Century-Crofts, Inc., a corporation, charging it with violation of subsection (e) of section 2 of said act as amended. On June 21, 1950, respondent filed its answer. At the initial hearing on October 16, 1950, for the taking of testimony and receipt of other evidence, respondent moved to withdraw its answer theretofore filed and for leave to file substitute answer, which latter answer "agreed that the facts stated in the complaint might be deemed admitted." This substitute answer was rejeced by the trial examiner for the reason that it did not constitute an outright admission of the facts. Respondent's motion to substitute was therefore denied. Respondent's counsel stated his desire to appeal this ruling to the Commission and further stated that if the appeal were denied by the Commission respondent would file a substitute answer admitting outright all the material allegations of fact set out in the complaint. In view of this professional undertaking, the trial examiner thereupon canceled further hearings and closed the proceeding for the purpose of taking evidence. Permission to appeal under rule XX of the Commission's rules of practice was requested by the respondent on October 30, 1950, accompanied by a brief. On February 5, 1951, the Commission refused to entertain the appeal, and thereafter on February 21, 1951, respondent filed answer admitting all material allegations of fact set forth in the complaint, waiving hearing as to facts and refraining from contesting the proceeding, such admissions being qualified only to the extent that they were made for the purpose of this proceeding solely and reserving the right to submit proposed findings and conclusions of fact or of law. No proposed findings or conclusions were submitted by counsel on either side. Thereafter, this proceeding regularly came on for final consideration by said trial examiner upon the complaint and substitute answer filed February 21, 1951, and the trial examiner, after consideration of the record herein, makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

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 has 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 found 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.

PAR. 5. 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 furnish 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.

CONCLUSION

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

ORDER

It is ordered, That Appleton-Century-Crofts, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the sale of books in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, among competing purchasers of such books bought for resale,

1. By furnishing, or contributing to the furnishing, of the service or facility of accepting the return for credit of unsold copies of such books, to any purchaser of such books, when such service or facility is not accorded on proportionally equal terms to other purchasers of such books, who compete in the resale thereof with purchasers who receive such service or facility.

2. By furnishing, or contributing to the furnishing, of any services or facilities connected with the handling, sale, or offering for sale of books purchased from respondent, to any purchaser thereof upon terms not accorded to all competing purchasers on proportionally equal terms.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent 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 June 13, 1951].

IN THE MATTER OF

LOUIS GORDON AND BEN GORDON TRADING AS BENGOR PRODUCTS CO.

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

Docket 4420. Complaint, Dec. 16, 1940—Decision, June 20, 1951

Where two partners engaged in the interstate sale and distribution of miscellaneous merchandise including cosmetics, perfumes, shaving and dental cream, soap, drug and household sundries, handkerchiefs, ladies' hose, pajamas, pocketbooks, punchboards, push cards, novelties, and household notions; in advertising their merchandise in trade magazines and newspapers, and in catalogs and advertising circulars distributed through the mail and otherwise to wholesale purchasers—

(*a*) Represented that various products were ordinarily and customarily sold to consumers at a stated price through such typical statements as "Dr. Sachs Dental Cream 35¢ size tube Dozen 45¢ 60¢ size tube Dozen 65¢," "Royal Blue Dental Cream * * * 35¢ size tube Dozen 45¢ 60¢ size tube Dozen 65¢," and "Powder & Perfume Combination * * * a real Flash. Is packed 12 deals to a box. Retails for 25¢ each. Priced to Beat All Competition. Dozen 65¢ gross $7.20 * * * Sun Glo Roses Annette price $1.00";

When in fact the aforesaid and other products offered and sold by them were ordinarily sold to consumers at prices considerably lower than those so represented as consumer prices;

With the result of placing in the hands of retailers buying such products for resale an instrumentality whereby they might deceive the purchasing public by offering said products at purported discounts from the factitious retail price;

(*b*) Falsely represented that certain of their products were made in accordance with the formula and under the supervision of a member of the medical or dental profession through such statements as "Dr. Dade's Skin Soap," etc.;

(*c*) Falsely represented that certain of their domestic perfumes were manufactured in France and imported into the United States through the use of the term "Parfums Jockey Club de Paris"; and,

(*d*) Falsely represented that certain rayon products were composed wholly of silk and that others were composed of silk in combination with rayon, through such statements as "Ladies' Silk Rayon Hose," "Ladies Hose Rayon Silk Ringless," "A dainty and distinctive handkerchief of rayon silk * * *" "Men's Pure Silk Handkerchiefs," and "Men's Silk Pajamas Manufactured from Rayon Silk";

With effect of misleading and deceiving the purchasing public and retailers into the erroneous belief that such false representations were true, and with capacity and tendency so to do and thereby induce purchase of their said products; and,

