traffic information . . . ;" etc. Its bylaws further provide for regular and special meetings of the members, as well as for regular and special meetings of the board of directors.

In addition to performing the functions set forth in its bylaws, respondent association serves its members as a medium for joint and collusive action on prices and on terms and conditions of sale of the product of its members, participates in the establishment and maintenance of the combination and conspiracy hereinafter found, and cooperates with its members in carrying out the unlawful acts, practices, methods, and policies hereinafter described.

(*b*) Respondent Blackmer & Post Pipe Co. is a corporation organized and existing under the laws of the State of Missouri, with its principal office in the city of St. Louis, State of Missouri.

Respondent Cannelton Sewer Pipe Company (erroneously named in the complaint as Cannelton Sewer Pipe Co.) is a corporation organized and existing under the laws of the State of Indiana, with its main office in the city of Cannelton, State of Indiana.

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

Respondent What Cheer Clay Products Company (erroneously named in the complaint as What Cheer Clay Products Co.) is a corporation organized and existing under the laws of the State of Maine, with its main office in the city of What Cheer, State of 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 in the city of White Hall, State of Illinois.

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

Respondent W. S. Dickey Clay Manufacturing Company (erroneously named in the complaint as W. S. Dickey Clay Manufacturing Co.) is a corporation organized and existing under the laws of the State of Delaware, with its main office in the city of Kansas City, State of Missouri.

Respondent Laclede-Christy Clay Products Company (erroneously named in the complaint as Laclede Christy Clay Products Co.) is a corporation organized and existing under the laws of the State of Missouri, with its main office in the city of St. Louis, State of Missouri.

Respondent Evens & Howard Sewer Pipe Company (erroneously

named in the complaint as Evens & Howard Sewer Pipe Co.) is a corporation organized and existing under the laws of the State of Missouri, with its main office in the city of St. Louis, State of Missouri.

Respondent Iowa Pipe & Tile Company (erroneously named in the complaint as Iowa Pipe & Tile Co.) is a corporation organized and existing under the laws of the State of Iowa, with its main office in the city of Des Moines, State of Iowa.

Respondent The Denver Sewer Pipe & Clay Company (erroneously named in the complaint as Denver Sewer Pipe & Clay Co.) is a corporation organized and existing under the laws of the State of Colorado, with its main office in the city of Denver, State of Colorado.

Respondent The Standard Fire Brick Company (erroneously named in the complaint as Standard Fire Brick Co.) is a corporation organized and existing under the laws of the State of Colorado, with its main office in the city of Pueblo, State of Colorado.

Respondent The Lovell Clay Products Company (erroneously named in the complaint as Lovell Clay Products Co.) is a corporation organized and existing under the laws of the State of Wyoming, with its main office in the city of Lovell, State of Wyoming.

(*c*) Each of the respondents named in paragraph 1 (*b*) above, except respondent Evens & Howard Sewer Pipe Company, is a member of the respondent Clay Products Association, Inc. The record shows that respondent Evens & Howard Sewer Pipe Company also was formerly a member of the association, but that it resigned from membership therein on or about July 27, 1946. As used hereinafter, the term "respondent members" shall be deemed to include all of said respondents, including respondent Evens & Howard Sewer Pipe Company.

PAR. 2. Respondent members of respondent association are engaged in the manufacture and in the sale of vitrified clay sewer pipe and other clay products. Vitrified clay sewer pipe is a clay product commonly used for all types of sewers. It is an important item in modern building construction and community development. It is a heavy commodity so that freight costs are a substantial part of delivered costs. Respondent members 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 clay sewer pipe industry in the United States is composed of manufacturers located in 23 States operating a total of 75 plants.

PAR. 3. Respondent members are all doing business in interstate commerce. In the course and conduct of their respective businesses, each of them sells and distributes vitrified clay sewer pipe and fittings

manufactured by it to the purchasers thereof located in the various States of the United States, and in connection with and as a part of its sales each of said respondent members transports or causes to be transported its products to said purchasers located in the various States of the United States other than the States of origin. The respondent members are, therefore, engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. To the extent that competition has not been hindered, lessened, restricted, or suppressed as hereinafter set forth, 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 clay sewer pipe and fittings which it manufactures.

PAR. 5. For more than 5 years last past and while engaged as aforesaid in commerce, the respondents have engaged, and are now engaging, in unfair methods of competition, and have performed, and are now performing, unfair acts and practices 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 clay sewer pipe and fittings in trade and commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

1. They have fixed, established, and maintained prices for vitrified sewer pipe and fittings in most of the trade area in which respondent members 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. They 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 respondent members and dealers.

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

4. Respondent members of respondent association have made use of respondent Clay Products Association, Inc., 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 and fittings.

PAR. 6. Each of the respondent members has contributed to the accomplishment and effectiveness of the foregoing acts, practices, and results (1) through its use of a zoning method of computing, formulating, and using delivered price quotations when other respondent members simultaneously did likewise and by which it was enabled to and did match its quotations on a delivered basis with the quotations of other respondent members, and (2) through its practice of discriminating between and among its customers by demanding, charging, accepting, and receiving higher net prices from its customers located near its plant then from its customers more distantly located for goods of like grade, quality, and quantity, by which it was enabled to and did match its quotations on a delivered basis with the quotations of other respondent members.

PAR. 7. In the circumstances of this case, the inherent and necessary effects of the use by the respondents of the acts, practices, and methods hereinabove described have been the following:

(1) A substantial lessening of competition in the sale of vitrified clay sewer pipe and fittings as among the respondent members of respondent association; and

(2) The maintainance of unfair and oppressive discriminations against purchasers of vitrified clay sewer pipe and fittings in large areas of the United States by depriving such purchasers of the advantages in the cost of such products which would otherwise accrue to them as a result of their proximity to the factories of the respondent members and the imposition upon such purchasers of larger net prices than they would have to pay if such net prices had been fixed by competition among the respondent members.

CONCLUSION

The aforesaid combination and the acts and practices of the respondents pursuant thereto and in connection therewith, as hereinabove found, under the conditions and circumstances set forth, constituted unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

As noted in the preamble of the findings, the allegations of the complaint have not been established as against four of the respondents, namely, American Vitrified Products Company, Robinson Clay Product Company, Clay City Pipe Company, and Agate Sewer Pipe Co., and no findings have been made with respect to the participation of any of these respondents in the unlawful acts and practices herein described. It appears, moreover, that American Vitrified Products Company, Robinson Clay Product Company and Clay City Pipe Company are all respondents in the Commission's proceeding against Clay Sewer Pipe Association, Inc., et al., known as docket No. 5484, involving charges substantially similar to the charges in this proceeding, and in the circumstances the Commission is of the opinion that the public interest does not require an expenditure of the time and money necessary to further prosecute this proceeding against these three respondents. The Commission is of the further opinion that the unlawful acts and practices alleged to have been engaged in by the respondents may be effectively stopped without the necessity of further proceedings against Agate Sewer Pipe Co. and that as to all four of the respondents named in this paragraph the complaint should be dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding against said respondents if at any time in the future the public interest should so require.[1]

As further noted in the preamble, Count II of the complaint purported to charge the respondent members of the respondent association with having discriminated in price in the sale of vitrified sewer pipe and fittings by selling such products to some purchasers thereof at a

[1] Said paragraph is published as modified by an order of the Commission dated June 26, 1951, which reads as follows, omitting the paragraph in question as above published :

It appearing to the Commission that the "Conclusion" appended to the Findings as to the Facts issued in this proceeding on April 19, 1951, recites, among other things, that the respondents, American Vitrified Products Company, Robinson Clay Product Company and Clay City Pipe Company, who are all parties respondent in the Commission's proceeding against Clay Sewer Pipe Association, Inc., et al., known as docket No. 5484, have filed in that proceeding an answer admitting all of the material allegations of fact set forth in the complaint therein ; and

It further appearing that the substitute answer of said respondents in docket No. 5484, wherein all of the material allegations of fact set forth in the complaint were admitted for the purposes of that proceeding, was filed with the undertsanding that if said proceeding were not disposed of by the issuance of an order to cease and desist in the form submitted in connection with said substitute answer the respondents reserved the right to

price higher than the price at which their products of like grade and quality were sold to other purchasers, all in violation of subsection (a) of section 2 of the Clayton Act, as amended. The Commission is of the opinion, however, that the allegations with respect to this charge do not clearly show that the alleged unlawful discriminations occurred as a result of differences made in the actual prices at which the respondents' products were sold, and that, therefore, Count II of the complaint should be dismissed as to all of the respondents.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, substitute answers thereto filed by the respondents (except American Vitrified Products Company, Robinson Clay Product Company, Clay City Pipe Company, and Agate Sewer Pipe Co.), 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, and 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.), attached to which memoranda was a proposed form of order to cease and desist; and the Commission having declined to dispose of the proceeding by the entry of an order to cease and desist in the form recommended, but having served upon the respondents an order in a form proposed by the Commission for entry as its order to cease and desist and granting the respondents leave to file any objections they might have to the entry of such order (the respondents having filed no objections thereto); and the Commission having made its findings as to the facts and its conclusion that the respondents (except American Vitrified Products Company, Robinson Clay Product Company, Clay City Pipe Company, and Agate Sewer Pipe Co.) have violated the provisions of section 5 of the Federal Trade Commission Act:

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withdraw the substitute admission answer and to refile their original answers to the complaint; and

It further appearing that the Commission declined to dispose of docket No. 5484 by the issuance of an order in the form proposed and that the respondents in said proceeding, including American Vitrified Products Company, Robinson Clay Product Company and Clay City Pipe Company, subsequently withdrew their substitute admission answer in said proceeding and refiled their original answers; and

It further appearing that by reason of this development the aforesaid recitation in the "Conclusion" appended to the Findings as to the Facts in this proceeding is inaccurate:

It is therefore ordered, That the second paragraph of the "Conclusion" appended to the Findings as to the Facts issued in this proceeding on April 19, 1951, be, and it hereby is, modified to read as follows: [Setting forth the paragraph in quetion as above published.]

It is further ordered, That a copy of this order be served upon each of the parties upon which copies of the Findings as to the Facts, Conclusion and Order to Cease and Desist issued on April 19, 1951, were served.

It is ordered, That the respondents, Blackmer & Post Pipe Co., Cannelton Sewer Pipe Company, Lehigh Sewer Pipe & Tile Co., Red Wing Sewer Pipe Corporation, What Cheer Clay Products Company, White Hall Sewer Pipe & Stoneware Co., Streator Drain Tile Co., W. S. Dickey Clay Manufacturing Company, Laclede-Christy Clay Products Company, Evens & Howard Sewer Pipe Company, Iowa Pipe & Tile Company, The Denver Sewer Pipe & Clay Company, The Standard Fire Brick Company, and The Lovell Clay Products Company, and their respective officers, agents, representatives and employees, in or in connection with the offering for sale, sale or distribution in commerce between and among the several States of the United States and in the District of Columbia of vitrified clay sewer pipe or fittings, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out, any planned common course of action, understanding, agreement, combination or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts, practices or things:

1. Fixing or maintaining prices for vitrified clay sewer pipe, or fittings.

2. Composing or announcing prices for vitrified clay sewer pipe, or fittings, for any destination at which the respondents quote prices or sell their products, through the use of or in accordance with a basic price list, or percentage discounts therefrom, for the purpose or with the effect of systematically matching or making the same delivered price quotations at any such desination by any two or more respondents.

3. Using in common any freight rate compilation as a factor in fixing or announcing prices of vitrified clay sewer pipe, or fittings, which results in uniform delivered prices at any given destination as between any two or more of the respondents.

4. Using in common a zoning method of computing or formulating delivered price quotations for any such products by which any respondent is enabled to, and does, match its quotations on a delivered basis with the quotations of other respondents.

5. Engaging in any practice of discriminating in price as between different purchasers of such products of like grade, quality and quantity, for the purpose or with the effect of matching the price quotations of other respondents.

6. Establishing or maintaining uniform terms or conditions of sale to dealers, or alloçating sales between and among the respondents or dealers.

7. Establishing or maintaining a list of jobbers, the terms and con-

ditions of sale to jobbers, or allocating sales between and among the respondents or jobbers.

It is further ordered, That the respondents, Blackmer & Post Pipe Co., Cannelton Sewer Pipe Company, Lehigh Sewer Pipe & Tile Co., Red Wing Sewer Pipe Corporation, What Cheer Clay Products Company, White Hall Sewer Pipe & Stoneware Co., Streator Drain Tile Co., W. S. Dickey Clay Manufacturing Company, Laclede-Christy Clay Products Company, Evens & Howard Sewer Pipe Company, Iowa Pipe & Tile Company, The Denver Sewer Pipe & Clay Company, The Standard Fire Brick Company, and The Lovell Clay Products Company, and their respective officers, agents, representatives and employees, do forthwith cease and desist from collectively, concertedly, or by combination of two or more of said respondents, using or maintaining the Clay Products Association, Inc., as a medium for promoting, aiding, or rendering more effective any cooperative or concerted efforts to suppress or eliminate competition in the sale of vitrified clay sewer pipe, or fittings, in any of the respects set forth in the immediately preceding preamble and subparagraphs 1 to 7, inclusive, of this order as set forth above.

It is further ordered, That each of the respondents, Clay Products Association, Inc., Blackmer & Post Pipe Co., Cannelton Sewer Pipe Company, Lehigh Sewer Pipe & Tile Co., Red Wing Sewer Pipe Corporation, What Cheer Clay Products Company, White Hall Sewer Pipe & Stoneware Co., Streator Drain Tile Co., W. S. Dickey Clay Manufacturing Company, Laclede-Christy Clay Products Company, Evens & Howard Sewer Pipe Company, Iowa Pipe & Tile Company, The Denver Sewer Pipe & Clay Company, The Standard Fire Brick Company, and The Lovell Clay Products Company, and their respective officers, agents, representatives and employees, do forthwith cease and desist from knowingly contributing to the accomplishment of any of the acts, practices or things prohibited in the preamble and subparagraphs 1 to 7, inclusive, of this order as set forth above.

It is further ordered, That nothing contained in this order shall be construed as prohibiting the establishment or maintenance of any lawful bona fide agreements, discussions or other action solely between any corporate respondent and its directors, officers and employees, or between any corporate respondent and any of its subsidiaries or affiliates, and relating solely to the carrying on of the business of such corporation and its subsidiaries or affiliates, when not for the purpose or with the effect of restricting competition.

It is further ordered, For reasons appearing in the Commission's findings as to the facts in this proceeding, that the allegations of Count I of the complaint herein be, and they hereby are, dismissed as

to American Vitrified Products Company, Robinson Clay Product Company, Clay City Pipe Company, and Agate Sewer Pipe Co., without prejudice, however, to the right of the Commission to take such further action against these respondents in respect to said allegations at any time in the future as may be warranted by the then existing circumstances.

It is further ordered, That the allegations of Count II of the complaint be, and they hereby are, dismissed as to all of the respondents.

It is further ordered, That the respondents (except American Vitrified Products Company, Robinson Clay Product Company, Clay City Pipe Company, and Agate Sewer Pipe Co.) 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

CONTINENTAL RADIO TUBE CO. ET AL.

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

Docket 5725. Complaint, Dec. 20, 1949—Decision, Apr. 19, 1951

Many radio repairmen and service dealers are prejudiced against the purchase of war surplus tubes, and have a preference for the current commercial tubes.

Where a corporation and its four officers, engaged in the interstate sale and distribution of radio tubes—

(*a*) Removed from radio tubes purchased by them the identification number or symbols placed thereon by the manufacturers or others, substituted in lieu thereof other numbers or symbols, and delivered said tubes in commerce as and for the tubes which are commonly identified in the trade by the substituted numbers and symbols;

(*b*) Buffed away the service numbers of symbols on war surplus tubes which they had purchased, substituted therefor commercial numbers or symbols, and caused said tubes to be delivered to their customers as the tubes commonly identified by such commercial markings; and

(*c*) Falsely represented that they held a license from Radio Corp. of America and that they were master builders of radio tubes, through statements to such effect on cartons packaging their tubes;

With capacity and tendency to mislead and deceive the trade and public in said respects; and with the effect of placing in the hands of purchasers of their tubes for resale, a means whereby they might and did pass on to the ultimate users thereof incorrectly marked and delusively identified products:

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

Before *Mr. Clyde M. Hadley*, trial examiner.
Mr. Randolph W. Branch for the Commission.
KixMiller, Baar & Morris, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Continental Radio Tube Co., a corporation, P. D. Jackson, Jacob L. Gaber, Erwin F. Rempert, and Martin Gaber, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest,

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

PARAGRAPH 1. Respondent, Continental Radio Tube Co., is an Illinois corporation and has its principal office and place of business at 1800 Winnemac Avenue, Chicago, Ill. Respondents, P. D. Jackson, Jacob L. Gaber, Erwin F. Rempert, and Martin Gaber, are president, vice president, secretary, and treasurer, respectively, of the respondent, Continental Radio Tube Co. Said respondents are now, and for several years last past, have been engaged in selling radio supplies. In the course and conduct of said business, respondents use the trade names Concert Master Radio Tube Co., and Premier Radio Tube Co.

Respondents cause said products, when sold, to be transported from their aforesaid place of business to 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 said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondents advertise their said products in trade publications, and sell the bulk of their products to jobbers, retail dealers, and repairmen.

PAR. 3. In the course and conduct of their business as aforesaid, and in promoting the sale of their products, the respondents have engaged in various deceptive and misleading practices. Among those practices, respondents purchase radio tubes from various sources, remove therefrom the identification number or symbol placed on the tubes by the manufacturer thereof, and substitute, in lieu of said number or symbol, another number or symbol signifying a more expensive tube or a tube of current manufacture. Respondents purchase war surplus tubes, buff away the service marking thereon, and substitute therefor a commercial number or symbol, and stamp thereon the legend "Made in U. S. A.," CC. The carton in which respondents package their aforesaid tubes for shipment to the purchasers thereof, are marked by respondents, "Licensed by Radio Corp. of America," or "Licensed by RCA," when in truth and in fact, respondents were never licensed by the Radio Corp. of America.

PAR. 4. By and through the aforesaid acts and practices, the respondents have sold their radio tubes and supplies to the purchasers thereof throughout the United States, who bought said tubes in the erroneous and mistaken belief that said tubes and supplies were correctly marked, and that they were buying current stock of the latest manufacture from a dealer duly licensed by the Radio Corp. of America. By said acts and practices, respondents have also placed in

the hands of the purchasers of their tubes for resale, a means or instrumentality whereby said purchasers may and do pass on to the ultimate users of the tubes and supplies incorrectly marked and identified products.

