because of its vitamin A content, provides the user thereof with increased pep, energy, vitality, vigor, strength, or endurance.

(*d*) That vitamin A is properly characterized as the "pep-up" vitamin, or that vitamin A provides the user thereof with increased pep, energy, vitality, vigor, strength, or endurance.

(*e*) That the said product has any therapeutic value in the treatment of digestive troubles.

2. Disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of such product, which advertisement contains any of the representations prohibited in the preceding paragraph 1 (*a*), (*b*), (*c*), (*d*), and (*e*).

It is further ordered, That the respondents shall, within sixty (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.

IN THE MATTER OF

CLAY PRODUCTS ASSOCIATION, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914 AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5483. Complaint, Feb. 14, 1947—Decision, Apr. 19, 1951 [1]

Where an association of manufacturers of vitrified clay sewer pipe, the delivered costs of which are composed in substantial part of freight costs; and 13 members and a former member, with some 20 plants in Montana, Colorado, Nebraska, Texas, Missouri, Kansas, Iowa, Illinois, Indiana, Kentucky, Minnesota, and Michigan, engaged in the interstate sale and distribution of said products in competition with one another except as below set forth—

(*a*) Cooperated in a common course of action, whereby competition in the sale and distribution of said pipe and fittings was substantially suppressed and prevented; and in furtherance thereof—

(1) Fixed, established, and maintained prices for said products through dividing their trade area into delivered price zones and agreeing upon and jointly publishing a master price list (known generally in the trade as the western price list), which set forth a basic price for each type of product together with discount rates applicable to the several delivered price zones, according to an agreed-upon schedule of freight rate differentials, and did not reflect, in delivered prices in any given zone, actual freight rates, but reflected rather freight rate averages to each zone from the Ohio basing area;

(2) Established and maintained a common course of action regarding dealers, which included the designation of dealers, the terms and conditions of sale including the discount or commission to be allowed to dealers, and the allocation of sales between respondent members and dealers;

(3) Established and maintained a list of jobbers, and terms and conditions of sale to jobbers, and agreed upon the allocation of sales between jobbers and themselves; and

(4) Made use of their said association as a medium for establishing and agreeing upon prices, pricing methods, preparation of price sheets for publication, delivered price zones and prices therein, defining and classifying dealers and jobbers, establishing uniform terms and conditions of sale, and otherwise suppressing competition among themselves in the sale and distribution of said products; and

Where each of said members, and said former member—

(*b*) Contributed to the accomplishment and effectiveness of the foregoing acts, practices, and results through using a zoning method of computing, formulating, and using delivered price quotations when other members simultaneously did the same, whereby it was enabled to and did match its quotations on a delivered basis with those of other members; and

(*c*) Contributed, as aforesaid, through discriminating among its customers by charging and receiving higher net prices from customers located near its plant than from those more distant, for goods of like grade, quality, and quantity, whereby it was enabled to and did match its quotations on a delivered basis, with those of other members;

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[1] See footnote on p. 1272.

Inherent and necessary effects of which acts, practices and methods, under the circumstances set forth, were—

(1) A substantial lessening of competition in the sale of said products as among the members of said association; and

(2) Unfair and oppressive discrimination against purchasers of vitrified clay sewer pipe and fittings in large areas of the United States, by depriving them of advantages in cost which would otherwise accrue to them as a result of their proximity to the factories of the members, and the imposition upon them of higher net prices than they would have to pay if such net prices had been fixed by competition among the members:

Held, That such combination, and the acts and practices pursued in connection therewith, as above set forth, constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

As respects four respondent concerns against which the allegations of the complaint had not been established and with respect to which no findings had been made as regards their participation in the unlawful acts and practices described, it appearing that three were respondents in the Commission's proceeding against Clay Sewer Pipe Association, Inc., et al., docket 5484, which involved substantially similar charges, and that each of said three had filed therein an answer admitting all of the material allegations of fact set forth in that complaint:

The Commission was of the opinion that the public interest did not require an expenditure of the time and money necessary to prosecute further the instant proceeding against said three respondents, that the unlawful acts and practices alleged to have been engaged in by the respondents might be effectively stopped without the necessity of further proceedings against said fourth respondent, and that as to all four, the complaint should be dismissed without prejudice to the right of the Commission to institute a new proceeding against them if ever the public interest should so require.