Where said partners, engaged in the interstate sale and distribution of push cards and punchboards which, bearing explanatory legends or blank spaces

provided therefor, were designed for use in the sale and distribution of merchandise at retail 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 without additional cost and at much less than the normal retail price, others receiving nothing further for their money—

Sold such device to dealers engaged in the sale and distribution of other merchandise; and thereby supplied to and placed in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale and distribution of their merchandise to the consuming public, contrary to established public policy of the United States:

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

As respects the allegations in the complaint that respondents represented that they were giving certain merchandise free, that in fact the merchandise was given only to purchasers of other merchandise, that the price of the so-called free merchandise was included in that of other merchandise, and that such offer of free goods constituted their regular method of doing business:

It appearing that the record showed that respondents had discontinued such false representations in 1940, the Commission, in the absence of any reason to believe that they would be resumed, was of the opinion that in the circumstances the public interest did not then required further corrective action as to said discontinued practice.

Before *Mr. L. C. Russell* and *Mr. John L. Hornor*, trial examiners.

Mr. Joseph C. Fehr and *Mr. J. W. Brookfield, Jr.* for the Commission.

Mr. Samuel J. Ernstoff, 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 Louis Gordon and Ben Gordon, individuals and copartners trading as Bengor Products 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, Louis Gordon and Ben Gordon, are copartners doing business under the trade name of Bengor Products Co., with their principal office and place of business located at 878 Broadway, in the city of New York, State of New York.

PAR. 2. Respondents are now, and for more than 2 years last past have been, wholesale dealers engaged in the sale and distribution in

commerce among and between the various States of the United States of a variety of miscellaneous merchandise, including cosmetics, perfumes, shaving and dental creams, soap, drug and household sundries, handkerchiefs, ladies' hose, pajamas, pocketbooks, punchboards, novelties, and various household notions. Respondents cause said products when sold by them to be shipped from their principal place of business in the State of New York to the purchasers thereof located in various other States of the United States, and in the District of Columbia.

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

PAR. 3. In the course and conduct of their business the respondents are now and during all times mentioned herein have been, engaged in substantial competition with various other individuals and copartnerships and with corporations engaged in the offering for sale and selling various items of merchandise similar to those sold and distributed by respondents in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business the respondents publish catalogs and various advertising circulars listing and describing the various articles of merchandise sold and distributed by them. Respondents distribute such catalogs and circulars by United States mails and by other means to purchasers and prospective purchasers located in the various States of the United States and in the District of Columbia.

For the purpose of inducing the purchase of the various products sold and distributed by them and listed in said catalogs and circulars, the respondents in the course and conduct of their business have engaged in the practice of falsely representing the quality, material, construction, durability, price, point of origin, and other characteristics of the products sold and distributed by them. In furtherance of this practice the respondents place in said catalogs and circulars various descriptive statements concerning their various products, which statements are exaggerated, false, and misleading.

PAR. 5. Typical of these acts and practices are representations made by the respondents with reference to the retail selling price or value of certain of their products as follows:

(1) DR. SACHS DENTAL CREAM:
35¢ size tube Dozen 45¢.
60¢ size tube Dozen 65¢.

(2) ROYAL BLUE DENTAL CREAM:
Quality guaranteed.
35¢ size tube Dozen 45¢.
60¢ size tube Dozen 65¢.

(3) POWDER & PERFUME COMBINATION. A large box of quality face powder in assorted shades and a bottle of perfume cellophaned together. A real FLASH. Is packed 12 deals to a box. Retails for 25¢ each. PRICED TO BEAT ALL COMPETITION. Dozen 65¢. Gross $7.20. (Illustration of single box or package shows words and figures as follows:) Sun Glo Roses Annette Price $1.00.

By means of the above representations and others similar thereto not specifically set out herein, the respondents represent that various of their products have a retail price greatly in excess of the actual selling price at which such merchandise ordinarily and customarily is sold to consumers. Respondents' dental creams, represented as "60¢ size," actually are sold to the retail trade at 65 cents per dozen. Respondents' "Powder and Perfume Combination," represented as retailing at 25 cents, is sold to retailers at 65 cents per dozen packages.

The aforesaid false and misleading statements and representations consisting of fictitious retail prices for such products place in the hands of retailers and peddlers, buying such products from respondents for resale, an instrumentality and means whereby said retailers and peddlers may mislead and deceive a substantial portion of the purchasing public by enabling such peddlers and dealers to represent and offer for sale and sell respondents said products at various purported discounts from the marked resale price.

PAR. 6. Also typical of the acts and practices hereinabove described are representations that certain items of merchandise are given free on various quantity purchases, such as the following:

FREE MERCHANDISE—Your choice.
Value $7.50, E-Z ELECTRIC RAZOR FREE with an order of $100.00 or more.
Value $5.00, 26 Piece Wm. A. Rogers Silverware Set FREE with an order of $60.00 or more.
LIGHTHOUSE ELECTRIC CLOCK, Value $5.00 FREE with an order of $75.00 or more.