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

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's rules of practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated April 19, 1951, the initial decision in the instant matter of trial examiner Clyde M. Hadley, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY CLYDE M. HADLEY, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 20, 1949, issued and subsequently served its complaint in this proceeding upon respondents, Continental Corp. (incorrectly designated in the complaint as Continental Radio Tube Co.), a corporation; and P. D. Jackson, Jacob L. Gaber, Erwin F. Rempert, and Martin Gaber, individually and as officers of such corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After respondents filed their answer in this proceeding, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for respondents and Randolph W. Branch, for the Federal Trade Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of and in opposition to the charges stated in the complaint, and that the said statement of facts may serve as the basis for findings as to the facts and conclusion based thereon and order disposing of the proceeding, counsel having duly waived presentation of proposed findings and conclusions or oral argument. Said stipulation as to the facts expressly provides that upon appeal to or review by the Commission such stipulation may be set aside by the Commission and this matter remanded for further proceedings under the complaint. Thereafter, this proceeding regularly came on for final consideration by said trial examiner upon the complaint, answer, and stipulation, said stipulation having been approved by the trial examiner, who, after duly considering the record herein, finds that

this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Continental Corp. (incorrectly named in the complaint as Continental Radio Tube Co.) is an Illinois corporation with its principal office and place of business now at 551–553 West Randolph Street, Chicago, Ill. During all the times mentioned herein, respondent P. D. Jackson was the president, respondent Jacob L. Gaber, the vice president, respondent Erwin F. Rempert, the secretary and treasurer of said corporation, and until March 31, 1950, respondent Martin Gaber was its manager to carry out the policies formulated by the officers as to advertising and other operations, and since then has been its vice president and participates in formulation of policies. At the present time, neither said P. D. Jackson nor Erwin F. Rempert is in any way connected with such Continental Corp.

PAR. 2. Respondents have been and now are engaged in selling radio supplies, including radio tubes, causing the same, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof in other States and in the District of Columbia, maintaining a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia. In conducting said business, respondents have also used the trade names Concert Master Radio Tube Co. and Premier Radio Tube Co. They have advertised their said products in trade publications and sold the bulk of such products to jobbers, dealers, and repairmen.

PAR. 3. In the course and conduct of their business, and in promoting the sale of their products, respondents have purchased radio tubes from various sources, removed the identification numbers or symbols placed thereon by the manufacturers or by others prior to their acquisition by respondents, and have substituted in lieu thereof other numbers or symbols and delivered them in commerce as and for the tubes which are commonly and usually identified in the trade by the numbers and symbols thus substituted. While many of respondents' tubes with the substituted markings were in fact identical with tubes generally so identified, in other instances they were not.

Respondents have also purchased war surplus tubes, buffed away the service numbers or symbols thereon, substituted therefor commercial numbers or symbols, and caused them to be delivered to their customers in commerce as and for the tubes which are commonly and usually identified by such commercial numbers or symbols. Thus, a tube originally bearing the Army number "VT–131" is marked and

offered commercially by them as "12S.K7." Many radio repairmen and service dealers are prejudiced against the purchase of war surplus tubes, and have a preference for the current commercial tubes.

Various cartons used by respondents in packaging their tubes shipped in commerce bear the following:

Concert Master
matched
Radio Tubes
Uniformly consistent
Licensed by R. C. A.
Concert Master Radio Tube Co.
Chicago, Ill. U. S. A.
Continental Radio Tubes
Licensed by
Radio Corporation of America
Continental Radio Tubes
designed and engineered by
Master Builders of Radio Tubes

PAR. 4. In truth and in fact, the Army surplus tubes thus sold by respondents with substituted commercial markings are not, as thereby connoted, current stock of recent manufacture; and certain other tubes sold by respondents bearing their substituted identification marks are not, in fact, the items which said substitute markings indicate to the trade and the public. Respondents do not hold and never have held any license from Radio Corporation of America, nor do they manufacture any of the tubes sold by them.

PAR. 5. The aforesaid acts and practices of respondents have had and now have the capacity and tendency to mislead and deceive the trade and the public as to their radio tubes, inducing purchasers to buy the same in the erroneous and mistaken belief that said tubes were correctly marked, were of current stock of the latest manufacture, and were offered by a concern duly licensed by the Radio Corp. of America, and that such corporate respondent is a master builder of radio tubes. By said acts and practices, respondents have also placed in the hands of the purchasers of their tubes for resale, a means or instrumentality whereby said purchasers may and do pass on to the ultimate users thereof incorrectly marked and delusively identified products.

CONCLUSION

The acts and practices of said 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 the respondents Continental Co., a corporation, trading under its own or by any other name, and P. D. Jackson, Jacob L. Gaber, Erwin F. Rempert, and Martin Gaber, either individually or as officers thereof, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the sale and distribution of radio tubes in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from the following acts and practices:

1. Removing the manufacturers' or other identifying numbers or symbols on radio tubes purchased by them, substituting in lieu thereof other numbers or symbols, and delivering same to customers in commerce as products to which such substitute identification marks would not truthfully or properly apply, as understood in the trade and by the consuming public.

2. Buffing away the service numbers or symbols on war surplus radio tubes purchased by them, substituting therefor commercial numbers or symbols, and delivering same to customers in commerce, thereby representing directly or inferentially, that such war surplus tubes are current commercial stock of recent manufacture.

3. Representing that respondents have been licensed by Radio Corp. of America to make or distribute tubes, or for any other purpose.

4. Representing, by statement or by implication, that respondents are master builders of radio tubes or that they manufacture any tubes whatsoever.

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 19, 1951].

Complaint

IN THE MATTER OF

EVERETT J. GRANGER ET AL. TRADING AS GARDNER & COMPANY

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

Docket 4278. Complaint, Aug. 28, 1940—Decision, May 3, 1951

Where two individuals engaged in the manufacture and interstate sale and distribution of pushcards and punchboards which, bearing explanatory legends or spaces therefor, were designed for use in the sale and distribution of merchandise at retail to the public by means of a game of chance, under a plan whereby the purchaser of a push or punch who, by chance, selected a concealed winning number, secured an article of merchandise without additional cost at much less than its normal retail price, others receiving nothing for their money other than the privilege of a push or punch—

Sold such devices to dealers in candy, cigarettes, clocks, razors, cosmetics, clothing and other merchandise, assortments of which, along with said devices, were made up by said dealers, and exposed and sold by retail purchasers thereof to the purchasing public in accordance with the aforesaid sales plan; and thereby supplied and placed in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale and distribution of merchandise to the consuming public, contrary to an established public policy of the United States Government and in violation of criminal laws;

With the result that members of the purchasing public were thus induced to trade with retailers who sold or distributed their merchandise through the use of such devices, and many retailers were thereby induced to trade with manufacturers, wholesalers and jobbers who thus sold and distributed their products; competitors of such retailers were faced with the alternative of using such devices or suffering the loss of substantial trade; and competitors of such suppliers, who did not use said devices, frequently had sales diverted to those who did:

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

Before *Mr. John W. Addison*, trial examiner.

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

Mulliner, Prince & Mulliner, of Salt Lake City, Utah, for Bernice Feitler and Irwin Feitler.

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 Everett J. Granger, Mame Partin, Frances Martin, Hattie G. Gardner, Thekla Maas, Bernice Feitler, and Erwin Feitler, individually and trading as Gardner & 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 Everett J. Granger, Mame Partin, Frances Martin, Hattie G. Gardner, Thekla Maas, Bernice Feitler, and Erwin Feitler are individuals trading as Gardner & Co., with their principal office and place of business located at 2309 Archer Avenue, Chicago, Ill. Branch offices and places of business are located at Philadelphia, Pa., New Orleans, La., and San Francisco, Calif.

Respondents are now, and for more than 2 years last past have been, engaged in the manufacture of devices commonly known as pushcards and punchboards and in the sale and distribution of said devices to manufacturers of, and dealers in, various other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause and have caused said devices when sold, to be transported from their aforesaid places of business to purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois and in the District of Columbia. There is now, and for more than two years last past has been, a course of trade in such pushcard and punchboard devices by said respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed to said manufacturers and dealers pushcards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used in making sales of merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed, many kinds of said pushcards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of other merchandise and vary only in detail.

Many of said pushcards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said pushcards and punchboards vary in accordance with

the individual device. Each purchaser is entitled to one push or punch from the pushcard or punchboard, and when a push or punch is made a disc or printed slip is separated from the pushcard or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designate articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push-card and punch-board devices have no instructions or legends thereon but have blank spaces provided therefor. On those pushcards and punchboards the purchasers thereof place instructions or legends which have the same import or meaning as the instructions or legends placed by the respondents on said push card and punchboard devices first hereinabove described. The only use to be made of said pushcard and punchboard devices and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' said pushcard and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said pushcard and punchboard devices. Retail dealers who have purchased said assortments, either directly or indirectly, or retail dealers who have purchased said devices direct from respondents and made up their own assortments, have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said pushcards and punchboards in accordance with the sales plan as described in paragraph 2 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said pushcards and punchboards, many members of the purchasing public have been

induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute said merchandise together with said devices. Said persons, firms, or corporations have many competitors who sell or distribute like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said pushcard and punchboard devices or other similar devices which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise, or to suffer the loss of substantial trade. Said competitors do not sell or distribute their merchandise by means of pushcard or punchboard devices or similar devices because of the element of chance or lottery features involved therein, and because such practices are contrary to the public policy of the Government of the United States and in violation of criminal laws, and such competitors refrain from supplying to, or placing in the hands of, others pushcard or punchboard devices, or any other similar devices which are to be used or which may be used in connection with the sale or distribution of the merchandise of such competitors to the general public by means of a lottery, game of chance or gift enterprise. As a result thereof substantial trade in commerce among and between the various States of the United States and in the District of Columbia has been unfairly diverted from said competitors who do not sell or use said devices to persons, firms, and corporations who purchase and use said devices of the respondents.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or method in the sale of merchandise and the sale of merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

The sale or distribution of said pushcard and punchboard devices by respondents as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance or

gift enterprises in the sale or distribution of their merchandise. The respondents thus supply to, and place in the hands of, said persons, firms, and corporations the means of, and instrumentalities for, engaging in unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 28, 1940, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging said respondents with the use of unfair acts and practices in commerce in violation of the provisions of that act. After the filing of the respondents' answers, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore 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 complaint, the respondent's answers thereto, the testimony and other evidence, the trial examiner's recommended decision and briefs and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Bernice Feitler and Irwin Feitler (erroneously named in the complaint as Erwin Feitler), are individuals who are now and since prior to 1940 have been trading and doing business as Gardner & Co., with their principal office and place of business located at 2309 Archer Avenue in the city of Chicago, State of Illinois. Respondents Everett J. Granger, Mame Partin, Francis Martin, Hattie G. Gardner, and Thekla Maas prior to February 1, 1940, were individuals trading as said Gardner & Company. On or about February 1, 1940, said respondents Everett J. Granger, Mame

Partin, Frances Martin, Hattie G. Gardner, and Thekla Maas sold their interests in the said business to respondents Bernice Feitler and Irwin Feitler, who have solely owned and conducted the business since that date.

The record fails to establish that respondents Everett J. Granger, Mame Partin, Frances Martin, Hattie G. Gardner, and Thekla Maas, since February 1, 1940, participated in any manner in the acts and practices hereinafter described, and the Commission is of the opinion that the complaint should be dismissed as to these five named respondents. The term "respondents" as used hereinafter will therefore not include these five named respondents unless the contrary is indicated.

PAR. 2. Trading under the name of Gardner & Co. the respondents are now, and since prior to 1940 have been, engaged in the manufacture of devices commonly known as pushcards and punchboards, and in the sale and distribution of said devices to manufacturers of, and dealers in, various other articles of merchandise in commerce between and among the various States of the United States. Respondents cause and have caused said devices, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois. There is now, and since prior to 1940 has been, a course of trade in such pushcard and punchboard devices by said respondents in commerce between and among the various States of the United States.

PAR. 3. Among the various types of punchboards and pushcards manufactured and sold by the respondents, as aforesaid, are many which are designed for use by retail dealers in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme. Many of these said pushcards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. Such legends or instructions are printed by respondents according to specifications received from the customers. The prices of the sales on said pushcards and punchboards vary with the individual device. Each purchaser is entitled to one punch from the pushcard or punchboard, and when a push or punch is made a disc or printed slip is separated from the pushcard or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers en-

titled purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push of punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of these said pushcard and punchboard devices have no instructions thereon but have blank spaces provided therefor. On those pushcards and punchboards the purchasers thereof place instructions or legends which have the same import or meaning as the instructions or legends placed by the respondents on said pushcard and punchboard devices hereinabove described.

Except for pushcard and punchboard devices used for gambling, where persons securing the lucky or winning numbers are paid money prizes, the only use to be made of said pushcard and punchboard devices and the only manner in which they are used by the ultimate purchaser thereof is in combination with other merchandise so as to enable said ultimate purchaser to sell or distribute the other merchandise by means of lot or chance.

PAR. 4. Many persons, firms, and corporations who sell and distribute various articles of merchandise in commerce, such as candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise, have purchased the respondents' pushcards and punchboards, and such purchasers have made up assortments consisting of various articles of merchandise and a card or board and have sold and distributed their merchandise so packed and assembled to retail dealers and others for resale to the public.

PAR. 5. Retail dealers who have purchased assortments of merchandise herein referred to have exposed and sold said merchandise to the purchasing public by the use of the pushcards and punchboards in accordance with the aforesaid sales plan. Thus, the respondents supply to and place in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale and distribution of merchandise to the consuming public.

PAR. 6. Because of the element of chance involved in the purchase of merchandise by means of pushcards and punchboards, members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing their merchandise through the use of such devices. As a result, many retail dealers have been induced to

deal or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute their products together with said pushcard and punchboard devices.

Such retail dealers have competitors who sell or distribute like or similar articles of merchandise. Said competitors are faced with the alternative of also using pushcards and punchboards and other similar devices in connection with the sale and distribution of their merchandise or suffering the loss of substantial trade.

Manufacturers, wholesale dealers, and jobbers who use pushcards, punchboards and similar devices in connection with the sale of their merchandise to retailers also have competitors who do not use such devices. Such manufacturers, wholesalers, and jobbers who do not use lottery devices in promoting the sale of their merchandise often have their sales and potential sales diverted to those who do use these devices.

PAR. 7. The sale of merchandise to the purchasing public through the use of or by means of pushboards or punchboards in the manner above described involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof. The use of said sales plan or method in the sale of merchandise, and the sale of merchandise by and through the use thereof and by the aid of said sales plan or method, is a practice which is contrary to an established public policy of the Government of the United States and is in violation of criminal laws.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answers thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, and briefs and oral argument of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondents (except the respondents Everett J. Granger, Mame Partin, Frances Martin, Hattie G. Gardner and

Thekla Maas) have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Bernice Feitler and Irwin Feitler, individuals trading under the name of Gardner & Co., or trading under any other name, their agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, pushcards, punchcards, or other lottery devices, which are to be used or may be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondents, Everett J. Granger, Mame Partin, Frances Martin, Hattie G. Gardner, and Thekla Maas.

Commissioner Mason concurring in the findings as to the facts and conclusion, but not concurring in the form of order to cease and desist, for the reasons stated in his opinion concurring in part and dissenting in part in Docket 5203, Worthmore Sales Company.[1]

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[1] See 46 F. T. C. 606. March 10, 1950.

IN THE MATTER OF

MONOLITH PORTLAND CEMENT COMPANY ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION 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 5671. Complaint, July 1, 1949—Decision, May 4, 1951

Where a corporation, its subsidiary and their officers, engaged in the sale and distribution of Portland cement produced at said subsidiary's plant at Laramie, Wyo., to purchasers located principally in Colorado, New Mexico, and Nebraska, who purchased said product either for resale or for use in the manufacture and sale of ready-mixed concrete, concrete building blocks and other concrete products, and who in competition with other customers of respondents of other cement producers—

Discriminated in price during a certain period, through charging purchasers transporting cement from its Laramie plant by motor truck 20 cents per barrel more than they offered or sold cement of like grade and quality to purchasers who transported it by rail freight;

With the result that the customer so favored was thereby enabled to obtain greater profits from the resale of such cement and either to undersell its competitior who was not thus favored or to furnish to its customers superior facilities and services; any appreciable differential in the price of its said product accordingly had the capacity of diverting trade from the nonfavored to the favored customers; and effect of such practice, therefore, might have been substantially to lessen competition in the lines of commerce in which such purchasers were engaged and in injure, destroy or prevent competition with the purchasers who received the lower prices:

Held, That their said acts and practices in selling cement transported by motor truck at a price higher than they sold cement of like grade and quality transported by rail freight, as above set forth, constituted violations of subsec. (a) of section 2 of the Clayton Act as amended.

In said proceeding in which respondents stated in their amended answer that in the pricing policy in question, admittedly followed from January 1, 1947, to January, 1949, they did not at any time believe they were unlawfully discriminating in price in favor of or against any particular type of transportation, and believed that the price differentials were justified by reason of difference in cost, but stated that to avoid the trouble and expense incident to the contention of the proceeding, and particularly in view of the fact that the practice complained of had been abandoned, thus eliminating the criticized differentials in price, they expressly waived their right to offer any evidence to justify the higher price of motor truck loaded cement upon the grounds of corresponding higher costs;

The Commission made no finding relative to cost justification in view of respondents' express waiver of the right to offer or adduce testimony or evidence related thereto.

Before *Mr. Clyde M. Hadley*, trial examiner.
Mr. James I. Rooney and *Mr. James S. Kelaher* for the Commission.
Loomis & Lazear, of Cheyenne, Wyo., for respondents.

COMPLAINT

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

PARAGRAPH 1. Respondent Monolith Portland Cement Co. is a Nevada corporation with offices and principal place of business located at 215 West Seventh Street, Los Angles, Calif.

Respondent Monolith Portland Midwest Co., is a Nevada corporation with offices and principal place of business at 215 West Seventh Street, Los Angeles, Calif., and is a wholly owned subsidiary and under the immediate direction and control of respondent Monolith Portland Cement Co.

Respondents Coy Burnett, W. D. Burnett, and E. R. Durfee are individuals, and are president, vice president, and secretary-treasurer, respectively, of both corporate respondents. These individual respondents formulate, control, and direct the policies, practices, and methods of the corporate respondents. Respondent Stanley W. Russell is an individual and vice president of the corporate respondent Monolith Portland Midwest Co.

PAR. 2. Respondents are now and have been since June 19, 1936, engaged in the business of selling and distributing Portland cement, hereinafter referred to as "cement," produced at their manufacturing plant located at Laramie, Wyo., and operated by respondent Monolith Portland Midwest Co.

Respondents cause said cement, when sold, to be transported from the place of manufacture at Laramie, Wyo., to the purchasers thereof located in States other than the State of Wyoming, and there is and has been at all times herein mentioned a continuous current of trade and commerce in said product across State lines, between respondents' manufacturing plant and the purchasers of such product. Said product is sold and distributed for use, consumption and resale with the various States of the United States.

PAR. 3. Respondents' customers purchase cement either for resale or for use in the manufacture and sale of ready-mixed concrete, concrete building blocks and other concrete products.

In the course and conduct of their business, respondents' customers are competitively engaged with each other and with the customers of other cement producers within the various trading areas in which the respondents' said customers offer for sale and sell the said product, at retail or in processed form as described herein.

PAR. 4. Respondents in the course and conduct of their business, as hereinbefore set forth, have been since January 1, 1947, and now are, discriminating in price between different purchasers of their cement of like grade and quality by selling said product to some of their customers at higher prices than they sell and have sold such product of like grade and quality to others of their customers. Such discriminations arise from respondents' pricing policy, in effect since January 1, 1947, whereby the respondents sell or offer for sale, cement, at their plant located at Laramie, Wyo., to purchasers who have the said cement transported therefrom by rail freight at 20 cents per barrel lower than they sell or offer for sale said cement to purchasers who transport said cement therefrom by motortruck or other means of motor transportation.