As regards the charge in count two of the complaint that respondent members had discriminated in price in the sale of said pipe and fittings by selling to some purchasers at a price higher than that to others, in violation of subsection (*a*) of section 2 of the Clayton Act as amended: the Commission was of the opinion that the allegations did not clearly show that the alleged unlawful discriminations occurred as a result of differences made in the actual price at which the respondents' products were sold, and that, therefore, said count should be dismissed as to all of the respondents.

Mr. Lynn C. Paulson and *Mr. Rice E. Schrimsher* for the Commission.

Kirkland, Fleming, Green, Martin & Ellis, of Chicago, Ill., for Clay Products Association, Inc., Blackmer & Post Pipe Co., Cannelton Sewer Pipe Co., Red Wing Sewer Pipe Corp., What Cheer Clay Products Co., White Hall Sewer Pipe & Stoneware Co., Streator Drain Tile Co., Standard Fire Brick Co., Lovell Clay Products Co., and along with—

Froelich, Grossman, Teton & Tabin, of Chicago, Ill., for Lehigh Sewer Pipe & Tile Co.;

Winger, Barker & Winger, of Kansas City, Mo., for W. S. Dickey Clay Manufacturing Co.;

Cobbs, Logan, Roos & Armstrong, of St. Louis, Mo., for Laclede Christy Clay Products Co.;

Strock, Woods & Dyer, of Des Moines, Iowa, for Iowa Pipe & Tile Co.;

Mr. C. T. Greenlee, of Uhrichsville, Ohio, for Clay City Pipe Co.; and

Hughes & Dorsey, of Denver, Colo., for Denver Sewer Pipe & Clay Co.

Thompson, Hine & Flory, Cleveland, Ohio, for American Vitrified Products Co.

Slabaugh, Guinther, Jeter & Pflueger, of Akron, Ohio, for The Robinson Clay Products Co.

Mr. Oscar E. Buder and *Mr. Eugene H. Buder*, of St. Louis, Mo., for Evens & Howard Sewer Pipe Co.

COMPLAINT

This complaint is filed to obtain relief from respondents' activities because of their violations, jointly and severally, as hereinafter alleged in Count I herein, of section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," commonly referred to as the Federal Trade Commission Act, as approved September 26, 1914, and amended March 21, 1938 (38 Stat. 717; 15 U. S. C. A. sec. 41; 52 Stat. 111), and because of their violations, as alleged in Count II herein, of section 2 (*a*) of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly referred to as the Clayton Act, as approved October 15, 1914, and amended June 19, 1936 (38 Stat. 730; 15 U. S. C. A. sec. 12, 49 Stat. 1526; 15 U. S. C. A. sec. 13, as amended).

COUNT I

THE CHARGE UNDER THE FEDERAL TRADE COMMISSION ACT

PARAGRAPH 1. Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the 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 charges in that respect as follows:

DESCRIPTION OF RESPONDENTS

PAR. 2. Respondent Clay Products Association, Inc., is an Illinois corporation, with its offices at 111 West Washington Street, Chicago, Ill.

Respondent American Vitrified Products Co. is a corporation organized and existing under the laws of the State of New Jersey with its main office at Cleveland, Ohio.

Respondent Blackmer & Post Pipe Co., is a corporation organized and existing under the laws of the State of Missouri, with its principal office located in St. Louis, Mo.

Respondent Cannelton Sewer Pipe Co. is a corporation organized and existing under the laws of the State of Indiana, with its main office at Cannelton, Ind.

Respondent Lehigh Sewer Pipe & Tile Co. is a corporation organized and existing under the laws of the State of Iowa, with its main office at Fort Dodge, Iowa.

Respondent Red Wing Sewer Pipe Corp. is a corporation organized and existing under the laws of the State of Minnesota, with its main office at Red Wing, Minn.