The products and articles of merchandise which the respondents represent are given free are not free in any instance. The respondents do not give any specified items of merchandise free, as the price of the so-called "free" items of merchandise are included in the price of other articles of merchandise. The price paid by the purchaser is the regular price which would be paid for the combination of various items including so-called "free" goods. Furthermore, this offer of "free" goods is one of long-standing and constitutes respondents' per-

manent method of doing business, and the price of the "free" goods is included in the price of other items which must be purchased to obtain the so-called "free" items.

PAR. 7. Another typical example of the acts and practices hereinabove described is the use of such designations as "Dr. Sachs," and "Dr. Dade's," in the trade or brand name of their various products by which respondents represent that the formula of such products has been prepared from a formula of a member of the medical or dental professions or that such products are made under the supervision and direction of a medical or dental practitioner. Examples of the use of such names by the respondents are the following:

Dr. Sachs Dental Cream
Dr. Dade's Skin Soap

The products so marked, stamped, branded, advertised, and sold by the respondents are not made in accordance with the formula of a member of the medical or dental profession. Said products are not made under the supervision of a member of the medical or dental professions as represented.

PAR. 8. Another and typical example of the acts and practices hereinabove described is the representation by the respondents that certain of their cosmetic products are manufactured in France and imported into the United States. In this connection the respondents use the statements "Parfums. Jockey Club de Paris" in describing various of their products. By this means the respondents represent that such products are manufactured in France and imported into the United States.

In truth and in fact such perfumes sold and distributed by the respondents are not imported from France or any other foreign country into the United States but are wholly manufactured within the United States.

There is a preference on the part of the buying public for perfumes which are manufactured in foreign countries and imported into the United States. This is particularly true regarding perfumes manufactured in France, and such goods so manufactured and imported demand and bring from the purchasing public a higher price in the markets of the United States than domestic perfumes and cosmetics of the same nature and description.

PAR. 9. A further typical example of the acts and practices of the respondents as hereinabove described are false representations with reference to the constituent fibers of which various of their products are made. In describing ladies' hose, men's handkerchiefs, and men's pajamas, the respondents make the following statements:

LADIES' SILK Rayon Hose.
LADIES' HOSE, Rayon Silk Ringless.
A dainty and distinctive handkerchief of rayon silk with beautiful cut-out borders.
Men's Pure Silk Handkerchiefs.
Men's Silk Pajamas Manufactured from Rayon Silk.

By means of the above statements and representations the respondents represent that the various products so described are made wholly of silk, the product of the cocoon of the silkworm, or are composed of silk in combination with rayon, when in truth and in fact all of said products are composed wholly of rayon.

PAR. 10. Over a period of many years the word "silk" has had, and still has, in the minds of the purchasing and consuming public generally a definite and specific meaning as being the product of the cocoon of the silkworm. Silk products for many years have held, and still hold, great public esteem and confidence for their pre-eminent qualities.

Rayon is a chemically manufactured fiber or fabric which may be manufactured so as to simulate silk and when so manufactured it has the appearance and feel of silk and is by the purchasing public practically indistinguishable from silk. By reason of these qualities, rayon, when manufactured to simulate silk and not designated as rayon, is readily believed and accepted by the purchasing public as being silk, the product of the cocoon of the silkworm.

PAR. 11. The use by the respondent of the acts and practices hereinabove described, and the foregoing false, deceptive, and misleading statements and representations, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public and retail dealers into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and to induce a portion of the purchasing public and retail dealers, because of such erroneous and mistaken belief, to purchase respondents' products.

PAR. 12. In addition to the false, deceptive, and misleading representations hereinabove described, the respondents are also engaged in the sale and distribution in commerce among and between various States of the United States of devices commonly known as push cards and punchboards to dealers engaged in the sale and distribution of various other articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia. These various lottery devices are listed and described by the respondents in their various catalogs and advertising circulars. Said push

cards and punchboards are so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used in making sales of articles of merchandise to the purchasing public. Respondents sell and distribute, and have sold and distributed, various kinds of said punchboards or lottery devices, all of which devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said punchboards or lottery devices 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 punchboards or lottery devices vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the punchboard or lottery device, and when a push or punch is made a disk or printed slip is separated from the punchboard or lottery device 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 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 prices of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said punchboards or lottery devices have no instructions or legends thereon but have blank spaces provided therefor. On those punchboards or lottery devices the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said punchboards or lottery devices first hereinabove described. The only use to be made of said punchboards or lottery 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. 13. 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 punchboard and push-card devices, and pack and assemble, and have

packed and assembled, assortments comprised of various articles of merchandise together with said punchboard and push-card devices. Retail dealers who have purchased said assortments, either directly or indirectly, have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said punchboards and push cards in accordance with the sales plan as hereinabove described. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said devices, 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, and 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 lottery 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 loss of substantial trade. Said competitors do not sell or distribute their merchandise by means of said 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 punchboard or push-card 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 or chance. As a result thereof, substantial trade has been unfairly diverted to said persons, firms, and corporations from said competitors in said commerce, who do not sell or use such devices.