PAR. 5. The effect of such discriminations in price as set forth in paragraph 4 may be substantially to lessen competition in the lines of commerce in which those purchasers of respondents' product who receive the benefits of such discriminations are engaged and to injure, destroy, or prevent competition with the customers of respondents who receive the benefits of such discriminations.

PAR. 6. The foregoing alleged acts and practices of said respondents as set forth herein constitute violations of subsection (a) of section 2 of the Clayton Act (U. S. C., title 15, sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act) (15 U. S. C., sec. 13), the Federal Trade Commission on July 1, 1949, issued and subsequently served upon the respondents named in the caption hereof its complaint in this proceeding, charging said respondents with having violated the provisions of subsection (a) of section 2 of said Clayton Act, as amended. After the filing of the respondents' answer to the complaint and the designation of a trial examiner by the Commission, the respondents,

upon leave granted by the trial examiner, withdrew their original answer and in lieu thereof filed an amended answer in which, solely for the purposes of this proceeding, they admitted all of the material allegations of fact set forth in the complaint and waived all hearings and further procedure, including the filing of a recommended decision by the trial examiner. In said answer the respondents expressly consented for the Commission to proceed upon the complaint and admission answer to make its report, stating its findings as to the facts, including inferences which it may draw therefrom, and its conclusion based thereon, and enter its order requiring the respondents to cease and desist from the discriminations charged in the complaint.

Subsequently, this proceeding regularly came on for hearing before the Commission upon the complaint, the respondents' amended answer thereto, and certain memoranda of counsel in support of the complaint and of counsel for the respondents, filed as, for, and in lieu of briefs, attached to which memoranda were drafts of proposed findings as to the facts, conclusion, and order to cease and desist which were recommended by counsel in support of the complaint and by counsel for the respondents for issuance by the Commission in disposition of the proceeding.

The proposed form of findings as to the facts, conclusion, and order to cease and desist having been altered by the Commission to the extent and for the reasons shown by the tentative order issued November 28, 1950, the respondents were afforded opportunity to show cause why the tentative findings, conclusion, and order to cease and desist attached thereto should not be entered herein as the Commission's decision. Thereafter, on January 22, 1951, the respondents filed certain objections to the entry of said documents; and the Commission, having duly considered the objections and the entire record herein and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (*a*) The respondent, Monolith Portland Cement Co., is a corporation organized and existing under the laws of the State of Nevada, with offices and its principal place of business located at 215 West Seventh Street, in the city of Los Angeles, State of California.

(*b*) The respondent, Monolith Portland Midwest Co., is a corporation organized and existing under the laws of the State of Nevada, with its offices and principal place of business also located at 215 West

Seventh Street, in the city of Los Angeles, State of California. This respondent is a wholly owned subsidiary of and is under the immediate direction and control of the respondent, Monolith Portland Cement Co.

(c) The respondents, Coy Burnett and E. R. Durfee, are individuals and are, respectively, president, vice president, and secretary-treasurer of both of the corporate respondents, Monolith Portland Cement Co. and Monolith Portland Midwest Co. The respondent, Stanley W. Russell, is an individual and is vice president of the respondent, Monolith Portland Midwest Co. The respondents, Coy Burnett, W. D. Burnett and Stanley W. Russell, as officers of the aforesaid respondent corporations, are primarily responsible for and are the persons primarily concerned with formulating the practices and policies of Monolith Portland Midwest Co. with respect to sales of cement at the manufacturing plant of said company located at Laramie, Wyo.

PAR. 2. The respondents named in paragraph 1, acting through the respondent, Monolith Portland Midwest Co., were, at the time of the issuance of the complaint, and since June 19, 1936, they have been, engaged in the business of selling and distributing portland cement produced at the cement-manufacturing plant of said company located at Laramie, Wyo. Said cement, when sold, is transported either by the respondents or by its purchasers from the place of manufacture at Laramie, Wyo., to the respective locations of the purchasers thereof both in the State of Wyoming and in States other than Wyoming, principally Colorado, New Mexico, and Nebraska. There is now, and at all times mentioned in the complaint there has been, a continuous current of trade and commerce in said product by the respondents across State lines between the respondents' manufacturing plant and purchasers of such product. The respondents' cement is sold and distributed for use, consumption and resale in various States of the United States, but principally in the States of Wyoming, Colorado, New Mexico, and Nebraska.

PAR. 3. The respondents' customers purchase cement either for resale or for use in the manufacture and sale of ready-mixed concrete, concrete building blocks and other concrete products, or for other purposes. Such customers are generally competitively engaged with one or more of the other customers of the respondents and with the customers of other cement producers within the various trading areas in which such customers offer for sale and sell cement purchased by them from the respondents either at retail or in processed form.

PAR. 4. In the course and conduct of their business, as aforesaid,

the respondents, from January 1, 1947, until January 1949, offered for sale and sold cement at their plant located at Laramie, Wyo., to purchasers transporting said cement from said point of sale by motor truck at a price 20 cents per barrel higher than they offered for sale or sold cement of like grade and quality to purchasers transporting the same from said point of sale by rail freight. In so doing the respondents discriminated in favor of purchasers transporting such cement by rail freight and against purchasers transporting their cement by motor truck.

PAR. 5. In all instances in which the respondents' cement is sold to one of their customers at a price exceeding by any appreciable amount the price at which their cement of like grade and quality is sold to other competing customers the customer so favored in price is thereby enabled to obtain greater profits from the resale of such cement and to either undersell its competitor who is not so favored or to furnish to its consumer purchasers superior facilities and services. For this reason, any appreciable differential in the price of the respondents' cement as between competing customers has the capacity of diverting trade from the nonfavored customers to the customers favored with the lower price. The Commission therefore finds that the effect of the respondents' practice of selling their cement to purchasers transporting the same from the place of manufacture by motor truck at a price higher than they sold cement of like grade and quality to competing customers transporting it by rail freight may have been substantially to lessen competition in the lines of commerce in which such purchasers were engaged and to injure, destroy, or prevent competition with the purchasers of such cement who received the lower price.

PAR. 6. In their amended answer to the complaint the respondents stated that during the month of January 1949 the pricing policy above described was abandoned and that thereafter the respondents established, and have since maintained, the practice of charging no differential in price for cement loaded onto motor trucks at their plant at Laramie, Wyo., as distinguished from cement loaded onto rail cars at said plant, provided only that the amount of cement loaded, whether loaded onto one or more motor trucks at the same time of loading, is equal to the amount of a minimum rail car loading. In seeking to defend their pricing policy admitted to have been followed from January 1, 1947, until January 1949, the respondents also stated that they did not at any time believe they were unlawfully discriminating in price in favor of or against any particular type of transportation, and that while said pricing policy was in effect they believed the resulting price differentials were justified by reason of differences

in costs. The respondents stated further, however, that for the purpose of avoiding the trouble and expense incident to a continuation of this proceeding, and particularly in view of the fact that the practice complained of has been abandoned, thus eliminating all differentials in price with respect to cement transported by motor truck, they expressly waived their right to offer any evidence tending to justify the higher price of motor truck loaded cement upon the grounds of correspondingly higher costs. The respondents having expressly waived the right to offer or adduce testimony or evidence relating to cost justification, the Commission, of course, makes no finding with respect thereto.

CONCLUSION

The acts and practices of the respondents in selling cement to purchasers transporting the same from the place of manufacture by motor truck at a price higher than they sold cement of like grade and quality to purchasers transporting it from such place of manufacture by rail freight, as herein found, constituted violations of subsection (a) of section 2 of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the act of Congress approved June 19, 1936 (the Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' amended answer thereto, and certain memoranda of counsel in support of the complaint and of counsel for the respondents proposing disposition of the case, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of subsection (a) of section 2 of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act):

It is ordered, That the corporate respondents, Monolith Portland Cement Co. and Monolith Portland Midwest Co., and their officers, and the respondents, Coy Burnett, W. D. Burnett, and E. R. Durfee, individually and as president, vice president, and secretary-treasurer, respectively, of said corporate respondents, and the respondent, Stanley W. Russell, individually and as vice president of the respondent,

Monolith Portland Midwest Co., and said respective respondents' agents, representatives, and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale, or distribution of portland cement in commerce, as "commerce" is described in the aforesaid Clayton Act, do forthwith cease and desist from directly or indirectly discriminating in price between different purchasers of their cement of like grade and quality who are competitively engaged with each other in the resale of such cement, either at retail or in processed form, by offering to sell or selling such product to purchasers who have said cement transported from the place of sale by motor truck at any higher price than said product is offered for sale or sold to purchasers who have it transported from the place of sale by rail freight: *Provided, however*, That the foregoing shall not be construed to prevent the respondents from defending any alleged violation of this order by showing that any differences in price make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which said product is to such purchasers sold or delivered.

It is further ordered, That the respondents shall, within 60 days after service upon them on 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

MORRIS ROSEN AND ROSELINE FABRICS, INC.

COMPLAINT, FINDINGS, AND ORDERS 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 5833. Complaint, Dec. 19, 1950—Decision, May 5, 1951

Where an individual and the corporate instrumentality through which he conducted his business—

Misbranded certain wool products in violation of the Wool Products Labeling Act and rules and regulations promulgated thereunder, in that they offered, sold and distributed in commerce, 38,000 yards of piece goods, purchased in greige form, without affixing thereto the stamps, tags, labels, etc., required by said act and rules, etc.:

Held, That such acts and practices, under the circumstances set forth, were in violation of the Wool Products Labeling Act and said rules and regulations, and constituted unfair and deceptive acts and practices.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. R. L. Banks, Jr. and *Mr. Jesse D. Kash* for the Commission.

Mr. William Weisman, 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 Morris Rosen, an individual, and Roseline Fabrics, Inc., a corporation, 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 Morris Rosen, is an individual, and Roseline Fabrics, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 1410 Broadway, New York, N. Y. Respondent, Morris Rosen, is president of Roseline Fabrics, Inc., and in control of its operations, and said respondent corporation is in fact an instrumentality through which the said Morris Rosen conducts his business.

PAR. 2. Subsequent to July 15, 1941, respondents have violated the provisions of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, by introducing into commerce, offering for sale in commerce, and selling and distributing in commerce, as "commerce" is defined in said act, wool products, as "wool products" are defined therein, which were "misbranded" within the meaning of said act in that there were not on or affixed thereto any stamps, tags, labels, or other means of identification, containing the information required by said act and in the manner and form required by the rules and regulations promulgated thereunder. Among said wool products were included approximately 38,000 yards of piece goods which were purchased, in greige form, from Raycrest Mills, Inc., in October 1948.

PAR. 3. The aforesaid acts and practices of respondents as herein 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.

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 May 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 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 December 19, 1950, issued and subsequently served its complaint in this proceeding upon the respondents Morris Rosen, an individual, and Roseline Fabrics, Inc., a corporation, charging them, and each of them, with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. On March 12, 1951, respondents filed a joint answer in which they admitted all the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to said facts. Thereafter this proceeding regularly came on for final hearing before the trial examiner upon the complaint and the joint admission answer of both respondents, and the trial examiner, having duly considered the record

herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Morris Rosen, is an individual, and respondent Roseline Fabrics, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 1410 Broadway, New York, N. Y. Respondent, Morris Rosen, is president of Roseline Fabrics, Inc., the respondent corporation being in fact an instrumentality through which the said Morris Rosen conducts his business.

PAR. 2. Subsequent to July 15, 1941, respondents offered for sale, sold and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act, wool products including 38,000 yards of piece goods purchased, in greige form, from Raycrest Mills, Inc., without affixing there to any stamps, tags, labels, or other means of identification, containing the information required by said act and in the manner and form required by the Rules and Regulations promulgated thereunder.

CONCLUSION

The aforesaid acts and practices of the respondents were 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.

ORDER

It is ordered, That respondents Morris Rosen, an individual, and Roseline Fabrics, Inc., a corporation, its officers, directors, representatives and agents, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, transportation, or distribution of products made in whole or in part of wool in commerce, as "commerce" is defined in the aforesaid acts, do forthwith cease and desist from misbranding products made in whole or in part of wool as defined in and subject to the Wool Products Labeling Act of 1939, which contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said act, by failing to securely affix to or place on such products a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

(A) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding 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) In the case of a wool product containing a fiber other than wool, the percentages by weight, in words and figures plainly legible, of the wool contents thereof;

(D) The name of the manufacturer of the wool product, or the name of one or more persons subject to section 3 of the Wool Products Labeling Act of 1939, or the registered identification number of such person or persons as provided in Rule 4 of the Regulations as amended.

Provided, That the foregoing 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 provision of said act or the rules and regulations promulgated thereunder.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of May 5, 1951].

IN THE MATTER OF

HERBOLD LABORATORY, INC., ET AL.

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

Docket 5733. Complaint, Jan. 16, 1950—Decision, May 7, 1951

Where a corporation and its president who formulated and controlled its policy and practices, engaged in selling and distributing a cosmetic preparation designated "Herbold Pomade"; in advertisements including circulars and newspapers, as well as other advertising matter—

(*a*) Represented falsely that their said preparation would add color to the roots of the hair and prevent the hair from becoming gray, and would impart the former natural or natural-like shade or color to gray, streaked, and faded hair; the facts being that the so-called color produced upon the hair was limited to shades from gray to black and was not natural or natural-like but, on the contrary, was artificial and unnatural;

(*b*) Represented falsely that said preparation would help to remove loose dandruff and would keep the scalp clean and free of dandruff;

The facts being that it would not remove loose dandruff scales, but would only render them less conspicuous by causing them to adhere more closely to the scalp and hair shafts;

(*c*) Falsely represented that said product was safe and harmless; when in fact it contained lead, which might cause ill effects when brought into contact with the skin; and

(*d*) Represented falsely that it was a unique, new, and revolutionary product;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true, and with effect of inducing it, as a result, to purchase respondent's said preparation:

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

Mr. B. G. Wilson for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Herbold Laboratory, Inc., a corporation, and Milton Herbold, individually and as an officer of Herbold Laboratory, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Herbold Laboratory, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California. Milton Herbold is president of said Herbold Laboratory, Inc. The corporate respondent and individual respondent have their office and principal place of business located at 7212 Melrose Avenue, Hollywood, Calif. The individual respondent, Milton Herbold, formulates and controls the policies and practices of said corporate respondent.

PAR. 2. The respondents are now and for more than two years last past have been engaged in the business of selling and distributing a cosmetic preparation as "cosmetic" is defined in the Federal Trade Commission Act. The designation used by respondents for their preparation and directions for use are as follows:

Designation: Herbold Pomade
Directions for Use:

How to use HERBOLD Pomade
for Best Results

To Add Lustrous Color to Gray,
Streaked or Off-color Hair

For the first 2 to 4 weeks, take a little Herbold Pomade on your finger tips and massage it into your hair at the scalp daily. A little used daily is better than larger amounts at longer intervals. Massage is important . . . it hastens the action. This simple process adds lustrous color to gray, faded and off-color hair and gives a well groomed appearance. Thereafter to maintain the desired shade, use as needed, usually about 2 to 3 times a week . . . to add color to new growth, and to keep the hair well groomed.

Shampooing

While Herbold Pomade usually adds color gradually, *quicker* results can be obtained, if desired, by washing the hair before it is applied the *first* time. Thereafter make no change in your established habit of washing your hair.

Some Gray hair reacts more slowly than others, and in a few instances more than one jar may be required to show satisfactory color. Regular use helps remove loose dandruff and serves as a splendid dressing to groom dry, brittle hair.

Caution

For external use only. Do not use if there is any break or abrasion in the skin.

The respondents cause their said preparation when sold to be transported from their place of business in the State of California to the purchasers thereof located in various States of the United States.

Respondents maintain, and at all times mentioned herein have maintained a course of trade in said preparation between and among the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business, respondents, subsequent to March 21, 1938, disseminated and caused the dissemination of certain advertisements concerning their said preparation 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 circulars, booklets, magazines, newspapers, and other advertising matter, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their said preparation; and respondents disseminated and caused the dissemination of the advertisements, including but not limited to circulars, booklets, magazines, and newspapers, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical of the statements and representations contained in said advertisements disseminated as aforesaid are the following:

When the new growth of gray hair begins to show, or even before it begins to show you can easily re-color it or prevent it from ever showing, and blend it in with the color you already have.

May be used on dyed hair too—even if hair has been dyed with coal tar dyes, henna or other dyes, it will add an even natural looking color to the roots and the rest of the hair.

Not a coal tar dye. You get a normal—not a "dyed" look.

Herbold is not just another hair preparation. It is a unique new product—an entirely new approach to the gray hair problem—at the same time serving as an excellent dressing for dry, dull, brittle hair and itchy scalp due to loose dandruff. There is no other product you can substitute for it.

Herbold Pomade is guaranteed harmless.

My sister and I are using Herbold Pomade and have found it very successful for graying hair.

Herbold Pomade—adds deep, rich color to faded gray, streaked hair and does it easily without muss or bother; * * * Herbold Pomade, upon your finger tips and massage it into your hair. That is all you do. Yet this simple process adds color from hair root to hair end—lustrous color.

Use Herbold Pomade as your regular hair dressing, for all types and shades of hair. Just one preparation for all colors of hair—no confusing shades to select. * * * Gradually your hair becomes a new, lustrous, natural-like color, to match the original shade.

When your gray hair appears; or your hair becomes dull—lacking color and lustre, use Harbold Pomade, as your regular hair dressing, and prevent unsightly grayness and drab dullness from showing * * * use Herbold Pomade as your daily hair dressing to prevent grayness, and drab dullness

appearing. * * * It will add an even, natural-looking color to the roots and the rest of the hair.

When the new growth of gray hair begins to show or even before it begins to show you can easily recolor it to prevent it from showing and blend it in with the color you already have.

Herbold Pomade must add youthful-looking color to gray, streaked, dull hair * * *.

* * * It helps to remove loose dandruff and to keep the scalp clean and free of dandruff * * *.

PAR. 5. Through the use of the aforesaid statements and representations appearing in the advertisements above set forth, and others of similar import not specifically set out, respondents represented that their preparation, Herbold Pomade, is not a dye; will add color to the roots of the hair and prevent the hair from becoming gray; will impart the former natural or natural-like shade or color to gray, streaked, and faded hair; that it helps to remove loose dandruff and will keep the scalp clean and free of dandruff; and that it is a harmless, unique, new and revolutionary hair dye and hair dressing preparation.

PAR. 6. The aforesaid 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, respondents' preparation, Herbold Pomade, is a dye. It will not add color to or color the roots of the hair and will not prevent hair from becoming gray. Said preparation will not impart the former shade or color to gray, streaked, and faded hair in most instances, since the so-called color it produces upon the hair is limited to various shades from gray to black. Such shade or color as is produced is not natural or natural-like but, on the contrary, is artificial and unnatural. Said preparation will not keep or help to keep the scalp clean or free from dandruff. Its use will not remove loose dandruff scales but only render them less conspicuous by causing them to adhere more closely to the scalp and hair shafts. Said preparation is not safe or harmless for the reason that it contains lead, a substance which may cause ill effects when it comes into contact with the skin. It is not a new, unique, or revolutionary product.