Respondent The Robinson Clay Products Co. is a corporation organized and existing under the laws of the State of Maine, with its main office at Akron, Ohio.

Respondent What Cheer Clay Products Co. is a corporation organized and existing under the laws of the State of Maine, with its main office at What Cheer, Iowa.

Respondent White Hall Sewer Pipe & Stoneware Co. is a corporation organized and existing under the laws of the State of Illinois, with its main office at White Hall, Ill.

Respondent Streator Drain Tile Co. is a corporation organized and existing under the laws of the State of Illinois, with its main office at Streator, Ill.

Respondent W. S. Dickey Clay Manufacturing Co. is a corporation organized and existing under the laws of the State of Delaware with its main office at Kansas City, Mo.

Respondent Laclede Christy Clay Products Co. is a corporation organized and existing under the laws of the State of Missouri, with its main office at St. Louis, Mo.

Respondent Evens & Howard Sewer Pipe Co. is a corporation organized and existing under the laws of the State of Missouri, with its main office at St. Louis, Mo.

Respondent Iowa Pipe & Tile Co. is a corporation organized and existing under the laws of the State of Iowa, with its main office at Des Moines, Iowa.

Respondent Clay City Pipe Co. is a corporation organized and existing under the laws of the State of Ohio, with its main office at Uhrichsville, Ohio.

Respondent Denver Sewer Pipe & Clay Co. is a corporation organized and existing under the laws of the State of Colorado, with its main office at Denver, Colo.

Respondent Standard Fire Brick Co. is a corporation organized and existing under the laws of the State of Colorado, with its main office at Pueblo, Colo.

Respondent Lovell Clay Products Co. is believed to be a corporation. The state of incorporation is unknown. Its main office is at Lovell, Wyo.

Respondent Agate Sewer Pipe Co. is believed to be a corporation. The state of incorporation is unknown. Its main office is at Louisville, Ky.

Each of the aforesaid respondents is a member of respondent association. They are sometimes hereinafter referred to as respondent members.

PAR. 3. Respondent Clay Products Association, Inc. (sometimes hereafter referred to as respondent association), was organized in 1932. It has a staff of officers consisting of a president, vice president, treasurer and secretary, and a board of directors. Its bylaws provide that the object of the corporation is to "advance or promote the use of clay products * * *; aid in the standardization of * * * clay products; carry on educational, experimental and research work * * *; maintain a traffic committee or bureau to furnish traffic information * * *"; etc. All of the respondents are members.

The bylaws of respondent association provide for regular and special meetings of the members as well as for regular and special meetings of the board of directions. In addition to performing the functions set forth in the bylaws, respondent association serves the members as a medium for joint and collusive action on prices and terms and conditions of sale of respondents' products, participates in the establishment and maintenance of the combination and conspiracy hereinafter alleged, and cooperates with respondent members in carrying out the alleged unlawful acts, methods, policies, and practices with which they are herein charged.

DESCRIPTION OF INDUSTRY AND BUSINESS OF RESPONDENTS

PAR. 4. Respondents are engaged in the manufacture and sale of vitrified sewer pipe and other clay products. Vitrified sewer pipe is a clay product commonly used for all types of sewers. It is an im-

portant item in modern building construction and community development. It is a heavy commodity so that freight costs are a substantial part of delivered costs. Respondents operate a total of approximately 20 plants in the States of Montana, Colorado, Nebraska, Texas, Missouri, Kansas, Iowa, Illinois, Indiana, Kentucky, Minnesota, and Michigan. The vitrified sewer pipe industry in the United States is composed of manufacturers located in 23 States, operating a total of 75 plants.

PAR. 5. Respondents, with the exception of the respondent association, are all doing business in interstate commerce. In the course and conduct of their respective businesses, each respondent member sells and distributes vitrified clay sewer pipe manufactured by it to the purchasers thereof located in the various States of the United States, and in conection with and as a part of said sales, transports, or causes to be transported, said product to said purchasers thereof located in the various States of the United States other than the States, and in connection with and as a part of said rules, transports, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Each of the respondent members has been and is in competition with one or more of the other respondent members in making or seeking to make sales in commerce between and among the various States of the United States of vitrified sewer pipe which they manufacture, except insofar as said competition has been hindered, lessened, restricted, or suppressed as hereinafter alleged.