PAR. 14. The sale of merchandise to the purchasing public through the use of, or by means of, such devices 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 prices 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 a 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 and unfair acts and practices in said commerce.

The sale or distribution of said lottery 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. 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 and unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 16, 1940, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' answer, testimony, and other evidence in support of the allegations of the complaint, including a stipulation of counsel admitting all of the allegations of the complaint with the exception of those included in the second subparagraph of paragraph 4 and paragraphs 12 to 15, inclusive, were introduced before trial examiners of the Commission theretofore duly designated by it (no testimony or other evidence having been presented in opposition to the allegations of the complaint) and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the respondents' answer thereto, the testimony, and other evidence, and the recommended decision of the substitute trial examiner, the trial examiner originally designated by the Commission being deceased, and brief in support of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested); and the Commission having duly considered the matter and being now fully advised in the

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Louis Gordon and Ben Gordon, are copartners doing business under the trade name of Bengor Products Co., with their principal office and place of business located at 119 Fifth Avenue, in the city of New York, State of New York.

PAR. 2. Respondents are now and for many years have been wholesale dealers engaged in the sale and distribution in commerce among and between the various States of the United States of a variety of miscellaneous merchandise, including cosmetics, perfumes, shaving and dental creams, soap, drug and household sundries, handkerchiefs, ladies' hose, pajamas, pocketbooks, punchboards, push cards, novelties, and various household notions. Respondents cause said products, when sold by them, to be shipped from their principal place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents now maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now and during all times mentioned herein have been engaged in substantial competition with various other copartnerships and with individuals and corporations also engaged in the offering for sale and selling of various items of merchandise similar to those sold and distributed by respondents in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their said business respondents have made representations with respect to the said merchandise in advertisements placed in trade magazines and newspapers and in catalogs and advertising circulars listing and describing the various articles of merchandise sold and distributed by them. Respondents cause such representations to be distributed by the United States mails and by other means to wholesale purchasers and prospective wholesale purchasers located in the various States of the United States and in the District of Columbia.

PAR. 5. Among and typical of respondents' said representations are the following:

DR. SACHS DENTAL CREAM:
35¢ size tube Dozen 45¢.
60¢ size tube Dozen 65¢.
ROYAL BLUE DENTAL CREAM:
Quality guaranteed.
35¢ size tube Dozen 45¢.
60¢ size tube Dozen 65¢.

POWDER & PERFUME COMBINATION. a large box of quality face powder in assorted shades and a bottle of perfume cellophaned together. A real FLASH. Is packed 12 deals to a box. Retails for 25¢ each. PRICED TO BEAT ALL COMPETITION. Dozen 65¢ Gross $7.20.

(Illustration of single box or package shows words and figures as follows:) Sun Glo Roses Annette Price $1.00.

Dr. Dade's Skin Soap.

Parfums Jockey Club de Paris.

LADIES SILK Rayon Hose.

LADIES HOSE, Rayon Silk Ringless.

A dainty and distinctive handkerchief of rayon silk with beautiful cut out borders.
Men's Pure Silk Handkerchiefs.
Men's Silk Pajamas Manufactured from Rayon Silk.

PAR. 6. By the use of the foregoing statements and representations, and others of similar import, the respondents have represented directly or by implication—

(*a*) That various of their products are ordinarily and customarily sold to consumers at a stated price;

(*b*) That certain of their products were made in accordance with a formula and under the supervision of a member of the medical or dental profession;

(*c*) That certain of their perfumes are manufactured in France and imported into the United States; and

(*d*) That certain of their products are composed wholly of silk and that other of their products are composed of silk in combination with rayon.

PAR. 7. (*a*) Dr. Sachs Dental Cream, Royal Blue Dental Cream, Powder and Perfume combination, and various other products offered for sale and sold by respondents are ordinarily and customarily sold to consumers at prices considerably lower than those prices represented by respondents to be the actual consumer prices as hereinabove described. Respondents' said representations are false and misleading.

The aforesaid false and misleading representations consisting of fictitious retail prices for such products place in the hands of retailers buying such products from respondents for resale an instrumentality

and means whereby said retailers may mislead and deceive a substantial portion of the purchasing public by enabling such retailers to represent and offer for sale and sell respondents' said products at various purported discounts from the fictitious retail price.

(*b*) Respondents' articles of merchandise, the trade or brand name of which contains the designation "Doctor," or any abbreviation or simulation thereof, are not made in accordance with a formula of, or under the supervision of, a member of the medical or dental profession. Respondents' use of such a trade or brand name is false and misleading.