PAR. 7. The use by the respondents of the foregoing false, deceptive and misleading statements and representations, disseminated as aforesaid, has had and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and

representations are true, and induces a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase respondents' said preparation.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission, on January 16, 1950, issued and subsequently served its complaint in this proceeding upon the respondents, Herbold Laboratory, Inc., a corporation, and Milton Herbold, individually and as an officer of Herbold Laboratory, Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, a written stipulation as to the facts was entered into by and between Daniel J. Murphy, Chief, Division of Litigation, of the Commission, and the 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 this matter, without the presentation of argument or the filing of briefs. Thereafter the Commission, having approved and accepted said stipulation as to the facts, served upon the respondents a tentative decision including findings as to the facts, conclusion, and order to cease and desist, and afforded the respondents an opportunity to show cause why said tentative decision should not be made the decision of the Commission in this matter. The respondents not having appeared in response to said leave to show cause, this proceeding came on for final hearing before the Commission upon the complaint, answer thereto, and stipulation as to the facts; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Herbold Laboratory, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California. Milton Herbold is president of said Herbold Laboratory, Inc. The corporate respondent and individual respondent have their office and principal place of business located at 7212 Melrose Avenue, Hollywood, Calif. The individual respondent, Milton Herbold formulates and controls the policies and practices of said corporate respondent.

PAR. 2. The respondents are now and for more than 2 years last past have been engaged in the business of selling and distributing a cosmetic preparation as "cosmetic" is defined in the Federal Trade Commission Act. The designation used by respondents for their preparation and directions for use are as follows:

Designation: Herbold Pomade
Directions for Use:

How to use HERBOLD Pomade
for Best Results

To Add Lustrous Color to Gray,
Streaked or Off-color Hair

For the first 2 to 4 weeks, take a little Herbold Pomade on your fingers tips and *massage* it into your hair at the scalp daily. A little used daily is better than larger amounts at longer intervals. Massage is important . . . it hastens the action. This simple process adds lustrous color to gray, faded and off-color hair and gives a well groomed appearance. Thereafter to maintain the desired shade, use as needed, usually about 2 to 3 times a week . . . to add color to new growth, and to keep the hair well groomed.

Shampooing

While Herbold Pomade usually adds color gradually, *quicker* results can be obtained, if desired, by washing the hair before it is applied the *first* time. Thereafter make no change in your established habit of washing your hair.

Some Gray hair reacts more slowly than others, and in a few instances more than one jar may be required to show satisfactory color. Regular use helps remove loose dandruff and serves as a splendid dressing to groom dry, brittle hair.

Caution

For external use only. Do not use if there is any break or abrasions in the skin.

The respondents cause their said preparation, when sold, to be transported from their place of business in the State of California to the purchasers thereof located in various States of the United States.

Respondents maintain and at all times mentioned herein have maintained a course of trade in said preparation between and among the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business, respondents, subsequent to March 21, 1938, disseminated and caused the dissemination of certain advertisements concerning their said preparation 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, circulars, booklets, magazines, newspapers, and other advertising matter, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their said preparation; and respondents disseminated and caused the dissemination of advertisements, including, but not limited to, circulars, booklets, magazines, and newspapers, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical of the statements and representations contained in said advertisements disseminated as aforesaid are the following:

When the new growth of gray hair begins to show, or even before it begins to show you can easily re-color it or prevent it from ever showing, and blend it in with the color you already have.

May be use on dyed hair too—even if hair has been dyed with coal tar dyes, henna or other dyes, it will add an even natural looking color to the roots and the rest of the hair.

Not a coal tar dye. You get a normal—not a "dyed" look.

Herbold is not just another hair preparation. It is a unique new product—an entirely new approach to the gray hair problem—at the same time serving as an excellent dressing for dry, dull, brittle hair and itchy scalp due to loose dandruff. There is no other product you can substitute for it.

Herbold Pomade is guaranteed harmless.

My sister and I are using Herbold Pomade and have found it very successful for graying hair.

Herbold Pomade—adds deep, rich color to faded gray, streaked hair and does it easily without muss or bother; * * * Herbold Pomade, upon your finger tips and massage it into your hair. That is all you do. Yet this simple process adds color from hair root to hair end—lustrous color.

Use Herbold Pomade as your regular hair dressing, for all types and shades of hair. Just one preparation for all colors of hair—no confusing shades to select. * * * Gradually your hair becomes a new, lustrous, natural-like color, to match the original shade.

When your gray hair appears; or your hair becomes dull—lacking color and lustre, use Herbold Pomade, as your regular hair dressing, and prevent unsightly grayness and drab dullness from showing * * * use Herbold Pomade as your daily hair dressing to prevent grayness, and drab dullness appearing. * * * It will add an even, natural-looking color to the roots and the rest of the hair.

When the new growth of gray hair begins to show or even before it begins to show you can easily recolor it to prevent it from showing and blend it in with the color you already have.

Herbold Pomade must add youthful-looking color to gray, streaked, dull hair * * *.

* * * It helps to remove loose dandruff and to keep the scalp clean and free of dandruff * * *.

PAR. 5. Through the use of the aforesaid statements and representations appearing in the advertisements above set forth, and others of similar import not specifically set out, respondents represented that their preparation, Herbold Pomade, will add color to the roots of the hair and prevent the hair from becoming gray; will impart the former natural or natural-like shade or color to gray, streaked, and faded hair; that it helps to remove loose dandruff and will keep the scalp clean and free of dandruff; and that it is a harmless, unique, new, and revolutionary hair dye and hair dressing preparation.

PAR. 6. The aforesaid 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, respondents' preparation Herbold Pomade will not add color to, or color, the roots of the hair and will not prevent hair from becoming gray. Said preparation will not impart the former shade or color to gray, streaked, and faded hair in most instances, since the so-called color it produces upon the hair is limited to various shades from gray to black. Such shade or color as is produced is not natural or natural-like but, on the contrary, is artificial and unnatural. Said preparation will not keep or help to keep the scalp clean or free from dandruff. Its use will not remove loose dandruff scales but only render them less conspicuous by causing them to adhere more closely to the scalp and hair shafts. Said preparation is not safe or harmless for the reason that it contains lead, a substance which may cause ill effects when it comes into contact with the skin. It is not a new, unique, or revolutionary product.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public

into the erroneous and mistaken belief that all such statements and representations are true, and induces a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase respondents' said preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer thereto, and a stipulation as to the facts entered into by and between Daniel J. Murphy, Chief, Division of Litigation, of the Commission, and the 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 Federal Trade Commission Act:

It is ordered, That the respondents, Herbold Laboratory, Inc., a corporation, its officers, and Milton Herbold, individually and as an officer of Herbold Laboratory, Inc., 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 of a cosmetic preparation designated as "Herbold Pomade," or any preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated 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 by implication:

(*a*) That said preparation will add color to, or color, the roots of the hair and prevent the hair from becoming gray.

(*b*) That said preparation will impart the former natural shade of color to gray, streaked, or faded hair.

(*c*) That said preparation will remove loose dandruff or will keep or help to keep the scalp clean or free from dandruff.

(*d*) That said preparation is safe or harmless.

(*e*) That said preparation is a new, unique, or revolutionary product.

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 preparation, any advertisement which contains any of the representations prohibited in paragraph "1" of this order.

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

IN THE MATTER OF

NATIONAL TEA COMPANY AND NATIONAL TEA COMPANY—STANDARD GROCERY DIVISION

MODIFIED ORDER TO CEASE AND DESIST

Docket 5648. Order, May 8, 1951

Order modifying, as below set out, Commission's cease and desist order of May 15, 1950, 46 F. T. C. 829 at page 834, so as to require respondent corporation, engaged in the operation of some 700 retail grocery stores in Chicago and 48 stores in Indianapolis, and in purchasing numerous food and grocery items in interstate commerce, for resale therein, from various sellers, in competition with others similarly engaged, to cease and desist from knowingly inducing or receiving from sellers certain unlawful discriminations as in said order below set out.

Mr. Eldon P. Schrup for the Commission.

Kirkland, Fleming, Green, Martin & Ellis, of Chicago, Ill., for National Tea Co.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of the respondent, National Tea Co., in which answer said respondent admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to said facts; and the Commission, having made its findings as to the facts and its conclusion that the respondent had violated subsection (f) of section 2 of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13), on May 15, 1950, issued, and on May 22, 1950, served upon said respondent, its order to cease and desist. Thereafter, this matter came on for hearing before the Commission upon a petition, filed on behalf of the respondent, requesting certain modifications in the aforesaid order to cease and desist, and the answer to such petition, filed by counsel in support of the complaint, and the Commission, having entered its order granting the respondent's petition now issues this its modified order to cease and desist.

It is ordered, That the respondent, National Tea Co., a corporation, and its officers, agents, representatives and employees, directly or

through any corporate or other device, in or in connection with the purchase of food products or other items of merchandise in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Knowingly inducing or receiving from any manufacturer or seller, by or through means of any coupon or other similar device, any discount, rebate, or other allowance higher than, or price lower than, that allowed by such manufacturer or seller to competitors of the respondent, when such coupon or other similar device results in a discrimination in favor of the respondent.

It is further ordered, For reasons appearing in the Commission's findings as to the facts in this proceeding, that the complaint herein be, and it hereby is, dismissed as to National Tea Co.—Standard Grocery Division.

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

IN THE MATTER OF

SILK-O-LITE MANUFACTURING CORP.

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

Docket 5709. Complaint, Nov. 9, 1949—Decision, May 8, 1951

Where a corporation engaged in the manufacture and interstate sale and distribution of lamp shades, of which 85 percent were composed solely of rayon and of which 15 percent had silk shantung tops with rayon linings—

(*a*) Represented through the use of the word "silk" as a part of its name, and the statements in connection therewith "Manufacturers of Silk Lamp Shades", on invoice forms, that it was a manufacturer of silk lamp shades, when in fact more than 85 percent of the fabric content of its products was rayon;

(*b*) Represented through the use of the hyphenated word "Silk-O-Lite" on the tags attached to its lamp shades and the words on the reverse side thereof, "Celanese and Acetate Taffeta Top, Fine Rayon Taffeta Lining", that the entire top portion of its shades was made of material other than rayon, and, when considered in connection with the similarity in appearance of rayon and silk, conveyed thereby the deceptive impression that it was silk; and

(*c*) Placed in the hands of purchasers of its products for resale the same deceptive implication through advertising data supplied by it:

Held, That such acts and practices as above set out, constituted deceptive acts and practices.

Respondent's revision of its label and advertising data subsequent to the institution of the instant proceeding, as a result of which it inserted in the label immediately under the word "Silk-O-Lite", in small type, the words "Mfg. Corp." and, in lieu of the words "Celanese and Acetate Taffeta Top, Fine Rayon Taffeta Lining", the words "Fine Rayon Celanese Taffeta"; revised its advertising data so as to describe the material in the top of its shades as "Celanese Rayon Taffeta", and the material in the lining as "rayon"; and revised its invoices so that there appeared therein under the word "Description", the words "The fabric content of this lamp shade group is fine Celanese Rayon Taffeta; Rayon lined for durability"; constituted no defense to the charges contained in the complaint, and, if permanently adopted and adhered to, would not correct the deceptive inference flowing from the word "silk" in the hyphenated word "Silk-O-Lite" in respondent's corporate name and trade mark, and the words "Manufacturers of Silk Lamp Shades".

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Edward F. Downs for the Commission.

Nemeroff, Jelline, Danzig & Paley, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Silk-O-Lite Manufacturing Corp., 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 Silk-O-Lite Manufacturing Corp. is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 230 Fifth Avenue, New York, N. Y.

PAR. 2. The respondent is now and for several years last past has been engaged in the manufacture, sale, and distribution of lamp shades, which are sold principally to retail stores for resale to the purchasing public. In the course and conduct of its said business, respondent causes said products when sold to be transported from its place of business in the State of New York or from its factory in the State of New Jersey to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. From about 1924 to about 1941 respondent was engaged in the manufacture and sale of silk lamp shades exclusively, during which time respondent earned and enjoyed a favorable reputation throughout the industry for its said silk lamp shades, and the fact that respondent was the manufacturer of silk lamp shades became firmly implanted in the public mind. About 1941 silk became unobtainable due to war conditions, and as a consequence respondent changed to the manufacture of rayon lamp shades.

PAR. 4. In the course and conduct of its business respondent used the trade-mark "Silk-O-Lite" to designate its silk lamp shades, and continued to use the same trade-mark to designate its rayon lamp shades when the manufacture of silk lamp shades was discontinued. It is and has been respondent's practice to place a label bearing the trade-mark "Silk-O-Lite" on each lamp shade and in the case of rayon lamp shades to also attach a tag thereto on one side of which

appears the size of the shade and on the other side of which appears the printed words:

Celanese and Acetate Taffeta Tops
Fine Rayon Taffeta Lining

and to use an invoice form on which appears the legend:

Silk-O-Lite Manufacturing Corp.
Manufacturers of
Silk Lamp Shades & Novelties.

Respondent also places in the hands of the purchaser of its products advertising data bearing the trade-mark "Silk-O-Lite" and describing respondent's products as being made of acetate and celanese taffeta, with rayon linings.

PAR. 5. The use by respondent of the word "Silk-O-Lite" in its corporate name and as a trade-mark printed on its stationery and labels, and on its invoice forms together with the express representation that respondent manufactures silk lamp shades, is a representation to customers that respondent's lamp shades are composed of silk, the product of the cocoon of the silkworm. In truth and in fact practically all of respondent's lamp shades are made of rayon, with only a very small percentage of its shades being made of silk. Furthermore, respondent by the use of the statement "Celanese and Acetate Taffeta Tops Fine Rayon Taffeta Lining" on the tag attached to said shades, and in advertising data placed in the hands of its purchasers, represented that the tops of said shades were made of material other than rayon. In truth and in fact celanese and acetate are a form of rayon.

PAR. 6. The use by respondent of the said false and misleading statements and representations in the sale and distribution of the aforesaid products has had, and now has, the capacity and tendency to, and does, mislead and deceive purchasers and prospective purchasers of respondent's said products into the erroneous and mistaken belief that such false statements and representations are true, and to cause, and does cause, a substantial portion of the purchasing public to purchase respondent's products as a result of such mistaken belief.

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

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 May 8, 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 the Federal Trade Commission Act the Federal Trade Commission on November 9, 1949, issued and subsequently served its complaint in this proceeding upon respondent Silk-O-Lite Manufacturing Corp., a corporation, charging it with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts, signed and executed by counsel for the respondent and by Edward F. Downs for the Federal Trade Commission, subject to approval by the trial examiner, may be taken as the facts in this proceeding, in lieu of testimony in support of and in opposition to the charges stated in the complaint. Said stipulation as to the facts expressly provides that upon appeal to or review by the Commission said stipulation may be set aside by the Commission and this matter remanded for further proceedings under the complaint. Thereafter counsel submitted their respective requests for findings as to the facts and conclusions, oral argument not having been requested, and this proceeding regularly came on for final consideration by the trial examiner upon the complaint, answer and stipulation, said stipulation having been approved by the trial examiner, who after duly considering the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Silk-O-Lite Manufacturing Corp., is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 230 Fifth Avenue, New York, N. Y.

PAR. 2. Respondent is now and for several years last past has been engaged in the manufacture, sale, and distribution of lamp shades which are sold principally to retail stores for resale to the purchasing public. In the course and conduct of its said business respondent causes said products, when sold, to be transported from its place of business in the State of New York, or from its factory in the State of

New Jersey, to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. From about 1924 to about 1930 respondent was engaged in the manufacture and sale of georgette, tub silk, and radium silk mixed with cotton sateen and miscellaneous cotton fabrics. From 1931 until 1936 the respondent manufactured and sold lamp shades in the following proportions: one-half manufactured products were made of radium silk with rayon linings; one-half were made of rayon taffeta with rayon linings. From 1936 to 1940 the products of the respondent were composed of 75 percent rayon and the remaining 25 percent were silk shantung tops with rayon linings. From 1940 until the present time about 85 percent of the respondent's products were composed solely of rayon, 15 percent of the products having silk tops with rayon linings. During this time the respondent also manufactured and sold in fluctuating quantities shades made of parchment.

PAR. 4. In the course and conduct of its business respondent has used the trade mark "Silk-O-Lite" to designate all of its shades including rayon, silk, and parchment. Until about 1945 respondent placed no tags or labels on its products. Thereafter a label bearing the trade mark "Silk-O-Lite" was placed on each lamp shade, and in the case of rayon lamp shades a tag was also attached thereto on one side of which appeared the size of the shade and on the other side of which appeared the printed words:

Celanese and Acetate Taffeta Top
Fine Rayon Taffeta Lining

Respondent used an invoice form on which appeared the legend;

Silk-O-Lite Manufacturing Corp.
Manufacturers of
Silk Lamp Shades * *

Respondent also placed in the hands of the purchaser of its products advertising data bearing the trade mark "Silk-O-Lite" and describing respondent's products as being made of acetate and celanese taffeta with rayon linings.

PAR. 5. Since the institution of this proceeding respondent has revised its label and advertising data described in paragraph 4 by inserting in the label immediately under the word "Silk-O-Lite" in small type the words "Mfg. Corp." and in lieu of the words "Celanese and Acetate Taffeta Top, Fine Rayon Taffeta Lining" the words "Fine

Rayon Celanese Taffeta"; has revised its advertising data and now describes the material in the top of its shades as "Celanese Rayon Taffeta" and the material in the lining as "rayon," and has revised its invoices so that there now appears thereon under the word "Description" the following words "The fabric content of this lamp shade group is fine Celanese Rayon Taffeta; Rayon lined for durability."

CONCLUSION

The use by respondent of the word "silk" as a part of the hyphenated word "Silk-O-Lite" in its corporate name. "Silk-O-Lite Manufacturing Corp.," was and is an implied representation, and when considered in connection with the statement immediately under the corporate name "Manufacturers of Silk Lamp Shades * * *," it was and is an express representation that it was and is a manufacturer of silk lamp shades, whereas, in truth and in fact, it was and is a manufacturer of lamp shades, more than 85 percent of the fabric content of which was and is rayon.

The use by respondent of tags attached to its lamp shades bearing the hyphenated word "Silk-O-Lite" on the face and on the reverse side the words "Celanese and Acetate Top, Fine Rayon Taffeta Lining," and identical representation of its shades in advertising data placed in the hands of purchasers of its products for resale constituted and implied representation that the entire top portion of such shades were made of material other than rayon which, when considered in connection with the similarity in appearance of rayon and silk conveyed the deceptive and erroneous impression that the entire top portion of such shades were made of silk.

Respondent's revision of its labels, invoices, and advertising data subsequent to the institution of this proceeding, as set forth in finding 5, constitutes no defense to the charges contained in the complaint, and if permanently adopted and adhered to would not correct the deceptive inference flowing from the word "silk" in the hyphenated word "Silk-O-Lite" appearing in the respondent's corporate name and trade mark, and the words "Manufacturers of Silk Lamp Shades * * *" appearing immediately under its corporate name.

The acts and practices of the respondent in the respects above indicated constitute deceptive acts and practices within the intent and meaning of section 5 of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Silk-O-Lite Manufacturing Corp., its officers, directors, agents and employees, directly or through any

corporate or other device in connection with the sale or offering for sale and distribution of lamp shades in commerce, as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from:

1. The use of the corporate name "Silk-O-Lite Manufacturing Corp.," unless in immediate connection and conjunction therewith there appear clearly and conspicuously the words "Manufacturers of Rayon Lamp Shades."