OFFENSES CHARGED

PAR. 7. For more than 5 years last past respondents have done and performed, and are now doing and performing, unfair acts and practices, have engaged in and are now engaging in unfair methods of competition in violation of section 5 of the Federal Trade Commission Act in that they have acted, and are still acting, wrongfully and unlawfully by cooperating between and among themselves in establishing, adopting, and continuing a common course of action, concert of action and agreement, resulting in substantial hindrance, frustration, restraint, suppression, and prevention of competition in the sale and distribution of vitrified sewer pipe in trade and commerce, as "commerce" is defined in the Federal Trade Commission Act.

Pursuant to, in furtherance of, and in order to effectuate the purposes and objectives of the aforesaid cooperation and common course of action, and as a part of their said cooperation, common course of action and agreement, respondents have formulated, adopted, performed, and put into effect, among others, the overt acts and used the methods, systems, practices and policies listed, described, and set

forth in the immediately succeeding subparagraphs numbered 1 to 4, inclusive, of this Paragraph 7:

1. Respondents have fixed, established, and maintained prices for vitrified sewer pipe in most of the trade area in which they do business. A method used in that connection is that of dividing the trade area into delivered price zones and agreeing upon and jointly publishing a master price list known generally in the trade as the western price list, which said price list sets forth a basic price for each type of product for sale, together with discount rates which are applicable to the several delivered price zones, according to an agreed-upon schedule of freight rate differentials. The delivered prices in any given zone do not reflect the true and actual freight rates to all destinations in the zone, but are averages of freight rates to the zone from the basing area, which is Uhrichsville, Ohio.

2. Respondents have established and maintained a common course of action regarding dealers which includes the designation of dealers, the terms and conditions of sale, including the discount or commission to be allowed to dealers; and the allocation of sales between themselves and dealers.

3. Respondents have established and maintained a list of jobbers, terms and conditions of sale to jobbers, and agreed upon the allocation of sales between jobbers and themselves.

4. Respondents have made use of respondent Clay Products Association as a medium for establishing and agreeing upon prices, pricing methods, preparation of price sheets for publication, delivered price zones, prices in delivered price zones, defining and classifying dealers and jobbers, establishing uniform terms and conditions of sale and otherwise lessening, restricting, and suppressing competition between and among themselves in the sale and distribution of vitrified clay sewer pipe.

PAR. 8. Each of the respondent members has contributed to the accomplishment and effectiveness of the acts, things, and results alleged in the immediately preceding Paragraph 7 hereof through its—

(1) Use of a zoning method of computing, formulating, and using delivered price quotations when other respondent members simultaneously do likewise and by which it is enabled to, and does, match its quotations on a delivered basis with the quotations of other respondent members; and

(2) Discrimination between and among its customers through its demanding, charging, accepting, and receiving higher net prices from its customers located near its plant than from its customers more

distantly located for goods of like grade, quality, and quantity, and thereby is enabled to and does match its quotations on a delivered basis with the quotations of other respondent members.

EFFECTS AND RESULTS OF RESPONDENTS' ACTS AND PRACTICES

PAR. 9. The inherent effects of the adoption and maintenance by the respondent members of the methods and practices described and alleged in Paragraphs 7 and 8 herein include all and singularly the following, to wit:

(1) Substantial lessening of competition among respondent members; and

(2) Unfair and oppressive discrimination against portions of the purchasing public in large areas by depriving such purchasers of the advantage which would otherwise accrue to them as a result of their proximity to the factories of respondent members, and by requiring such purchasers to pay increases over what the net prices to such purchasers would have been if such net prices had been fixed by competition among respondents.

CONCLUSION

PAR. 10. The combination, agreements, and understandings of the respondents and the acts, practices, pricing methods, systems, devices, and policies as hereinbefore alleged, all and singularly, are unfair and to the prejudice of the public; deprive the public of the benefit of competition; promote discrimination against some buyers and users of respondents' products; have a dangerous tendency and capacity to restrain unreasonably competition in the sale of such products in commerce; have actually hindered, frustrated, restrained, suppressed, and prevented competition in such products in commerce; and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the meaning of section 5 of the Federal Trade Commission Act, as amended.