(*c*) The perfumes sold and distributed by the respondents are not imported from France into the United States but are wholly manufactured within the United States, and respondents' representations to the contrary are untrue.

There is a preference on the part of the buying public for perfumes which are manufactured in France and imported into the United States, and such goods so manufactured and imported bring a higher price in the markets of the United States than domestic perfumes of the same nature and description.

(*d*) The products which respondents represented as being composed wholly of silk and those products which they represented as being composed of silk in combination with rayon are in fact products composed wholly of rayon. A substantial portion of the purchasing public prefers silk products to those composed of rayon.

PAR. 8. The use by the respondents of the acts and practices hereinabove described and the foregoing false, deceptive, and misleading statements and representations has had, and now has, the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public and retail dealers into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and to induce a portion of the purchasing public and retail dealers, because of such erroneous and mistaken belief, to purchase respondents' products.

PAR. 9. The respondents are now, and for many years have been, engaged in the sale and distribution of lottery devices commonly known as push cards and punchboards to dealers engaged in the sale and distribution of various other articles of merchandise. Respondents cause and have caused said devices, when sold, to be transported from their place of business in the State of New York to purchasers thereof at their respective places of business in various States of the United States other than the State of New York.

PAR. 10. Certain of the said punchboards and push cards have printed on the faces thereof certain legends or instructions that explain the manner in which they are to be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said punchboards and push cards vary in accordance with the individual device. Each purchaser, upon paying the price for one chance, is entitled to one punch or push from the lottery device, and when a push or punch is made a disk or printed slip is separated from the lottery device 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 designated articles of merchandise. Persons selecting winning numbers receive the articles of merchandise without additional cost. The cost of one chance is much less than the normal retail price of the said article of merchandise. Persons who buy a chance but do not select a winning number receive nothing for their money. The said articles of merchandise are thus distributed to the consuming public wholly by lot or chance.

The said punchboards and push cards sold by respondents which carry legends as above described are designed for use by the ultimate purchasers in combination with merchandise of the type described on the said legend so as to enable the ultimate purchasers to sell such merchandise by means of lot or chance in the manner hereinabove described. That these punchboards and push cards are designed and sold for that specific purpose is evident not only from the make-up of the boards and cards themselves, but also from statements made by the respondents in their catalogs advertising the said devices. 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. 11. Certain other of the said punchboards and push cards have no instructions or legends thereon but have blank spaces provided therefor. Except when used for gambling, where persons securing winning numbers are paid money prizes, the only use to be made of said boards or cards by the ultimate purchasers is in the sale or distribution of merchandise by lot or chance.

PAR. 12. The sale and distribution of said lottery devices by respondents, as above set forth, 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. Supplying the means of conducting lotteries, games of chance, or gift enter-

prise in the sale or distribution of merchandise is a practice contrary to established public policy of the United States.

PAR. 13. The complaint in this proceeding further alleges that respondents represented that they were giving certain merchandise free, that in fact the merchandise was given only to purchasers of other merchandise, that the price of the so-called free merchandise was included in the price of the other merchandise, and that this offer of free goods constituted respondents' regular method of doing business. The record shows that respondents discontinued these complained of false representations in 1940. The Commission, having no reason to believe that the complained of representations will be resumed, is of the opinion that in the circumstances the public interest does not require further corrective action as to this discontinued practice at this time.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice and injury of the public. The acts and practices of the respondents relating to false representations as found in paragraphs 4 through 8, inclusive, of these findings, constitute unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce within the meaning of the Federal Trade Commission Act. The acts and practices of the respondents relating to the sale of lottery devices as found in paragraphs 9 through 12, inclusive, of these findings, 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' answer thereto, testimony, and other evidence in support of the allegations of the complaint introduced before trial examiners of the Commission theretofore duly designated by it (respondents having presented no evidence in opposition to the allegations of the complaint), the recommended decision of the substitute trial examiner, the trial examiner originally designated herein being deceased, and brief in support of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Louis Gordon and Ben Gordon, individually and as copartners trading as Bengor Products Co., or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of any merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication, that any merchandise offered for sale or sold has a retail price in excess of the actual selling price at which such merchandise ordinarily is sold to consumers.

2. Using the word "Doctor," or any abbreviation or simulation thereof, to designate, describe, or refer to any merchandise not made in accordance with the formula or under the supervision of a member of the medical or dental profession; or otherwise representing directly or by implication, that any such product has been so made.

3. Using the term "Parfums Jockey Club de Paris," or any other term or word or words indicative of French origin as a brand or trade name for perfumes manufactured or compounded in the United States; or representing in any other manner that perfumes so manufactured or compounded were manufactured or compounded in France.