2. The use of the trade name "Silk-O-Lite," in connection with the offering for sale, or sale of its lamp shades, unless in immediate connection and conjunction therewith there appear clearly and conspicuously the words "A Trade Name" and designating all the constituent materials or fibers therein contained.

3. Describing in advertising data or on tags or labels or otherwise its lamp shades made of rayon as "Celanese and Acetate Taffeta" without disclosing that the products so described are made of rayon.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist [as required by said declaratory decision and order of May 8, 1951].

IN THE MATTER OF

PRATT AND POMARS ASSOCIATES, INC., ET AL.

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

Docket 5849. Complaint, Feb. 20, 1951—Decision, May 8, 1951

Where a corporation and its two officers, engaged in making collections for their clients of delinquent accounts, both within and without the State of New York, prior to November 30, 1950 (since which time they limited their collection business to delinquent debtors located only in said state);

In attempting to ascertain current addresses of persons from whom they were endeavoring to collect monies due their clients, as well as the names and addresses of such persons' employers and other information concerning them—

Falsely represented, through the use, singly and in combination, of the phraseology "Placement Clerk", "Divisional Registry", "Industrial Bureau", "Application Clerk", "Call for Interview", and "Appointment Clerk", to the persons to whom they sent form post cards in the foregoing connection, that they operated an industrial bureau; were engaged in personnel work and in the employment of workers in connection therewith; and that the information sought was in connection with the placement or appointment of the recipient of the card to a position;

With capacity and tendency to mislead and deceive persons to whom said cards were sent into the mistaken belief that such representations were true and thereby induce the recipients to call respondents and give information which they otherwise would not have supplied:

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

Before *Mr. Webster Ballinger*, trial examiner.
Mr. J. W. Brookfield, Jr., for the Commission.
Mr. Sol H. Erstein, 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 Pratt and Pomars Associates, Inc., a corporation, and Harold A. Pomars, and Ida May Pomars, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Pratt and Pomars Associates, Inc., is a corporation organized 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 45 West 34th Street, in the city of New York, New York. Respondents Harold A. Pomars and Ida May Pomars are President and Secretary, respectively, of respondent corporation and formulate, direct and control the policies and practices of said corporation.

PAR. 2. Respondents are now, and for more than 5 years last past have been, engaged in conducting a collection agency and in collecting accounts owed to creditor clients of said respondents. Said clients are located both within and without the State of New York, as are also those from whom the respondents endeavor to collect such delinquent accounts. Said respondents, in the course and conduct of their said business, are engaged in commercial intercourse and communication with their clients and their clients' debtors located in various States of the United States.

PAR. 3. In the course and conduct of their said business, respondents frequently attempt to ascertain current addresses of persons from whom they are endeavoring to collect money due their clients, as well as the names and addresses of the employers of such persons and other information about said persons. For the purpose of obtaining such information respondents have employed and now employ various methods including the use of certain written communications, typical of which are the following:

Post cards are addressed and mailed to the debtors and contain the following wording:

Registry No. _____
It is urgent to call at once LO 4–5878
Mr. John Walker, Placement Clerk Ext. 8
Divisional Registry

Call at once
Industrial Bureau
Longacre 4–5878
Dept. _____

_____
Application Clerk

Call for Interview
Longacre 4–5878
Extension _____

_____
Appointment Clerk

PAR. 4. Through the use, singly and in combination, of the phraseology "Placement Clerk," "Divisional Registry," "Industrial Bureau," "Application Clerk," "Call for Interview" and "Appointment Clerk," respondents represented to the persons to whom the cards are sent that they operated an industrial bureau; were engaged in personnel work and in the employment of workers in connection therewith; and that the information sought is in connection with the placement or appointment of the recipient of the card to a position.

PAR. 5. The said representations are false, misleading, and deceptive. In truth and in fact, respondents do not operate an industrial bureau nor are they engaged in personnel or employment services. On the contrary their only business is that of collecting delinquent accounts and the information sought to be obtained is for use by respondents only in the collection of their clients' accounts.

PAR. 6. The use as hereinabove set forth of the false, misleading, and deceptive statements, representations, and designations, has had and now has the capacity and tendency to mislead and deceive persons to whom said post cards were sent into the erroneous and mistaken belief that the said statements and representations were true and thus to induce the recipients to call respondents and give information which they otherwise would not have supplied.

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

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 May 8, 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 the Federal Trade Commission Act, the Federal Trade Commission on February 20, 1951, issued and subsequently served its complaint in this proceeding upon respondents Pratt & Pomars Associates, Inc., a corporation, and Harold A. Pomars and Ida May Pomars, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices

in commerce in violation of the provisions of said act. After the issuance of said complaint respondents filed a joint answer in which they admitted substantially all of the material allegations of fact set forth on the complaint and answer, and waived all intervening proceedings. Thereafter, the proceeding regularly came on for final consideration by the above named trial examiner theretofore duly designated by the Commission upon the complaint, and answer thereto, and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Pratt and Pomars Associates, Inc., is a corporation organized 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 45 West 34th Street, in the city of New York, N. Y. Respondents Harold A. Pomars and Ida May Pomars are president and secretary, respectively, of the respondent corporation and formulate, direct, and control the policies and practices of said corporation.

PAR. 2. The individual respondents Harold A. Pomars and Ida May Pomars for more than 5 years last past have been engaged exclusively in the business of making collections for their clients of delinquent accounts, the business being conducted in the name of the corporate respondent Pratt and Pomars Associates, Inc. Their clients were and are located in New York as well as other States. Prior to the 30th day of November 1950, respondents endeavored to locate delinquent debtors located in various States, including the State of New York, and make collection of monies due their clients. Since November 30, 1950, respondents have confined their said business operations to delinquent debtors residing in the State of New York. In the course and conduct of their said business respondents were, prior to November 30, 1950, engaged in commercial intercourse and communication with their clients and their clients' delinquent debtors located in various States of the United States. Since November 30, 1950, while representing clients in various States of the United States with whom they are and have been in commercial intercourse and communication respondents have confined their collection business to delinquent debtors located only in the State of New York.

PAR. 3. In the course and conduct of their said business, respondents have and do now frequently attempt to ascertain current addresses of persons from whom they are endeavoring to collect monies due

their clients, as well as the names and addresses of the employers of such persons and other information about said persons. For the purpose of obtaining such information respondents have employed and now employ various methods including the use of certain written communications, typical of which are the following:

Post cards are addressed and mailed to the debtors and contain the following wording:

Registry No. _____
It is urgent to call at once LO 4-5878
Mr. John Walker, Placement Clerk Ext. 8
Divisional Registry

Call at once
Industrial Bureau
Longacre 4-5878
Dept. _____

_____
Application Clerk

Call for Interview
Longacre 4-5878
Extension _____

_____
Appointment Clerk

Since November 30, 1950, said post cards have been forwarded by respondents only to the New York States addresses of delinquent debtors, and not to any place outside of said State.

PAR. 4. Through the use, singly and in combination, of the phraseology "Placement Clerk," "Divisional Registry," "Industrial Bureau," "Application Clerk," "Call for Interview" and "Appointment Clerk," respondents have falsely represented and now falsely represent to the persons to whom the cards were and are sent that they have operated and now operate an industrial bureau; were and are engaged in personnel work and in the employment of workers in connection therewith; and that the information sought is in connection with the placement or appointment of the recipient of the card to a position.

PAR. 5. The use of the false, misleading, and deceptive statements, representations and designations, above set forth, has had and now has the capacity and tendency to mislead and deceive persons to whom said post cards were sent into the erroneous and mistaken belief that the said statements and representations were true and thus to induce the recipients to call respondents and give information which they otherwise would not have supplied.

CONCLUSION

The acts and practices of the respondents as set forth in the findings of fact were and 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.

ORDER

It is ordered, That Pratt and Pomars Associates, Inc., a corporation, its officers, directors, agents, and employees, and Harold A. Pomars and Ida May Pomars, individually, either directly or through any corporate or other devices in connection with the use in commerce, as "commerce" is defined in the Federal Trade Commission Act, of postal or other cards, or any other printed or written material of similar nature do forthwith cease and desist from:

Using any of the words "Placement Clerk," "Divisional Registry," "Industrial Bureau," "Application Clerk," "Call for Interview," "Appointment Clerk," or otherwise representing directly or by implication that respondents operate an industrial bureau, or are engaged in personnel work and in the employment of workers in connection therewith, or that the information sought is in connection with the placement or appointment of the person to whom the card is addressed to a position, or that respondents' business is other than that of a collection agency.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of May 8, 1951].

IN THE MATTER OF

HENRY MODELL & COMPANY, INC., ET AL.

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

Docket 5805. Complaint, Sept. 5, 1950—Decision, May 12, 1951

The word "wool" is understood by the trade and among the purchasing public to mean the fiber from the fleece of the sheep or lamb, or hair of the Angora or Cashmere goat, including the so-called specialty fibers from the hair of the camel, alpaca, llama and vicuna, which has never been reclaimed from any woven or felted products, and is wholly free from both "reprocessed wool" and "reused wool".

"Reprocessed wool" means the resulting fibers made from a woven or felted wool product which has never been utilized in any way by the ultimate consumer.

"Reused wool" means the resulting fiber when wool or reprocessed wool has been spun, woven, knitted or felted into a wool product, and after having been used by an ultimate consumer, is subsequently reduced to a fiber state.

Where a corporation and its three officers engaged in selling at wholesale and at retail various articles of merchandise including blankets and wearing apparel, and in the interstate sale and distribution of their said products; in advertising in newspapers, circulars, and other advertising matter disseminated among the trade and the purchasing public throughout the United States—

Misrepresented the constituent fiber or material of which certain blankets and pea-jackets were composed through the use of such words as "new, 100% wool", "100% wool", "brand new, all wool", or "100% all wool", to describe said products; the facts being that the products in question were composed wholly or largely of "reprocessed wool" or "reused wool"; as revealed by the labeling thereof as required under the Wool Products Labeling Act;

With capacity and tendency to mislead a substantial portion of the purchasing public as to the constituent fiber or material used in the manufacture of their said products, and with the result that many members of the purchasing public, as a consequence, purchased substantial quantities thereof:

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

Before *Mr. John W. Addison*, trial examiner.
Mr. Edward L. Smith and *Mr. H. D. Stringer* for the Commission.
Mr. Milton Solomon, 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 Henry Modell & Co., Inc., and Henry Modell, Rose Modell, and William Modell, individually and as officers of Henry Modell & Co., Inc., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Henry Modell & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York and has its principal office and place of business at 700 Broadway, New York, N. Y. Said respondent is now and for several years last past has been engaged in selling at wholesale and at retail various articles of merchandise including blankets and articles of wearing apparel.

The respondents, Henry Modell, Rose Modell, and William Modell, are officers of respondent, Henry Modell & Co., Inc., and as such determine, direct, and control the merchandising policies of said corporate respondent and the acts and practices hereinafter set forth and described.

Respondents cause and have caused their said products, when sold by them, during all the times mentioned herein, to be transported from the State of New York to various purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business the respondents have engaged and are now engaged in the practice of falsely representing the constituent fiber or material of which the said products sold and distributed by them in commerce are made. In furtherance of this practice, and for the purpose of inducing the purchase of its said products, respondents have caused false statements and representations purporting to be descriptive of such products and their respective constitutent fiber or materials to be inserted in newspapers, circulars and other types of advertising matter disseminated among the trade and the purchasing public throughout the United States.

PAR. 3. Among and typical of the acts and practices above described, the respondents in the aforesaid advertising matter represent said products as follows:

NEW 100% WOOL GREY
BLANKETS*
. . .

#6058 . . . 100% Wool . . .
Good all wool Blankets . . .
*Labeled

BRAND NEW, ALL WOOL*
GREY
BLANKETS . . .

*Labeled as to wool content.

#6058 . . .
100% all wool . . .

100%
WOOL* CAMP BLANKET
BRAND NEW BATTLESHIP GREY
. . .

Labeled as to wool content.
HEAVY ALL WOOL—NAVY-STYLE
Pea-Jackets . . . made of windproof 33 ounce all-wool*
. . .

*Labeled for wool content.

In truth and in fact said blankets and pea-jackets were not composed of NEW 100% WOOL, 100% WOOL, BRAND NEW, ALL WOOL, ALL WOOL, or 100% all wool, within the meaning of the word "wool" as hereinbelow set out in paragraph 4, but were in fact composed wholly or largely of "reprocessed wool" and/or "reused wool." Certain of said blankets when sold and delivered by the respondents were labeled under the provisions of the Wool Products Labeling Act as containing 45 percent reprocessed wool, 45 percent reused wool, and 10 percent wool, while others were labeled under such act as containing 30 percent wool and 70 percent reprocessed wool. The pea-jackets were labeled under such act as containing 100 percent reprocessed wool.

PAR. 4. The word "wool" is understood by the trade and among the purchasing public to mean the fiber from the fleece of the sheep or lamb, or hair of the Angora or Cashmere goat, including the so-called specialty fibers from the hair of the camel, alpaca, llama and vicuna, which has never been reclaimed from any woven or felted product, as distinguished from "reprocessed wool" and/or "reused wool"; and its use by respondents as aforesaid causes purchasers and prospective purchasers to have the mistaken and erroneous belief that the said products so advertised are composed wholly of fibers falling within the classification "wool" as hereinabove set out, rather than "reprocessed wool" and/or "reused wool."

PAR. 5. The use by the respondents of the aforesaid representations in advertising their products has the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing and consuming public as to the constituent fiber or material used in the manufacture of respondents' said products and as a result of that deception or mistaken belief many members of the purchasing public have purchased in commerce and are likely to continue to purchase in commerce substantial quantities of respondents' said products.

PAR. 6. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair or deceptive acts or practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's rules of practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated May 12, 1951, the initial decision in the instant matter of trial examiner John W. Addison, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN W. ADDISON, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 5, 1950, issued and subsequently served its complaint in this proceeding upon respondents, Henry Modell & Co., Inc., a corporation, and upon Henry Modell, Rose Modell, and William Modell, individually and as officers of the corporation, charging them with the use of unfair or deceptive acts or practices in commerce within the intent and meaning of the Federal Trade Commission Act. After the issuance of the complaint and the filing of respondents' answer thereto, hearings were held at which counsel supporting the complaint rested after introducing testimony and other evidence in support of the allegations of the complaint before the above named trial examiner, theretofore duly designated by the Commission, which is duly recorded and filed in the office of the Commission. At the last hearing on November 16, 1950, the taking of testimony at distant points was obviated by agreement between counsel; and on December 26, 1950, and January 5, 1951, to obviate further hearings counsel for respondents joined with counsel supporting the complaint in filing proposed findings, conclusions, and order to cease and desist upon the express reservation of right to withdraw the proposals and introduce testimony in the event that the proposals are not adopted by the trial examiner or that the Commission does not approve

them, but waiving the introduction of testimony on behalf of respondents if the proposals and reservation are acceptable. Thereafter the proceeding regularly came on for final consideration by said trial examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts, conclusions and order presented by opposing counsel jointly (oral argument not having been requested) ; and the trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and that the proposals jointly filed by opposing counsel are in accord with the testimony and adequately cover all material allegations in the complaint and with minor verbal changes adopts them as the basis for this his findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Henry Modell & Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and has its principal office and place of business at 700 Broadway, New York, N. Y. Said respondent is now and for several years last past has been engaged in selling at wholesale and at retail various articles of merchandise including blankets and articles of wearing apparel. The respondents, Henry Modell, Rose Modell, and William Modell, are officers of respondent, Henry Modell & Co., Inc., and as such determine, direct and control the merchandising practices of said corporate respondent and the acts and practices hereinafter set forth and described.

PAR. 2. The respondents cause and have caused their said products when sold by them during all the times mentioned herein to be transported from the State of New York to various purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in said products among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business the respondents have engaged in the practice of erroneously representing the constituent fiber or material of which the said products sold and distributed by them in commerce are made. In furtherance of this practice and for the purpose of inducing the purchase of its said products respondents have caused erroneous and misleading representations purporting to be descriptive of such products and their respective constituent fiber or materials to be inserted in newspapers, circulars

and other types of advertising matter disseminated among the trade and the purchasing public throughout the United States.

PAR. 4. Typical of the acts and practices, above described, the respondents in the aforesaid advertising matter represent said products as follows:

NEW 100% WOOL GREY
BLANKETS*

. . .

#6058 . . . 100% Wool . . .
Good all wool Blankets . . .
*Labeled

BRAND NEW, ALL WOOL*
GREY
BLANKETS . . .

*Labeled as to wool content.

#6058 . . .
100% all wool . . .

100%
WOOL* CAMP BLANKET
BRAND NEW BATTLESHIP GREY

. . .

Labeled as to wool content.

HEAVY ALL-WOOL—NAVY-STYLE
Pea-Jackets . . . made of windproof 33 ounce all-wool*

. . .

*Labeled for wool content.

PAR. 5. The said blankets and pea-jackets were not composed of NEW 100% WOOL, 100% WOOL, BRAND NEW, ALL WOOL, or 100% all wool, within the meaning of the word "wool" as hereinbelow set out, but were in fact composed wholly or largely of "reprocessed wool" or "reused wool." Certain of said blankets when sold and delivered by the respondents were labeled under the provisions of the Wool Products Labeling Act as containing 45 percent reprocessed wool, 45 percent reused wool, and 10 percent wool, while others were labeled under such act as containing 30 percent wool and 70 percent reprocessed wool. The pea-jackets were labeled under such act as containing 100 percent reprocessed wool.

PAR. 6. The word "wool" is understood by the trade and among the purchasing public to mean the fiber from the fleece of the sheep or lamb, or hair of the Angora or Cashmere goat, including the so-called specialty fibers from the hair of the camel, alpaca, llama, and vicuna, which has never been reclaimed from any woven or felted product, and is wholly free from both "reprocessed wool" and "reused wool"; and its use by respondents as aforesaid causes purchasers and prospective purchasers to have the mistaken and erroneous belief that the said products so advertised are composed wholly of fibers falling within the classification "wool" as hereinabove set out, and contain no "reprocessed wool" and no "reused wool." "Reprocessed wool" means the resulting fiber made from a woven or felted wool product which has never been utilized in any way by the ultimate consumer. "Reused wool" means the resulting fiber when wool or reprocessed wool has been spun, woven, knitted, or felted into a wool product and after having been used by an ultimate consumer is subsequently reduced to a fiber state.

PAR. 7. The use by the respondents of the aforesaid representations in advertising their products has the capacity and tendency to mislead a substantial portion of the purchasing and consuming public as to the constituent fiber or material used in the manufacture of respondents' said products and as a result of that mistaken belief many members of the purchasing public have purchased in commerce substantial quantities of respondents' said products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

It is ordered, That the respondents, Henry Modell & Co., Inc., a corporation, and its officers, and Henry Modell, Rose Modell, and William Modell, and their representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of its blankets and other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting in any way the constituent fiber or material used in its merchandise or the respective percentages thereof;

2. Describing, designating or in any way referring to any product or portion of a product which is "reprocessed wool" or "reused wool" as "wool";

3. Using the word "wool" to describe, designate or in any way refer to any product or portion of a product which is not the fiber from the fleece of the sheep or lamb, or hair of the Angora or Cashmere goat, or hair of the camel, alpaca, llama, or vicuna which has never been reclaimed from any woven or felted product; provided however, nothing herein shall prohibit the use of the terms "reprocessed wool" or "reused wool" when the products or those portions thereof referred to are composed of such fibers.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of May 12, 1951].