COUNT II

THE CHARGE UNDER THE CLAYTON ACT

PARAGRAPH 1. Pursuant to the provisions of section 2 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, as amended by an Act of Congress approved June 19, 1936, commonly known as the Robinson-Patman Act, the Commission, having reason to believe that

the parties hereinafter named and described as respondents in this Count II have violated and are violating the provisions of said Act of Congress as so amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges in such respect as follows:

DESCRIPTION OF RESPONDENTS; DEFINITIONS AND EXPLANATIONS OF TERMS; DESCRIPTION AND HISTORY OF INDUSTRY AND THE COMMERCE OF RESPONDENTS

PARS. 2, 3, 4, 5, and 6. As and for paragraphs 2, 3, 4, 5, and 6 of this Count II, the Commission incorporates (except the first unnumbered subparagraph of paragraph 2, regarding respondent Clay Products Association, and the definition of "commerce" as contained in paragraph 5) paragraphs 2, 3, 4, 5, and 6 of Count I of this complaint to precisely the same extent and effect as if each and all of them were set forth in full and repeated verbatim in this Count II. The definition of "commerce" as hereinafter used in this Count II means "commerce" as defined and set forth in the Clayton Act.

OFFENSES CHARGED

PAR. 7. For more than 5 years last past, and while engaged as aforesaid in commerce among the several States of the United States and in the District of Columbia, each of the respondents American Vitrified Products Co., Blackmer & Post Pipe Co., Cannelton Sewer Pipe Co., Lehigh Sewer Pipe & Tile Co., Red Wing Sewer Pipe Corp., The Robinson Clay Products Co., What Cheer Clay Products Co., White Hall Sewer Pipe & Stoneware Co., Streator Drain Tile Co., W. S. Dickey Clay Manufacturing Co., Laclede Christy Clay Products Co., Evens & Howard Sewer Pipe Co., Iowa Pipe & Tile Co., Clay City Pipe Co., Denver Sewer Pipe & Clay Co., Standard Fire Brick Co., Lovell Clay Products Co., and Agate Sewer Pipe Co., has been and is now in the course of such commerce discriminating in price between purchasers of said commodities of like grade and quality sold for use, consumption, or resale within the several States of the United States and the District of Columbia in that each of the respondents has been and is now systematically selling such commodities to many purchasers at a price higher than the price at which commodities of like grade and quality are sold by it to other purchasers and users.

PAR. 8. Each of the respondents uses a delivered pricing system and practice for determining, calculating, making up, using, an-

nouncing, publishing, and distributing its quotations and offers to its respective customers in selling vitrified clay sewer pipe and other clay products in commerce. Each of the respondents in using its said delivered pricing system for quoting its delivered prices, and in making sales of its products in commerce in accordance and in connection therewith, discriminates as between its customers in net prices realized on its products of like grade and quality. The discriminations by each said respondent thus effected are systematic and result in part because of its failure to "make only due allowance for differing methods or quantities in which such commodities are to such purchasers sold or delivered," and are discriminatory to such an extent that the net prices paid by customers located at or near its factory door in many instances amount to much more than the net prices realized by such respondent on its products of like grade and quantity sold to its customers located hundred of miles away. The systematic discriminations in net prices thus effected by each of the respondents against nearby customers and in favor of its more distantly located customers are inherent in the use of the aforesaid delivered pricing system of each of the respondents. There are also involved in said system MATCHED delivered price quotations so that such customer in considering or accepting any of such offers is denied the opportunity ordinarily afforded under price competition to bargain with one respondent against another.

PAR. 9. Each of the said respondents practices the aforesaid systematic discriminations in price for the purpose and with the effect of enabling all the respondents to exactly MATCH their delivered price offers to sell its products of like grade and quantity in commerce to any given prospective purchaser at any given destination and to maintain such matched offers.