4. Representing, directly or by implication, that any merchandise is composed wholly or in part of silk when such is not the fact.

It is further ordered, That said respondents and 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, push cards, punchboards, 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 allegations of the complaint relating to the use of the word "free" be, and they hereby are, dismissed without prejudice to the right of the Commission to institute a new proceeding or to take such further or other action at any time in the future with respect to the subject matter of such allegations as may be warranted by the then existing circumstances.

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 said order.

Syllabus

IN THE MATTER OF

AMERICAN TOBACCO CO.

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

Docket 4827. Complaint, Mar. 9, 1943 [1]*—Decision, June 20, 1951*

Where one of the largest manufacturers of tobacco products in the United States, engaged in the competitive interstate sale and distribution of its said products; in advertising its Lucky Strike cigarettes in magazines of Nation-wide circulation, in newspapers of interstate circulation, by radio broadcasts in Nation-wide hook-ups, and by other means—

(*a*) Represented that among independent tobacco experts—buyers, auctioneers, and warehousemen—Lucky Strike cigarettes had over twice as many exclusive smokers as all other cigarettes combined;

The facts being that the results of its prior survey did not and could not accurately reflect such a preference; of 1,184 persons represented as such exclusive smokers, about 50 out of 440 included in said figure smoked no cigarettes; more than 100 of the 440 testified that they did not smoke Luckies exclusively; others testified that they smoked other brands exclusively, could not recall ever having been interviewed or had no connection with the tobacco business; others were the recipients from it of free cigarettes or sums of money; and some testified that they smoked Luckies before its representative and other brands in the presence of its competitors;

(*b*) Represented that twice as many of such experts smoked Lucky Strike cigarettes exclusively as smoked all other brands because they sold and handled tobacco and saw the grade and quality purchased at auction for use in Luckies, represented as being superior to and more expensive than that purchased for competing brands, and because they knew tobacco best;

The facts being that any preference which they might have had for Luckies did not result from their knowledge as to the quality of the tobacco used therein, since the blend employed in its said product, among many others made by it, is a trade secret; its competitors bid on and purchase the same types and grades as it does, at tobacco auctions, and when a pile of tobacco is purchased by it, neither the auctioneer nor any other independent tobacco expert can tell whether it will be used by it in the manufacture of said cigarettes;

(*c*) Represented that Luckies were less acid than other popular brands, and that other popular brands had an excess acidity over such cigarettes of from 53 to 100 percent;

The facts being that there is no significant difference in the acid in the tobacco used in the manufacture of popular brands or in the smoke therefrom;

(*d*) Represented that its said cigarettes were less irritating to the throat than competing brands, offered one's throat protection, were easy on one's throat, and provided protection against throat irritation and coughing;

[1] Amended.

The facts being there is no significant difference in the tars, resins, or nicotine in the smoke from all the leading brands of cigarettes, which is all irritating to the respiratory tract; while said corporation, as do its competitors, remo 'es a portion of the irritants from the tobacco in its processing, no manufacturer attempts to eliminate such constituents completely, and differences in the different brands are so slight that the smoke from one is no less irritating than that from others; and

(*e*) Represented that Luckies contained less nicotine than did four other leading brands of cigarettes;

The facts being that the nicotine content of domestic tobaccos used in the manufacture of the leading brands varies considerably not only as among the several kinds or types but as among individual plants; it is practically impossible, by blending or otherwise, to maintain a given level of nicotine in the tobacco purchased; it, as do its competitors, bids upon and purchases substantially all grades of tobacco offered at public auction; tobaccos used in its said cigarettes are of substantially the same grades as those used in competing brands; and differences in the nicotine content in and hence the smoke from, the leading brands are so small as to have no significent effect on the body;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said representations were true and into the purchase of its said cigarettes as a result thereof, to the substantial injury of competition in commerce:

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

As respects respondent's contention that since its representations concerning the acidity of its said cigarettes was discontinued several years prior to the issuance of the amendment complaint, the issuance of an order to cease and desist the same would not be in the public interest, respondent further contending, however, that the representations in question were not shown to be false, misleading, or deceptive it was manifestly in the public interest, under the circumstances, for the Commission, through the issuance of an appropriate order, to prevent the resumption of the use of such representations.

As respects respondent's contention that representations as to its said cigarettes containing less nicotine than competing brands were true, and also that no significance was claimed as a result of the lower nicotine content nor any representation made as to any particular effect of the smoke therefrom, it contending also that since such representations were discontinued prior to the commencement of the proceeding, the public interest did not require an order with respect thereto:

The fact that it discontinued such misleading and deceptive representations with respect to its cigarettes and four other leading brands prior to the commencement of the proceeding did not make the issue with respect thereto devoid of public interest, the Commission was not satisfied that it might not resume such representations in the future, and it was manifestly in the public interest for it, in view of their misleading and deceptive nature,

to prevent such a resumption through the issuance of an appropriate order.