IN THE MATTER OF

S. WAXMAN AND OSCAR STEIN TRADING AS SANDY FASHIONS

COMPLAINT, FINDINGS, AND ORDERS 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 5826. Complaint, Nov. 2, 1950—Decision, May 18, 1951

Where two partners engaged in the introduction and manufacture for introduction into commerce, and in the offer for sale, sale, distribution and transportation of wool products including ladies' coats and other products composed in whole or in part of wool, reprocessed wool or reused wool as defined in the Wool Products Labeling Act and subject to the provisions thereof and the rules and regulations promulgated thereunder—

Misbranded substantial quantities of their aforesaid wool products in violation of said Act and said rules and regulations in that they failed to affix thereto the required stamps, tags, labels or other means of identification showing the percentage of the fiber weight of wool and other fiber, and other information required thereby including the name of the manufacturer or that of one or more persons subject to Section 3 of said Act, or the registered identification number of such person or persons as provided for in rule 4 of said regulations as amended:

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.

Before *Mr. Henry P. Alden*, trial examiner.
Mr. Jesse D. Kash for the Commission.
Stein & Stein, 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 S. Waxman and Oscar Stein, individually and as partners trading as Sandy Fashions, hereinafter referred to as respondents, have violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondents, S. Waxman and Oscar Stein are partners trading as Sandy Fashions, with their office and principal place of business located at 251 West Fortieth Street, New York, N. Y.

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 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 ladies' 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 the 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.

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 May 18, 1951, the initial decision in the instant matter of trial examiner Henry P. Alden, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY HENRY P. ALDEN, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission on November 2, 1950, issued and subsequently served its complaint in this proceeding upon the respondents S. Waxman and Oscar Stein, charging them as individuals and as partners trading as Sandy Fashions with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those Acts.

On January 23, 1951, the date of the initial and only hearing in this proceeding, an answer signed by both of the respondents was offered and accepted by the trial examiner. In such answer, the respondents admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to the facts for the purpose of this proceeding, the enforcement or review thereof in the Circuit Court of Appeals, and for any review thereof in the Supreme Court of the United States, or for any other court proceedings in connection therewith which may be brought or instituted by virtue of the authority contained in the Federal Trade Commission Act, as amended and approved March 21, 1938.

Thereafter, this proceeding regularly came on for consideration by the above-named trial examiner, theretofore duly designated by the Commission, upon the complaint and answer thereto; and the trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, S. Waxman and Oscar Stein, are partners trading as Sandy Fashions. Their office and principal place of business are located at 251 West Fortieth Street, New York, N. Y.

PAR. 2. The respondents are now and for some time past were engaged in the introduction and manufacture for introduction into commerce and in the offering for sale, sale, distribution, and transportation 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.

PAR. 3. Among the wool products manufactured for introduction and introduced into commerce, offered for sale and sold, distributed and transported by the respondents in commerce, were ladies' coats and other products 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.

PAR. 4. Substantial quantities of respondents' aforesaid wool products manufactured for introduction and introduced into commerce, offered for sale and sold, distributed and transported in commerce since July 15, 1941, were misbranded in violation of the provisions of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, by respondents' failure 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 five 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 five 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.

CONCLUSION

The aforesaid acts, practices and methods of the respondents, as herein found, were and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and 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 the respondents, S. Waxman and Oscar Stein, individually and as partners trading as Sandy Fashions or under any other name, their agents, representatives and employees, directly or through any other device, in connection with the introduction of manufacture for introduction into commerce, or the sale, transportation or distribution of such wool products in commerce, as "commerce" is defined in the aforesaid acts, do forthwith cease and desist from misbranding ladies' coats or other "wool products," as defined in and subject to the Wool Products Labeling Act of 1939, which contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said act, by failing to securely affix to or place on such products a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

(*a*) The percentage of the total fiber weight of such wool products, 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 fiber weight of such wool product of any nonfibrous loading, filling, or adulterating matter;

(*c*) The percentage 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 the Wool Products Labeling Act of 1939, 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 of such Act, as amended:

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by Paragraph (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 provision of said Act or the Rules and Regulations promulgated thereunder.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of May 18, 1951].

Order

IN THE MATTER OF

ELGIN RAZOR CORPORATION ET AL.

MODIFIED ORDER TO CEASE AND DESIST

Docket 4458. Order, May 24, 1951

Order modifying prior order of Commission, in accordance with the opinion and decision of the Court of Appeals for the Seventh Circuit on February 5, 1951, in *Galter et al.* v. *Federal Trade Commission*, 186 F. (2d) 810, and the court's final decree in said matter (which modified the Commission's cease and desist order issued on August 4, 1947, in *Elgin Razor Corporation et al.*, 44 F. T. C. 80, by striking therefrom paragraphs 1 (g) and 5 (f) reading "Representing as 'candid type' cameras any cameras which are not equipped with special lenses and shutters and which are incapable of taking action pictures under very unfavorable light conditions", and by striking therefrom also the names of two corporate respondents; and affirmed said order as modified;

So as to require respondents to cease and desist from the deceptive and misleading use of the words "Elgin", "Hamilton", "Remington", or "Underwood", to designate, describe or refer to their products, or as a part of their corporate or trade names, and from misrepresenting prices and guarantees in said order in detail set out.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Carrel F. Rhodes and *Mr. Edward L. Smith* for the Commission.

Mr. James R. McKnight and *Nash & Donnelly*, of Chicago, Ill., for Elgin Razor Corp., Underwood Laboratories, Inc., and Underwood Industries, Inc.

Mr. Henry H. Koven and *Nash & Donnelly*, of Chicago, Ill., for Match King, Inc.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, certain stipulations of fact entered into between the respondents and counsel for the Commission, and testimony and other evidence, 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 and issued its order to cease and desist on August 14, 1947; and

Respondents Jack Galter, individually and as former president of Match King, Inc., a dissolved corporation, Dora M. Galter, William

R. Galter, Arnold F. Shapiro, individually and as former president of American Supercraft Corp., a dissolved corporation, and Monarch Manufacturing Co., a corporation, having filed in the United States Court of Appeals for the Seventh Circuit their petition to review and set aside the order to cease and desist issued herein, and that court having heard the matter on briefs and oral argument, fully considered the matter, and, on March 5, 1951, entered its final decree modifying and affirming, as modified, the aforesaid order to cease and desist pursuant to its opinion announced on February 5, 1951:

1. NOW THEREFORE, *It is hereby ordered*, That respondents Elgin Razor Corp., Underwood Laboratories, Inc., Underwood Industries, Inc., the American Camera Corp., and Electric Clock Corp. of America, corporations, and their officers, and respondents Henry T. Schiff, Frances R. Schiff, Robert M. Schiff, and Benjamin A. Schiff, as officers of said corporations and individually and trading under the names the Keen Manufacturing Co., Razor Service Co., General Chromium and Copper Co., and Utility Manufacturing Co., or trading under any other name, and respondents Albert I. Leight and Ed Cohan, and respondents' 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 electric shavers, cameras, electric sunlamps, talking machines, electric clocks, and electric lighters, or any other merchandise, do forthwith cease and desist from:

(*a*) Using the name "Elgin," or any simulation thereof, either alone or in connection with other words, to designate, describe or refer to respondents' products;

(*b*) Using the name "Hamilton," or any simulation thereof, either alone or in connection with other words, to designate, describe or refer to respondents' products;

(*c*) Using the name "Remington," or any simulation thereof, either alone or in connection with other words, to designate, describe or refer to respondents' products;

(*d*) Using the name "Underwood," or any simulation thereof, either alone or in connection with other words, to designate, describe, or refer to respondents' products;

(*e*) Representing as the customary prices of respondents' products prices which are in excess of the prices at which such products are regularly and customarily sold in the normal course of business;

(*f*) Representing that the prices at which respondents' products are offered for sale are special or reduced prices or are applicable for

a limited period of time only, when such prices are in fact the regular and customary prices at which such products are offered for sale in the normal course of business;

(*g*) Representing, through the issuance of purported "guarantee certificates" or otherwise, that respondents' products are guaranteed against defective workmanship and materials, unless respondents do in fact repair in accordance with the terms of such guarantee products found to be defective in such respects.

2. *It is further ordered*, That respondent Elgin Razor Corp., a corporation, and its officers, and respondents Henry T. Schiff, Frances R. Schiff, Robert M. Schiff, and Benjamin A. Schiff, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of electric shavers, cameras, electric sunlamps, talking machines, electric clocks, and electric lighters, or any other merchandise, do forthwith cease and desist from:

(*a*) Using the name "Elgin," or any simulation thereof, as a part of the corporate or trade name of said corporation.

3. *It is further ordered*, That respondent Underwood Laboratories, Inc., a corporation, and its officers, and respondents Henry T. Schiff, Frances R. Schiff, Robert M. Schiff, and Benjamin A. Schiff, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of electric shavers, cameras, electric sunlamps, talking machines, electric clocks, and electric lighters, or any other merchandise, do forthwith cease and desist from:

(*a*) Using the name "Underwood," or any simulation thereof, as a part of the corporate or trade name of said corporation;

(*b*) Using the word "Laboratories," or any simulation thereof, as a part of the corporate or trade name of said corporation.

4. *It is further ordered*, That respondent Underwood Industries, Inc., a corporation, and its officers, and respondents Henry T. Schiff, Frances R. Schiff, Robert M. Schiff, and Benjamin A. Schiff, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of electric shavers, cameras, electric sunlamps, talk-

ing machines, electric clocks, and electric lighters, or any other merchandise, do forthwith cease and desist from:

(*a*) Using the name "Underwood," or any simulation thereof, as a part of the corporate or trade name of said corporation.

5. *It is further ordered*, That respondent the Monarch Manufacturing Co., a corporation, and its officers, and respondents Jack Galter, Dora M. Galter, William Galter, Harry C. Feinberg, Robert D. Schoenbrod, and Arnold F. Shapiro, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of electric shavers, cameras, sunlamps, talking machines, electric clocks, and electric lighters, or any other merchandise, do forthwith cease and desist from:

(*a*) Using the name "Elgin," or any simulation thereof, either alone or in connection with other words, to designate, describe, or refer to respondents' products;

(*b*) Using the name "Remington," or any simulation thereof, either alone or in connection with other words, to designate, describe, or refer to respondents' products;

(*c*) Using the name "Underwood," or any simulation thereof, either alone or in connection with other words, to designate, describe, or refer to respondents' products;

(*d*) Representing as the customary prices of respondent's products prices which are in excess of the prices at which such products are regularly and customarily sold in the normal course of business;

(*e*) Representing that the prices at which respondents' products are offered for sale are special or reduced prices or are applicable for a limited period of time only, when such prices are in fact the regular and customary prices at which such products are offered for sale in the normal course of business;

(*f*) Representing, through the issuance of purported "guarantee certificates" or otherwise, that respondents' products are guaranteed against defective workmanship and materials, unless respondents do in fact repair in accordance with the terms of such guarantee products found to be defective in such respects.

6. *It is further ordered*, That respondents Elgin Razor Corp., Underwood Laboratories, Inc., Underwood Industries, Inc., the Monarch Manufacturing Co., the American Camera Corp., and Electric Clock Corp. of America, corporations, and Henry T. Schiff, Frances R. Schiff, Benjamin A. Schiff, Jack Galter, individually and

and as former president of Match King, Inc., a dissolved corporation, Dora M. Galter, William Galter, Harry C. Feinberg, Robert D. Schoenbrod, Arnold F. Shapiro, individually and as former president of American Supercraft Corp., a dissolved corporation, Albert I. Leight, and Ed Cohan shall, within 90 days after the entry of the aforesaid decree by the United States Court of Appeals for the Seventh Circuit, 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

CARTER PRODUCTS, INC., AND SMALL AND SEIFFER, INC.

MODIFIED ORDER TO CEASE AND DESIST

Docket 4960. Order May 24, 1951

Order modifying prior order of Commission, in accordance with the opinion and decision of the Court of Appeals for the Seventh Circuit on February 2, 1951, in *Carter Products, Inc., et al.* v. *Federal Trade Commission*, 186 F. (2d) 821, and the court's final decree in said matter (which modified and affirmed, as modified, the Commission's said cease and desist order in *Carter Products, Inc., et al.*, July 14, 1949, 46 F. T. C. 64);

So as to require respondents to cease and desist from advertising falsely or misleadingly the effectiveness of the preparation "Arrid" with respect to stopping perspiration and as a deodorant, etc., as in said order below set out.

Before *Mr. Everett F. Haycraft*, trial examiner.
Mr. R. P. Bellinger for the Commission.
Breed, Abbott & Morgan, of New York City, for respondents.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and other evidence in support of the complaint and in opposition thereto, taken before a trial examiner of the Commission theretofore duly designated by it, the recommended decision of the trial examiner and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission, having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act and issued its order to cease and desist on July 14, 1949; and

Respondents having filed in the United States Court of Appeals for the Seventh Circuit their petition to review and set aside the order to cease and desist issued herein, and that court having heard the matter on briefs and oral argument, fully considered the matter, and, on February 20, 1951, entered its final decree modifying and affirming, as modified, the aforesaid order to cease and desist pursuant to its opinion announced on February 2, 1951:

NOW THEREFORE, *It is hereby ordered*, That respondents, Carter Products, Inc., a corporation, and Small & Seiffer, Inc., a corporation, and their respective agents, representatives and employees, directly or

through any corporate or other device in connection with the offering for sale, sale or distribution of a cosmetic preparation designated "Arrid," 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, 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;

(*a*) That the application of said preparation stops underarm perspiration; provided, however, that nothing herein shall prevent the respondents from representing that the use of Arrid will prevent the appearance of perspiration when used as directed, namely, "daily" or "as frequently as you find necessary."

(*b*) That said preparation will keep the armpits dry or odorless, provided that nothing herein shall prevent respondents from representing that the use of Arrid will keep the armpits dry or odorless when used as directed, namely, "daily" or "as frequently as you find necessary."

(*c*) That the use of said preparation immediately after shaving will not irritate the skin.

(*d*) That said preparation will prevent the accumulation of odor-creating secretions or excretions in the armpits, provided that nothing herein shall prevent respondents from representing that the use of Arrid will prevent the accumulation of odor-creating body secretions or excretions in the armpits when used as directed, namely, "daily" or "as frequently as you find necessary."

(*e*) That said preparation is safe or harmless to use, without disclosing that it may cause irritation of sensitive skin.

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 of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in Paragraph 1 hereof.

It is further ordered, That the respondents shall, within 90 days after the entry of the aforesaid decree by the United States Court of Appeals for the Seventh Circuit, 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

NEW STANDARD PUBLISHING COMPANY, INC., ET AL.

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

Docket 4697. Complaint, Feb. 4, 1942—Decision, May 25, 1951

Where a corporation engaged in the interstate sale and distribution of sets of "Doubleday's Encyclopedia", and annual supplements or yearbooks therefor, and other publications such as the "New Century Dictionary", "Funk & Wagnalls Practical Standard Dictionary", the "Nature Library", sets of classics, and some other items such as bookcases and pencils; acting under the direction and control of its president who was also its principal stockholder;

In selling its said encyclopedia and supplements or yearbooks on a commission basis through salesmen who were provided with advertising literature furnished by the publisher, and other material including contract forms furnished by said corporation in which was set forth the price to be paid for the encyclopedia and other items included therewith, and also an order for the annual supplements or yearbooks, price of which, however, were not included in the figures stated, but was taken cognizance of in the small type statements "As provided in certificate", or "As provided below", beneath the words "Bound Annual Yearbooks"—

(*a*) Falsely represented that the books were offered at a special low price for a limited time only, after which they would be considerably higher;

(*b*) Falsely represented that the books were given away as an advertising plan to a limited number of persons selected because of their prominence, and that the only return requested was a recommendation which could be shown to other prospective customers;

(*c*) Represented that the price of the books as shown in the body of the contract was the total price to be paid by the purchaser, including the cost of the annual supplements or yearbooks, that transportation charges would be paid by the corporation, and that the sum of $1.85 or $1.95, to be paid yearly for the annual supplements or yearbooks, was a handling charge only;

The facts being that said encyclopedia was a part of a combination sale; said total price represented as that of the yearbooks alone, was one of the prices at which such combination was regularly offered and sold; and the price of the books as shown in the body of the contract was not the total to be paid by the purchaser, including the cost of the annual supplements or yearbooks, for which the customer was required to pay the aforesaid $1.85 or $1.95, each, plus mailing charges, through the forwarding of certificates with which he was not provided until after the signing of the contract;

(*d*) Falsely represented that salesmen of the corporation were salesmen of the publisher of said encyclopedia, and that the corporation was a subsidiary organization of said publisher for distribution of encyclopedias in the Southern States;

(*e*) Falsely represented that said encyclopedias had been approved by educational authorities of the State in which the prospects were located and was on the list of recommended reference books of such state;

(*f*) Falsely represented that sets of said encyclopedias had been sold to and were recommended by superior officers, fellow workers, persons in authority, school superintendents, and college professors;

(*g*) Falsely represented that testimonials and letters of recommendation concerning said encyclopedia were unsolicited and genuine;

(*h*) Falsely represented that pencils to be supplied with sets of the encyclopedias sold to school authorities and actually of inferior quality, were of a 5-cent value and could be sold to students at that price, and were the same as the sample exhibited to the customer at the time he signed the contract; and,

(*i*) Represented that the books ordered by the customer could be paid for as he sold the pencils, when in fact the customers were required to make payments according to the terms of the contracts they signed; and

Where said corporation, for the purpose of enforcing payment under its contracts—

(*j*) Adopted the name "Commercial Finance" to induce its customers by means of threats, intimidations and coercive practices, to make payments according to the terms of the contracts they signed as a result of such false and misleading representations;

(*k*) Falsely represented that "Commercial Finance" was a bona fide collection agency in no way connected with said corporation, that customers' contracts had been assigned to it for collection, that such contracts had been discounted with said "Commercial Finance" and that it was the holder of them in due course and for value; and

(*l*) Falsely represented that said "Commercial Finance" did nation-wide business from its main office in Chicago, and that an office in Richmond, Va., was its branch;

The facts being that said "Commercial Finance" was merely a trade name used by the corporation to secure credit information concerning customers and prospective customers, which was furnished in the belief that it was a legitimate collection agency; and the Chicago address was that of a separate concern whose encyclopedia it also sold, and from which correspondence was forwarded to it at its office in Richmond;

With the result that it thereby deceived purchasers of said books and harassed them into the payment to said "Commercial Finance" of money which they might not have been legally obligated to pay; and

(*m*) Falsely represented that said corporation was a large concern with numerous employees through the use of various fictitious trade names and numerous fictitious names and titles of pseudo employes;

The facts being that its office force consisted of a manager and six or seven other employes whose duty consisted mainly of file work and typing numerous letters written by the organization; it was housed in a small room large enough only to accommodate the desks of the employes; other space included a small rear storeroom and the office of said individual, partitioned off from aforesaid room; and certain names used by said individual and employes in signing letters to customers were fictitious;

With effect of deceiving the purchasing public into the mistaken belief that the representations thus made were true, as a result of which many members of the purchasing public were induced to buy aforesaid 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.