EFFECTS OF PRICE DISCRIMINATIONS PRACTICED BY RESPONDENTS

PAR. 10. The inherent and necessary effect of the practice by the respondents of the discriminations described and alleged in this Count II includes all and singularly the following, to wit:

(1) The elimination of price competition between respondents; and

(2) The maintenance of monopolistic, unfair, and oppressive discrimination against purchasers of vitrified clay sewer pipe and other clay products in large areas of the United States by depriving such purchasers of the advantage in cost which would otherwise accrue to them from their proximity to the factories of respondents.

PAR. 11. Further effects of the said discriminations in price by said respondents, as alleged and described in this Count II herein, may be substantially to lessen competition between the buyers of respondents'

products from respondents receiving said lower discriminatory prices and other buyers from respondents competitively engaged with such favored buyers who do not receive such favorable prices; tend to create a monopoly in the lines of commerce in which buyers from respondents are engaged; and to injure, destroy, and prevent competition in the lines of commerce in which those who purchase from respondents are engaged between the said beneficiaries of said discriminatory prices and said buyers who do not and have not received such beneficial prices as well as to lessen competition in the lines of commerce in which respondents are engaged.

CONCLUSION

PAR. 12. The aforesaid acts of each of the said respondents constitute violations of the provisions of subsection (*a*) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (49 Stat. 1526; 15 U. S. C. A. sec. 13, as amended).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936, the Federal Trade Commission on February 14, 1947, 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 section 5 of the Federal Trade Commission Act and with having discriminated in price in the sale of vitrified sewer pipe and fittings in violation of the provisions of subsection (a) of section 2 of the said Clayton Act, as amended.

After the issuance of the complaint and the filing of the respondents' answers thereto (by all of said respondents except Agate Sewer Pipe Co.) denying in substantial part the allegations of the complaint, motions were filed on behalf of all of the respondents, except American Vitrified Products Company (erroneously named in the complaint as American Vitrified Products Co.), Robinson Clay Products Company (erroneously named in the complaint as The Robinson Clay Products Co.), Clay City Pipe Company (erroneously named in the complaint as Clay City Pipe Co.) and Agate Sewer Pipe Co., for permission to withdraw the original answers of said respondents and to file in lieu thereof substitute answers admitting, for the purposes of this proceeding, all of the material allegations of fact set forth in the

complaint and waiving all intervening procedure and further hearings as to said facts, but reserving to the respondents the right to file briefs and present oral argument before the Commission as to what order, if any, should be issued upon the facts admitted, which motions were granted, and the substitute answers were accordingly received and filed.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the aforesaid substitute answers, certain memoranda of counsel in support of the complaint and of counsel for the respondents (except American Vitrified Products Company, Robinson Clay Product Company, Clay City Pipe Company and Agate Sewer Pipe Co.) filed as, for, and in lieu of, briefs, attached to which memoranda of counsel in support of the complaint was a proposed form of order to cease and desist which was recommended by counsel in support of the complaint and by counsel for the respondents as the form of order to be issued by the Commission in disposition of the proceeding, and in which memoranda of counsel for the respondents the presentation of oral argument before the Commission as to what order, if any, should be issued was expressly waived.

The proposed form of order having been altered by the Commission to the extent and for the reasons shown by the tentative order entered October 16, 1950 (as revised by the order entered February 6, 1951, pursuant to suggestions made by counsel for the respondents), the respondents were afforded opportunity to show cause why said tentative order as so revised should not be entered herein as an order to cease and desist. The respondents not having appeared in response to the leave to show cause, the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (*a*) Respondent Clay Products Association, Inc., is an Illinois corporation, with its office at 111 West Washington Street, in the city of Chicago, State of Illinois. Said respondent sometimes hereinafter referred to as "respondent association," was organized in 1932. It has a staff of officers consisting of a president, a vice president, a treasurer, and secretary, and a board of directors. Its bylaws provide that the object of the corporation is to "advance or promote the use of clay products . . . ; aid in the standardization of . . . clay products; carry on educational, experimental, and research work . . . ; maintain a traffic committee or bureau to furnish