As respects the charge in the amended complaint that certain other representations were false, deceptive, and misleading, including the charge that respondent represented that Luckies were toasted and that it consistently paid more for cigarette tobacco purchased at auction markets than its competitors paid, and that it paid certain designated percentages more for its cigarette tobacco in certain designated markets than the average market price paid for all tobaccos sold at such markets, as reported by the United States Department of Agriculture: the Commission was of the opinion and found that such charges had not been sustained by the evidence.

Before *Mr. John L. Hornor*, trial examiner.

Mr. John R. Phillips, Jr., for the Commission.

Chadbourne, Wallace, Parke & Whiteside, of New York City, and *Covington, Burling, Rublee, O'Brian & Shorb*, of Washington, D. C., for respondent.

AMENDED COMPLAINT

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

PARAGRAPH 1. Respondent, the American Tobacco Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business in New York City, State of New York. It is now, and for more than 5 years last past has been, engaged in the manufacture and processing of tobacco products, including cigarettes branded "Lucky Strike," also known as "Luckies," and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. It now causes, and for more than 5 years last past has caused, such tobacco products, when sold by it, to be transported from its processing plants in the States of Virginia and North Carolina to the purchasers thereof, some located in said States and others located in various other States of the United States and in the District of Columbia, and there is now, and has been for more than 5 years last past, a constant current of trade and commerce conducted by said respondent in such tobacco products, between and among the various States of the United States

and in the District of Columbia. Respondent is now, and for more than 5 years last past has been, one of the largest manufacturers of tobacco products in the United States and is now, and for more thn 5 years last past has been, in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale of tobacco products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, described in paragraph 1 hereof, and for the purpose of aiding and promoting the sale by it of said Lucky Strike brand of cigarettes in the commerce aforesaid, respondent has disseminated, and caused to be disseminated, by the United States mails, in magazines of Nation-wide circulation, in newspapers of interstate circulation, by radio broadcasts in Nation-wide hook-ups and by other means in commerce, advertisements in which it has represented and still represents, directly and by implication:

(*a*) That Luckies are toasted.

(*b*) That among independent tobacco experts—buyers, auctioneers, and warehousemen—Luckies have over twice as many exclusive smokers as have all other cigarettes combined; that sworn records show such to be the fact.

(*c*) That because such experts—buyers, auctioneers, and warehousemen—sell and handle tobacco, because they see the grade and quality of tobacco purchased at auctions for Luckies, which is represented as being superior and more expensive than that purchased for competing brands, and because they know tobacco best, twice as many of them smoke Luckies exclusively as smoke all other brands.

(*d*) That Luckies are less acid than other popular brands of cigarettes.

(*e*) That other popular brands of cigarettes have an excess of acidity over Lucky Strikes of from 53 to 100 percent.

(*f*) That Luckies are less irritating to the throat than are competing brands.

(*g*) That Lucky Strike cigarettes offer one throat protection and that Luckies are easy on one's throat.

(*h*) That in Luckies one has protection against throat irritation.

(*i*) That in Luckies one has protection against coughing.

(*j*) That Luckies contain less nicotine than do competing brands of cigarettes.

(*k*) That certain throat irritants found in all tobacco have been driven out, taken out, removed, and expelled from the tobacco used

in Lucky Strike cigarettes in the processing of such tobacco into such cigarettes.

(*l*) That respondent consistently pays more for cigarette tobacco purchased at auction markets than competitors pay for their cigarette tobacco at such markets and that respondent pays certain designated percentages more for its cigarette tobacco in certain designated markets than the average market price paid for all tobacco sold at such markets, as reported by the United States Department of Agriculture.

PAR. 3. In truth and in fact:

(1) Luckies are not toasted as that term is commonly understood by the purchasing public to whom respondent's advertising is directed.

(2) Among independent tobacco experts as classified by respondent, being tobacco buyers, auctioneers, and warehousemen, Lucky Strikes do not have twice as many, or as many, exclusive smokers as have all other cigarettes combined; there are no records sworn to and verified by such so-called experts which establish that such is the fact; many tobacco buyers, auctioneers, and warehousemen have never been interviewed by respondent's representatives, and many of those who have been so interviewed and reported as being exclusive smokers of Luckies do not smoke Luckies exclusively and did not do so at the time of such interview.