As respects certain other charges in the complaint including the charge that respondents falsely or misleadingly represented that the encyclopedia would be shipped on approval and could be returned if not desired by the customer after examination; that the encyclopedia contained separate volumes devoted to such subjects as "flowers", "home economics", etc.; that the prospective customer would receive the exact edition of the encyclopedia disclosed in the prospectus displayed by the salesman; that blank checks signed by the customer at the request of the salesman would not be used as such but would be mailed directly to the customer as notice that a payment under the contract was due; and that respondent individual and respondent corporation, through the use of the words "press" and "publishing" in connection with the business of said corporation and through trade names used by them, have falsely represented and implied that said corporation is a publishing company:

The Commission was of the opinion that such charges were not sustained by the evidence.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Clark Nichols and *Mr. Randolph W. Branch* for the Commission.

Mr. Henry Ward Beer, of New York City, for New Standard Publishing Co., Inc., and Julius B. Lewis.

Mr. J. Raymond Tiffany, of Hoboken, N. J., for Doubleday-Doran & Co., Inc.

COMPLAINT [1]

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the corporations and the individual named in the caption hereof, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent New Standard Publishing Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 301–303 East Grace Street, Richmond, Va. Said corporate respondent also does business under the follow-

[1] The Commission on June 16, 1950 on joint motion, dismissed the complaint against Doubleday-Doran & Co., Inc., as not requiring further corrective action in the public interest, it appearing from the motion "that on May 23, 1941, respondent Doubleday-Doran & Co., Inc., sold all of its rights to publish the Doubleday Encyclopedia to another publishing company with which it now has no connection. In this sale were included all the plates and other matters pertaining to the Doubleday Encyclopedia. Since that date, said respondent has not in any way owned or controlled the publication or sale of said encyclopedia and has not engaged in the advertising thereof, and the encyclopedia is now being sold under a different name by another company."

ing trade names: Publishers Guild, Foundation Press, Geological Publishing Co., Commercial Finance, National Research Bureau, Standard Research Bureau, Geological Society, and Modern Health Institute. Said respondent is hereinafter referred to as New Standard.

PAR. 2. Respondent Julius B. Lewis, also known as Jack Lewis, is an individual and is president of respondent New Standard Publishing Co., Inc., and his business address is 301–303 East Grace Street, Richmond, Va. Said respondent is the principal stockholder of respondent New Standard, and he directs and controls the business policies and activities of said corporation in carrying out the acts and practices hereinafter alleged, whether said corporate respondent is doing business under its legal corporate name or under any of the trade or fictitious names heretofore mentioned.

PAR. 3. Respondent Doubleday-Doran & Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business located at Garden City, Long Island, N. Y. Said respondent is hereinafter referred to as Doubleday-Doran.

PAR. 4. Respondent New Standard, from the time of its incorporation in the year 1930 until the latter part of the year 1935, was engaged solely in the business of selling in commerce an encyclopedia published by the Standard Education Society of Chicago, Ill.

Thereafter, said respondent New Standard entered into an agreement with the respondent Doubleday-Doran, according to the terms of which respondent New Standard was to purchase from said respondent Doubleday-Doran and to sell sets of an encyclopedia published by respondent Doubleday-Doran and known as Doubleday's Encyclopedia.

Respondent New Standard continued to sell the encyclopedia published by the Standard Education Society heretofore referred to after the agreement entered into by it with respondent Doubleday-Doran, whereby it agreed to sell Doubleday's Encyclopedia. For the purpose of separating the business done by it in the sale of the Standard Education Society's publication and that of Doubleday, said respondent New Standard adopted the trade name "Foundation Press" under which name Doubleday's Encyclopedia was sold, and on or about November 8, 1937, said respondent New Standard, in accordance with the laws of the State of Virginia, filed a certificate to the effect that it was doing business under the trade names "Publishers Guild," "Foundation Press," "Geological Publishing Co.," and "Commercial Finance."

PAR. 5. Respondent New Standard, in the course and conduct of its business, causes said sets of Doubleday's Encyclopedia and other books

and materials to be shipped or transported from its place of business in Richmond, Va., or from the place of business of respondent Doubleday-Doran in the State of New York, to its customers who are located at points in various States of the United States other than the State of Virginia, and in the District of Columbia, and respondent Doubleday-Doran, in the course and conduct of its business, causes sets of its Doubleday Encyclopedia, annual supplements, yearbooks, and other publications sold by it to be shipped and transported from its place of business in the State of New York to its customers and, at the direction of respondent New Standard, to customers of respondent New Standard located at points in various States of the United States other than the State of New York and in the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. Respondent New Standard, pursuant to the agreement between it and respondent Doubleday-Doran, was to pay respondent Doubleday-Doran the sum of $12.50 for each current set of Doubleday's Encyclopedia sold by said respondent New Standard to its customers. Later, when respondent Doubleday-Doran revised or issued a new edition of Doubleday's Encyclopedia, respondent New Standard was obligated to buy one set of the older editions of said encyclopedia with each set of the new edition of the encyclopedia sold by respondent New Standard to its customers. Still later, respondent Doubleday-Doran offered all of its remaining sets of old editions of its encyclopedia to respondent New Standard at a price of $5.50 per set.

Respondent Doubleday-Doran furnished respondent New Standard with all necessary advertising material to be used in selling the Doubleday's Encyclopedia, including prospecti, booklets, stretches, annual supplements, and annual yearbooks wherein the name Doubleday-Doran was prominently displayed.

PAR. 7. Respondent New Standard, in the course and conduct of its business, employs various salesmen on a commission basis to sell Doubleday's Encyclopedia and annual supplements or yearbooks to school teachers, prospective school teachers, students, college professors, business and professional men, club women prominent in local communities and to the general public. Each salesman is provided with the literature, prospecti, and stretches furnished by respondent Doubleday-Doran, and, in addition thereto, letters of endorsement of such publication, sales talks, blank checks, and the contracts to be signed by the purchasers of said encyclopedia are provided the salesmen by respondent New Standard. The copies of the contracts fur-

nished by respondent New Standard are of various colors, depending upon the price to be paid by the purchaser for the encyclopedia and whatever other items are included therewith. These prices range generally from $59.50, $69.50, and $79.50, which prices are printed on the contract. Where the foregoing prices cannot be secured, the space for prices is left blank in other copies of the contract. These contracts are in duplicate, one copy of which is retained by the purchaser and the original forwarded to respondent New Standard by the salesman. Upon receipt of the signed contract by the respondent New Standard, it sends to said purchaser an acknowledgment of the contract, which acknowledgment purports to, but which in fact does not, contain the identical terms of the contract as signed by the customer. After receipt of the signed contract by the respondent New Standard, it either notifies respondent Doubleday-Doran to forward from its place of business in New York a set of Doubleday's Encyclopedia to the purchaser thereof or ships said sets of Doubleday's Encyclopedia to its customers directly from its place of business in Virginia. Reference is made in the contract to the fact that the purchaser is obligated to pay an amount greater than that printed on the contract, said reference being indicated by the following words: "as provided in certificate," or "as provided below," which statements are printed in small type directly beneath the words "bound annual yearbooks."

Respondent New Standard, in addition to selling sets of Doubleday's Encyclopedia, includes in its contract for sale certain other publications, such as Century Dictionary, Funk & Wagnalls Practical Standard Dictionary, The Nature Library, and sets of the works of Stevenson, Victor Hugo, and Dickens, and in some instances other items such as lead pencils.

The contracts above referred to for the sale of Doubleday's Encyclopedia also included the sale of an annual supplement which was published by the respondent Doubleday-Doran, and later changed to an annual yearbook not published by, but sold by, respondent Doubleday-Doran for a period of 10 years, the purpose of which was to keep current the Doubleday's Encyclopedia.

PAR. 8. Respondent New Standard, in the course and conduct of its business as aforesaid, for the purpose of inducing customers and prospective customers to sign a contract for the purchase of said encyclopedia and other publications, has directly and indirectly made many false and misleading statements regarding said encyclopedia and the nature and terms of said contract. Among and typical of the

false and misleading statements made and used by the respondent New Standard are the following:

That the books are offered at a special low price, which price will be in effect for a limited time only, after which time the books will be sold for an amount considerably higher than that at which they are offered; that the books are offered to a limited number of persons who are selected because of said persons' prominence and standing in the community; that the books are given away as an advertising plan and the only return requested of the prospective purchaser is a recommendation which can be shown to other prospective customers at some time in the future; that Doubleday's Encyclopedia is free but that there is a charge of $5.95 each for the 10 annual yearbooks and that the payment of these amounts may be made yearly instead of monthly; that the price of said books as shown in the body of the contract is the total price to be paid by the purchaser, including the cost of the annual supplements or yearbooks; that transportation charges will be paid by respondent New Standard and that the sum of $1.85 to be paid yearly for the annual supplements or yearbooks is a handling charge only; that Doubleday's Encyclopedia will be shipped upon approval and can be returned if not desired by the customer after examination and inspection; that salesmen of respondent New Standard are salesmen of Doubleday-Doran, and that respondent New Standard is a subsidiary organization of respondent Doubleday-Doran for distribution of encyclopedias in the southern States; that said encyclopedia has been approved by State educational authorities and is on the list of recommended reference books; that sets of said encyclopedia have been sold to and are recommended by superior officers, fellow workers, persons in authority, school superintendents, boards of education, and college professors; that testimonials and letters of recommendation concerning said Doubleday's Encyclopedia are unsolicited and genuine; that Doubleday's encyclopedia contains separate volumes devoted to such subjects as "flowers" "home economics" and other subjects; that the prospective customer will receive the exact editions of said encyclopedia, the prospecti of which said salesman of respondent New Standard displays and shows to said prospective customer; that blank checks signed by the customer at the request of respondent's salesman will not be used as such but will be mailed directly to the customer as notice that a payment under said contract is due; that pencils to be supplied with sets of the encyclopedia sold to school authorities are of a 5 cents value and can be sold to students at that price, that said pencils to be supplied are exactly the same as the sample exhibited to the customer at the time the con-

tract is signed, and that the pencils offered to school teachers or school authorities are offered for a limited time only and that the books so ordered by said customer may be paid for as the pencils are sold by said customer.

PAR. 9. In truth and in fact, the said books are not offered at a special low price for a limited time only, but are sold to all customers at all times at one of the following prices: $59.50, $69.50 or $79.50, depending upon what "throw-ins" are included in the contract with the purchase of Doubleday's Encyclopedia, and, where a sale cannot be made at any of the above prices, said books are sold at whatever price the salesman feels he can close the deal. The books are not offered to a limited number of persons selected because of their prominence and standing in the community, but are sold to any and all persons who desire to buy them. The books are not given to members of the public in return for a recommendation which may be displayed to prospective customers at some future time, but each customer is obligated to pay for said books as provided in the contract between said customer and respondent New Standard. Said encyclopedia is not given free in connection with the purchase of 10 yearbooks at $5.95 each, but is part of a combination sale, consisting of the encyclopedia, the yearbooks, and such other books or materials as may be included, and the $59.50 purportedly the price of the yearbooks alone, is one of the prices at which such combination is regularly offered for sale and sold and the price of $59.50 includes the price of encyclopedia, the yearbooks, and such other books and materials as may be included and is not the price of the yearbooks alone. The price of the books as shown in the body of the contract is not the total price to be paid by the purchaser, including the cost of the annual supplements, or yearbooks, but the customer is required to pay $1.85 for each annual yearbook furnished, and the sum of $1.85 is not a handling charge, but the amount to be paid yearly for the annual supplement or yearbook. Said sets of encyclopedias are not shipped upon approval and cannot be returned if not wanted by the purchaser after examination or inspection, for the customer is obligated to pay for such sets according to the terms of the contract. The salesmen selling said sets of encyclopedias are not representatives or agents of respondent Doubleday-Doran, and respondent New Standard is not a subsidiary of respondent Doubleday-Doran. The encyclopedia has not been approved by the State educational authorities in the State within which the prospective customer resides, and it is not on the list of recommended reference books. The encyclopedia has not been sold to or recommended by the superior officers

of, fellow workers to, or persons in authority over the prospective purchaser as represented, or to school superintendents, boards of education, and college professors within the locality in which the said customer resides. The testimonials and letters recommending said encyclopedia are not unsolicited and are not genuine, and in some instances said letters of recommendation have been altered and the signature of the purported signer of said letter has been placed on the letter of recommendation as altered by the respondent without authority. The blank checks are not mere reminders or memorandums which will be mailed directly to the customer as notice that a payment is due, but are in fact actual checks which are deposited for collection by the respondent even after the customer signing such checks has notified respondent of his or her desire to cancel said contract. The pencils supplied with the sets of encyclopedias sold to school authorities and school teachers are not of a 5-cent value and are not the same as the samples exhibited at the time the contract is signed and are not offered to school teachers or school authorities for a limited time only. Said pencils are of an inferior quality which cannot be sold to the students or others for 5 cents each but must be sold at a price much less than 5 cents each, and the said books purchased cannot be paid for as the pencils are sold but must be paid for according to the terms set forth in the contract signed by the customer.

PAR. 10. For the purpose of enforcing payment under the contracts executed by the purchasers of said encyclopedia and other books and materials, which contracts were signed as a result of the false and misleading representations heretofore referred to, respondent New Standard Publishing Co., Inc., adopted the name "Commercial Finance" to induce its customers to continue payments according to the terms of the contract by means of threats, intimidation, and deceptive practices. It falsely represents that "Commercial Finance" is a bona fide collection agency in no way connected with respondent New Standard and to whom the customer's contract has been assigned for collection; that the customer's contract has been discounted with "Commercial Finance" and that the said respondent is the holder in due course and for value of the contract signed by the respective customers; that "Commercial Finance" will notify employers and superior officers of the customer's failure to comply with the terms of the contract unless payment is made forthwith; that "Commercial Finance" does a Nation-wide business from its main office at 103 North Wells Street, Chicago, Ill., and that an office at Richmond, Va., is a branch office of said company.

In truth and in fact "Commercial Finance" is not a company independent and apart from respondent New Standard but is a trade name under which respondent New Standard does business for the purposes herein set forth. "Commercial Finance" is not a holder in due course and for value of the customer's contract, and there could be no assignment of said contract to it by respondent New Standard for the purpose of making collections. Said trade name is used by respondent New Standard for the purpose of securing credit information concerning its customers and prospective customers, which information is furnished upon the belief that said "Commercial Finance" is in fact a legitimate collection agency; and "Commercial Finance" does not have any main office in Chicago, Ill., and the location of the office as designated on its letterheads is the office of the Standard Education Society, whose encyclopedia, as heretofore stated, is also sold by respondent New Standard. By agreement with said Standard Education Society all correspondence addressed to "Commercial Finance" at the Chicago, Ill., address is forwarded to the respondent New Standard at Richmond, Va.

Respondent New Standard, through the use of said trade name "Commercial Finance," and through the practices aforesaid, misleads and deceives purchasers of said books and thereby intimidates and harasses such purchasers into the payment to said "Commercial Finance" of sums of money which they may not be legally obligated to pay.

PAR. 11. Respondent New Standard, acting under the direction and control of respondent Julius B. Lewis, has greatly exaggerated and has misled and deceived purchasers as to its size and standing in the publishing business by the use of numerous fictitious names and titles of pseudo-employees and by the use of the number of fictitious names under which said respondent does business. Respondent New Standard, doing business under its corporate name and under the various trade and fictitious names heretofore referred to, represents that it is a large concern with numerous employees, whereas in truth and in fact it is a small organization with an office force of eight employees consisting of the manager and seven other employees whose duties consist mainly of file work and typing numerous letters which are written by the organization. This office is housed in a small room only sufficiently large to accommodate the desks of the employees. Respondent Julius B. Lewis occupies a small office partitioned off from the room occupied by the employees and, in addition, there is a small storeroom in the rear wherein office supplies are stored.

PAR. 12. Respondent Julius B. Lewis, as principal stockholder in, and in directing the policies and practices of, respondent New Standard and the respondent New Standard, by using the words "press" and "publishing" in connection with the business of the respondent New Standard and by using said words in the trade names used by said respondents and by using the corporate name of the respondent New Standard, have falsely represented and implied that respondent New Standard is a publishing company, when in truth and in fact said respondent possesses no printing press nor does it maintain facilities for the publication of printed matter.

PAR. 13. Respondent Doubleday-Doran & Co., Inc., has aided, abetted, and encouraged respondents New Standard Publishing Co., Inc. and Julius B. Lewis in using, and in promoting the use of, and has induced, directly and indirectly, said respondents to use and to promote the use of the unfair and deceptive acts and practices hereinbefore alleged by: approving respondent New Standard's various types of deceptive contracts for use between it and its customers in the sale of respondent Doubleday-Doran's Encyclopedia; becoming a joint participant with respondent New Standard insofar as the terms of said contract heretofore referred to deal with the purchase of the annual supplement or yearbook for use in connection with Doubleday's Encyclopedia; permitting the respondent New Standard to prominently display the name "Doubleday-Doran" on its contracts in such a manner as to lead one to believe that he was entering into a contract with respondent Doubleday-Doran instead of respondent New Standard; continuing its agreement to sell respondent New Standard sets of its encyclopedia for resale to the general public after numerous complaints received by it over a long period of time of the unfair and deceptive acts and practices of respondent New Standard in connection with the sale of Doubleday's Encyclopedia; making laudable representations of the business integrity of respondent Julius B. Lewis to persons complaining directly to it of the misrepresentations made to them by salesmen of respondent New Standard, and assuring such complainants that their complaints would be equitably adjusted by taking such matters up with respondent New Standard even though it had repeatedly called the attention of respondent Julius R. Lewis to the manner in which he was conducting his business in connection with the sale of Doubleday-Doran's Encyclopedia and his failure to make equitable adjustments with his customers who had been induced by false and misleading representations to enter into said contracts for the purchase of said Doubleday's Encyclopedia; collaborating with the respondent Julius B. Lewis as to the type of

reply letters he should send to some of his customers who registered complaints, either with respondent New Standard or respondent Doubleday-Doran; returning monies, given to it by respondent New Standard for that purpose, to persons who had paid said money to respondent New Standard as a result of the false and misleading representations used by salesmen of the respondent New Standard; and by many other means and methods not herein specifically alleged.

PAR. 14. The use by the respondents of the aforesaid acts, practices and methods, in connection with the offering for sale, sale and distribution of said products in commerce as aforesaid, has had and now has the tendency and capacity to, and does, mislead and deceive the purchasing public into the erroneous and mistaken belief that the representations and implications so made and used by the respondents are true. As a result of this erroneous and mistaken belief, engendered as aforesaid, many members of the purchasing public have been and are induced to buy respondents' said products in said commerce.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission, on February 4, 1942, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were taken before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission upon the complaint, answers thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions thereto filed by counsel for certain of the respondents, and briefs and oral argument of counsel; and the Commission, having duly considered the matter, including the exceptions to the report of the trial examiner upon the evidence, 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 New Standard Publishing Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located in the Broad Grace Arcade Building, Grace Street, Richmond, Va. Said corporate respondent, in accordance with the laws of the State of Virginia, filed a certificate to do business under the trade names of "Publishers Guild," "Foundation Press," "Geographical Publishing Company," and "Commercial Finance," and business was actually done under the trade names of "Foundation Press" and "Commercial Finance." The names "National Research Bureau" and "Standard Research Bureau" were also used in connection with certain phases of said corporate respondent's business. Respondent New Standard Publishing Co., Inc., is hereinafter sometimes referred to as "New Standard."

PAR. 2. Respondent Julius B. Lewis, also known as Jack Lewis, is an individual and is president of respondent New Standard Publishing Co., Inc. His business address is Broad Grace Arcade Building, Grace Street, Richmond, Va. Said respondent is the principal stockholder of respondent New Standard Publishing Co., Inc., and he directs and controls the business policies and activities of said corporation in carrying out the acts and practices hereinafter described, whether said corporate respondent is doing business under its legal corporate name or under any of the fictitious or trade names heretofore mentioned.

PAR. 3. Respondent Doubleday-Doran & Co., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at Garden City, Long Island, N. Y. Prior to the issuance of the complaint herein said respondent Doubleday-Doran & Company sold all of its rights to publish the Doubleday's Encyclopedia to another firm, with whom it has no connection whatsoever, and said encyclopedia is presently being published and sold under a different name by another company. Since the sale of said encyclopedia, Doubleday-Doran & Company has had no connection or dealing with the other respondents herein in connection with the sale of encyclopedias, and the officials of Doubleday-Doran & Co. who were formerly in charge of the sale and distribution of said encyclopedia have left the employ of Double-

day-Doran & Company. The Commission has heretofore entered its order dismissing the complaint as to Doubleday-Doran & Company. As hereinafter used, the term "respondents" does not include Doubleday-Doran & Company.

PAR. 4. Respondent New Standard Publishing Company, Inc., entered into an agreement with Doubleday-Doran & Co. whereby it was to purchase from Doubleday-Doran & Company and to sell sets of an encyclopedia published by Doubleday-Doran & Company and known as Doubleday's Encyclopedia. At the time of entering into said agreement, respondent New Standard was also selling an encyclopedia published by Standard Education Society of Chicago, Ill. For the purpose of separating the business done by it in the sale of the Standard Education Society's publication and that in the sale of Doubleday-Doran & Company's publication, respondent adopted the trade name "Foundation Press," under which name Doubleday's Encyclopedia was sold.

PAR. 5. Respondent New Standard, acting under the direction and control of respondent Julius B. Lewis, as aforesaid, in the course and conduct of its business caused sets of Doubleday's Encyclopedia and other books and material to be shipped or transported from its place of business in Richmond, Va., or from the place of business of Doubleday-Doran & Co., in the State of New York, to customers located in various other States of the United States and in the District of Columbia, and at all times mentioned herein maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. Respondent New Standard Publishing Co., Inc., in the course and conduct of its business employed various salesmen on a commission basis to sell Doubleday's Encyclopedia and annual supplements or yearbooks.

Advertising literature furnished by the publisher of the encyclopedia, Doubleday-Doran & Co., and contract forms and other material furnished by respondent New Standard were provided each salesman. In addition to Doubleday's Encyclopedia and the annual supplement or yearbooks, respondent New Standard also sold certain other publications, such as The New Century Dictionary, Funk & Wagnalls Practical Standard Dictionary, The Nature Library, and sets of classics, and in some instances other items such as bookcases and pencils. Orders taken by salesmen were forwarded to respondent New Standard in Richmond, Va., and delivery was made either from that office or from the office of Doubleday-Doran & Co. in Garden City, Long Island, N. Y.

The contract forms provided the salesmen by respondent New Standard generally had printed thereon the price which the purchaser was to pay for the encyclopedia and any other items included therewith, which price was either $59.50, $69.50, or $79.50. The contracts entered into with purchasers included an order for the annual supplement or yearbooks. However, the total price printed on the contracts did not include the price to be paid by the purchasers for the annual supplement or yearbooks. The fact that the purchaser was obligated to pay a sum in addition to the amount printed on the contract was indicated on the contract by the words "As provided in certificate" or "As provided below," which were printed in small type beneath the words "Bound Annual Yearbooks."

PAR. 7. Respondent New Standard Publishing Co., Inc., in the course and conduct of its business as aforesaid, for the purpose of inducing customers and prospective customers to sign a contract for the purchase of said encyclopedia and other publications and other items, has, directly and indirectly, made many false and misleading statements and representations regarding said encyclopedia and the nature and terms of said contract. Typical of such false and misleading statements and representations are the following:

That the books were offered at a special low price, which price would be in effect for a limited time only—after which time the books would be sold for an amount considerably higher than that at which they were offered; that the books were offered to a limited number of persons who were selected because of said persons' prominence and standing in the community; that the books were given away as an advertising plan, and the only return requested of the prospective purchaser was a recommendation which could be shown to other prospective customers at some time in the future; that Doubleday's Encyclopedia was free, but that there was a charge of $5.95 each for the 10 annual yearbooks; that the price of said books as shown in the body of the contract was the total price to be paid by the purchaser, including the cost of the annual supplement or yearbooks; that transportation charges would be paid by respondent New Standard and that the sum of $1.85 or $1.95 to be paid yearly for the annual supplement or yearbooks was a handling charge only; that salesmen of respondent New Standard were salesmen of Doubleday-Doran & Co., and that respondent New Standard was a subsidiary organization of Doubleday-Doran & Co., for distribution of encyclopedias in the southern States; that Doubleday's Encyclopedia had been approved by State educational authorities of the State in which the prospective customers to whom such representation was made were located, and that said encyclopedia

was on the list of recommended reference books of such State; that sets of said encyclopedia had been sold to and were recommended by superior officers, fellow workers, persons in authority, school superintendents, and college professors; that testimonials and letters of recommendation concerning said encyclopedia were unsolicited and genuine; that pencils to be supplied with sets of the encyclopedia sold to school authorities were of a 5-cent value and could be sold to students at that price, that said pencils to be supplied were exactly the same as the sample exhibited to the customer at the time the contract was signed, and that the books so ordered by said customer could be paid for as the pencils were sold by said customer.

PAR. 8. In truth and in fact, the said books were not offered at a special low price for a limited time only, but were offered and sold to all customers at all times for $59.50, $69.50, or $79.50, depending upon the other publications or items which were included in the contract in addition to the encyclopedia. The books were not offered to a limited number of persons selected because of their prominence and standing in the community, but were sold to any and all persons who could be persuaded to buy them. The books were not given to members of the public in return for a recommendation which could be displayed to prospective customers at some future time, but each customer was obligated to pay for said books as provided in the contract between said customer and respondent New Standard. Said encyclopedia was not given free in connection with the purpose of 10 yearbooks at $5.95 each, but was part of a combination sale consisting of the encyclopedia, the yearbooks, and such other books or materials as might be included. The total price of $59.50, represented as being the price of the yearbooks alone, was one of the prices at which a combination, consisting of the encyclopedia and certain other books or materials, was regularly offered for sale and sold. The price of the books as shown in the body of the contract was not the total price to be paid by the purchaser, including the cost of the annual supplement or yearbooks. In addition to the price shown in the body of the contract, the customer was required to pay $1.85 or $1.95 for each annual supplement or yearbook furnished. Prospective customers were not advised that they would have to pay $1.85 or $1.95 plus mailing charges for each annual supplement or yearbook. Certificates which were to be signed by the purchaser and forwarded to Doubleday-Doran & Co. with $1.85 or $1.95 in order to receive the annual supplement or yearbook were not provided the customer until after the contract had been signed. The sum of $1.85 or $1.95 which a customer was required to pay for each annual supplement or yearbook was not a handling charge

as represented in the contract, but was the amount to be paid yearly for such annual supplement or yearbook. The salesmen employed by respondent New Standard were not representatives or agents of Doubleday-Doran & Co., and respondent New Standard was not a subsidiary of Doubleday-Doran & Co. Doubleday's Encyclopedia was not approved by the educational authorities of the State in which prospective customers to whom such a representation was made resided, and said encyclopedia was not on the list of recommended reference books of such State. Said encyclopedia had not been sold to or recommended by the superior officers of, fellow workers of, or persons in authority over, the prospective purchasers as represented, and had not been sold to school superintendents, boards of education, and college professors within the locality in which said prospective purchasers resided. Some of the testimonials and letters recommending said encyclopedia were not unsolicited and were not genuine. In at least one instance, one of respondents' salesmen, in attempting to sell a set of said encyclopedia to the principal of a school, exhibited to said principal a letter purportedly written by the county superintendent, to the effect that said salesman, a representative of Doubleday-Doran & Co., had been given permission to visit the school and present the encyclopedia and school service. The county superintendent whose name appeared on said letter had never given any such permission to said salesman or to anyone else. The pencils supplied with the sets of encyclopedias sold to school authorities and school teachers were not of a 5-cent value and were not the same as the samples exhibited at the time the contract was signed. Said pencils were of an inferior quality and could not be sold to students or others for 5 cents each, and the books purchased could not be paid for as the pencils were sold, but the customers were required to make payments according to the terms set forth in the contracts signed by them.

PAR. 9. For the purpose of enforcing payment under the contracts executed by the purchasers of said encyclopedia and other books and materials, which contracts were signed as a result of the false and misleading representations hereinabove described, respondent New Standard Publishing Co., Inc., adopted the name "Commercial Finance" to induce its customers to make payments according to the terms of the contract by means of threats, intimidation, and deceptive practices. Respondents falsely represented that "Commercial Finance" was a bona fide collection agency, in no way connected with respondent New Standard Publishing Co., Inc., and that customers' contracts had been assigned to it for collection; that customers' contracts had been discounted with "Commercial Finance"; and that said

"Commercial Finance" was the holder in due course and for value of the contracts signed by the customers; that "Commercial Finance" does a nation-wide business from its main office at 103 North Wells Street, Chicago, Ill., and that an office in Richmond, Va., is a branch office of said "Commercial Finance."

In truth and in fact, "Commercial Finance" was not a company independent and apart from respondent New Standard, but was a trade name under which respondents did business for the purpose hereinabove set forth. "Commercial Finance" was not a holder in due course and for value of the customers' contracts, and there could be no real transfer or assignment of said contracts to it by respondent New Standard for the purpose of making collections. The trade name "Commercial Finance" was used by respondent for the purpose of securing credit information concerning its customers and prospective customers, which information was furnished in the belief that said "Commercial Finance" was in fact a legitimate collection agency. "Commercial Finance" does not have a main office in Chicago, Ill., and the address given on its letterheads is the office of the Standard Education Society, whose encyclopedia, as heretofore stated, was also sold by respondent New Standard. By agreement with said Standard Education Society, all correspondence addressed to "Commercial Finance" at the Chicago, Ill., address was forwarded to the respondent New Standard at Richmond, Va.

Respondent New Standard, through the use of said trade name "Commercial Finance" and through the practice aforesaid, misled and deceived purchasers of said books and thereby intimidated and harrassed such purchasers into the payment to said "Commercial Finance" of sums of money which such purchasers may not have been legally obligated to pay.

PAR. 10. Through the use of the various fictitious and trade names referred to hereinabove and by the use of numerous fictitious names and titles of pseudo-employees, respondent New Standard Publishing Co., Inc., acting under the direction and control of respondent Julius B. Lewis, falsely represented that it was a large concern with numerous employees, and thus misled and deceived purchasers and prospective purchasers as to its size and standing in the publishing business.

In truth and in fact respondent New Standard was a comparatively small organization with an office force consisting of the manager and six or seven other employees whose duties consisted mainly of file work and typing numerous letters written by the organization. The office was housed in a small room only sufficiently large to accommodate the desks of the employees. Respondent Julius B. Lewis occupied

a small office partitioned off from the room occupied by the employees, and in addition there was a small storeroom in the rear, wherein office supplies were stored. The names "J. Simon," "C. A. Black," and "C. L. Brooks" were fictitious names used by respondent Lewis and certain employees in signing letters to customers.

PAR. 11. The use by the respondents New Standard Publishing Co., Inc., and Julius B. Lewis of the aforesaid acts, practices, and methods in connection with the offering for sale, sale, and distribution of said products in commerce as aforesaid had the tendency and capacity to, and did, mislead and deceive the purchasing public into the erroneous and mistaken belief that the representations and implications so made and used by said respondents were true. As a result of this erroneous and mistaken belief engendered as aforesaid, many members of the purchasing public were induced to buy said products in commerce as aforesaid.

PAR. 12. While the complaint herein contained certain charges in addition to those hereinabove mentioned, the Commission is of the opinion, and finds, that such charges are not sustained by the evidence.

CONCLUSION

The acts and practices of respondents New Standard Publishing Co., Inc., and Julius B. Lewis, as hereinabove 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, respondents' answers thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions thereto filed by counsel for certain of the respondents, and briefs an oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondents New Standard Publishing Co., Inc., and Julius B. Lewis have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent New Standard Publishing Co., Inc., a corporation, its officers, and respondent Julius B. Lewis, individually, and their respective representatives, agents, and employees,

directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of encyclopedias or any other publications, cease and desist from representing, directly or by implication:

1. That the usual or customary price at which said publications are offered for sale is a special low price; or that any offer is for a limited time only when such offer is made continuously in the regular course of business.

2. That said publications are available only to selected individuals.

3. That said publications are given to purchasers as an advertising plan, or otherwise, in return for endorsements from such purchasers, when such is not a fact.

4. That said publications are free or in any sense a gratuity, when in fact payment therefor is included in the total price to be paid by the purchaser or when the purchaser is required to purchase another publication or publications or some other merchandise as a condition to the receipt of said publications.

5. That the total price which a purchaser is obligated to pay covers any publication, or other items, for which an additional charge is made.

6. That the amount which a purchaser is required to pay in order to receive any publication is a handling charge only, when such is not a fact.

7. That salesmen employed by said respondents to sell encyclopedias or other publications are representatives of the publishers of said encyclopedias or other publications.

8. That respondent New Standard Publishing Co., Inc., is a subsidiary of the publisher of the encyclopedias which it sells, or that its relationship with said publisher is anything other than what it is in fact.

9. That said publications are approved by the State educational authorities, or are on the list of recommended reference books, of a particular State, unless said publications have in fact been so approved and listed.

10. That said publications have been sold to or recommended by any given person or persons, when such is not a fact.

11. That testimonials or recommendations are unsolicited and genuine, when such is not a fact.

12. That pencils or any other merchandise supplied with said publications are of a greater value than they are in fact; or that said pencils or other merchandise will be the same as samples exhibited to purchasers, when such is not a fact.

13. That purchasers of said publications will not be required to make payments in accordance with the terms of the contracts signed by them, when such is not a fact.

14. That "Commercial Finance," or any other trade or fictitious name under which business is done by respondents, is a bona fide collection agency not connected with respondent New Standard Publishing Co., Inc.

15. That any purchaser's contract has been assigned to or discounted with a bona fide collection agency, when such is not a fact.

16. That respondent New Standard Publishing Co., Inc., is a large concern with numerous employees, through the use of fictitious names and titles of pseudo-employees or otherwise.

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

Commissioner Mason not participating.

Complaint

IN THE MATTER OF

APPLETON-CENTURY-CROFTS, INC.

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

Docket 5773. Complaint, May 3, 1950—Decision, June 13, 1951

Where a corporation engaged in the publication of educational books for text and general reference use, and in the interstate sale and distribution thereof to purchasers competitively engaged in their resale to students and others for use during particular school terms or semesters, including some who owned or operated two or more places of business, engaged in varying degrees in buying second-hand educational books from, and selling them to, retail book stores or students and of whom (with the exception of those purchasing from and selling to students in their respective localities) it characterized some as handling, as a substantial part of their activities, second-hand books through multiple outlets, or as wholesaling second-hand books—

Discriminated in favor of some and against other purchasers of its books bought for resale, by contracting to furnish or furnishing or by contributing to the furnishing of services or facilities connected with the handling, sale, or offering for sale of said books upon terms not accorded to all competing purchasers on proportionally equal terms, in that it denied to those competing purchasers characterized by it as handling, as a substantial part of their activities, second-hand books through multiple outlets, or as wholesalers of second-hand books, the privilege of returning unsold copies of its educational books for credit, subject to the conditions announced in its "credit for return policy," as published in its catalogs and price lists and otherwise, and which it accorded to all others of its competing purchasers:

Held, That such acts and practices, under the circumstances set forth, violated subsection (e) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Before *Mr. Frank Hier*, trial examiner.

Mr. Austin H. Forkner for the Commission.

Sullivan & Cromwell, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (e) 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 in that respect as follows:

PARAGRAPH 1. Respondent, Appleton-Century-Crofts, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 35 West Thirty-second Street, New York, N. Y.

PAR. 2. Respondent is now, and during more than 2 years last past has been, engaged in the business of publishing books, including educational books for text and general reference use, and of selling said books to purchasers with places of business located in many States of the United States and in the District of Columbia for resale within the United States. In the course and conduct of said business, respondent caused said books so sold to be transported from one or more States to said purchasers located in other States and in the District of Columbia.

PAR. 3. In the course of its said business in commerce, respondent discriminated in favor of some and against others of said purchasers of said books bought for resale by contracting to furnish or furnishing, or by contributing to the furnishing, of services or facilities connected with the handling, sale, or offering for sale of said books so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

Among such services or facilities was that of accepting the return for credit of unsold copies of said books, including, as alleged in paragraph 4, unsold copies of said educational books.

PAR. 4. In the course and conduct of its said business in commerce, respondent sold said educational books to purchasers who bought them for and were competitively engaged in their resale at retail to students and others for use in connection with classes during particular school terms or semesters.

Some of said purchasers, including some who owned or operated two or more places of business, also engaged, in varying degrees, in the business of buying second-hand educational books from, and selling them to, retail book stores and/or students; and, of those purchasers so engaged in the second-hand book business, except those purchasing from and selling to students in their respective localities, respondent characterized some as handling as a substantial part of their activities second-hand books through multiple outlets, or as wholesaling second-hand books.

In connection with the handling, offering for sale, or sale by said competing purchasers of said books so purchased from it, respondent had and published, or caused to be published, in its catalogs and price lists of said books, and otherwise, a return for credit policy. Said policy specified the terms upon which respondent undertook to fur-

nish or accord the service or facility of accepting the return for credit of unsold copies of said books. Illustrative of said policy is the following, which appeared in respondent's catalog and price list of said books dated April 1, 1949:

RETURN FOR CREDIT POLICY. Our policy governing the acceptance for credit of unsold copies of our own publications ordered for class use is as follows:

> We will accept for full credit up to 33⅓% of the number of copies of any title listed in this catalog which has been ordered directly from us providing that the books are returned in a perfectly fresh and saleable condition within 60 days after the opening date of the term or semester for which they were ordered, all transportation and carriage charges prepaid. Shipments should be addressed to our wareroom: 726 Broadway, New York 3, N. Y. Exceptions to the above policy are the volumes in the Crofts Classics series and in the Classiques Larousse series, of which no returns are accepted.

We reserve the right to reship to the sender, without notification, transportation charges collect, any returns not in accordance with the above.

Respondent furnished or accorded said service or facility upon the terms specified in said policy to all of said competing purchasers except those characterized by respondent as handling as a substantial part of their activities second-hand books through multiple outlets or as wholesalers of second-hand books.

Respondent failed or refused to furnish or accord said service or facility to those of said competing purchasers so characterized for the reason that they were so characterized.

PAR. 5. The acts and practices of respondent as above alleged violate subsection (e) of section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C., title 15, sec. 13).

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 June 13, 1951, the initial decision in the instant matter of trial examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13), the Federal Trade Commission on May 3, 1950, issued and subsequently served its complaint in this proceeding upon Appleton-