(3) Such tobacco experts do not know the grade, quality, type, or prices of all of the varieties of tobacco making up Luckies, or any other brand of cigarettes on the market, nor do they know the proportionate amounts of such grades, types, or varieties blended into Luckies or other brands. Many of such experts are not of the opinion and do not believe that respondent buys the choicest or most expensive tobacco for its Lucky Strike cigarettes. Many of such experts have specialized knowledge of only one variety of tobacco and do not know how much of such variety is incorporated in respondent's cigarettes, or in other brands. The blending process used by each cigarette company and the proportions of the different types and varieties of tobacco making up the blend used in Luckies and in each other brand of cigarettes are trade secrets and none of the experts mentioned have knowledge as to such matters. Those of such tobacco experts who smoke Luckies do not smoke them because of the knowledge gained in the pursuance of their respective occupations, nor because of any opinion which they may have as to who buys what tobacco in the markets, with which they are familiar. Many of such experts smoke Luckies because they have been given to them by respondent, or because they prefer them as a matter of taste.

(4) Luckies are not less acid than are other popular brands of cigarettes.

(5) Other popular brands of cigarettes do not have an excess of acidity over Lucky Strikes of from 53 to 100 percent, nor of any percentage.

(6) Luckies are as irritating to the throat as are competing brands.

(7) Lucky Strike cigarettes do not offer throat protection and are not easy on one's throat.

(8) In smoking Luckies one does not have protection against throat irritations or against coughing.

(9) Luckies do not contain less nicotine than do competing brands of cigarettes; nor does the smoke from Luckies contain less nicotine than is contained in the smoke of other brands.

(10) Some portion of some of the throat irritants are removed in the processing of all cigarettes, but there are throat irritants present in Luckies in approximately the same volume as in competing cigarettes and in no case is the entire amount of any one irritant removed by the processing of respondent's tobacco into Luckies.

(11) In truth and in fact, the content of nicotine, tarry matter, acids, and other substances, irritating to the throat and nasal passages of the smoker and otherwise harmful, varies continually in respondent's cigarettes and in the smoke therefrom, as they are offered for sale to the general public; and the relative content of nicotine, tarry matter, acids, and such substances in respondent's cigarettes as compared with that in competing brands of cigarettes, likewise varies continually. The number of variable factors involved in the growing of tobacco for cigarettes, in the blending and processing of such tobacco into cigarettes, and in the packing, handling, and distribution of such cigarettes to the consumer make it impossible for respondent or any of its competitors to produce and market the large volume of cigarettes which they respectively sell with a standard or constant content of nicotine, tarry matter, acids, or other harmful substances. Among these variable factors are differences in weather conditions during the tobacco-growing season in different localities in which tobacco of the same variety is grown; differences in such weather conditions from year to year; differences in the soil in which cigarette tobacco is grown and in the cultivation and fertilization thereof; variation in the mixing and blending of the varieties of tobacco incorporated in the cigarettes; variations in the changes brought about in cigarette tobacco in the processing thereof; deviations in the density with which the tobacco is packed in cigarettes and in the weight of the cigarettes themselves; variations in methods of handling and distribu-

tion of cigarettes and changes in differences in climatic conditions affecting cigarettes after they leave the factory where made.

In truth and in fact, there is no practicable method whereby the content of nicotine, tarry matter, acids, and other harmful substances in the general run of respondent's cigarettes as they reach the consumer or in those of its competitors, or in the smoke therefrom, can be ascertained with any degree of accuracy for any appreciable length of time. Any test which may be made to determine such content must, as a practical matter, be limited to a few samples, infinitesimal in number as compared to the total number of such cigarettes on sale at any one time, and the results obtainable from any such test are indicative of nothing more than the facts sought to be ascertained as of the particular time and place of the initiation of the test.

In truth and in fact, the differences between the content of nicotine, tarry matter, acids, and other harmful substances to be found in respondent's cigarettes as compared with those of competing cigarettes, and such differences among the cigarettes of such competitors, are so minute as to be insignificant and undetectable from the standpoint of the effect which such substances have on the smoker of respondent's cigarettes as compared to that experienced by the smoker of competing brands. For the above reasons, among others, the representations which respondent has made concerning the content of nicotine, tarry matter, acids, and other harmful substances in its cigarettes and the smoke thereof are false and deceptive, and mislead the public into erroneously believing that respondent's cigarettes are less injurious, when smoked, than are other and competing brands of cigarettes.

(12) Tobacco is commonly sold by the growers at auctions. It is prepared for market by being tied into bundles or hands and it is auctioned off in this form. Most major buyers have private systems for grading these bundles and the Department of Agriculture has promulgated a system of grading in certain markets. As each bundle is auctioned off it is sold to the highest bidder. Respondent is frequently such highest bidder, but more often not. The bulk of the lower grades of tobacco and that selling at cheaper prices is purchased by independent buyers not affiliated with any cigarette manufacturing company, and these independent buyers resell this tobacco to respondent in large quantities. Much of this lower priced tobacco is used by respondent in its cigarettes, but the price actually paid for it by respondent does not appear in any compilation of auction market prices. The average market price for tobacco at a given market, as reported by the United States Department of Agriculture, includes the prices paid

for all grades and types of tobacco. Many of these grades and types are not used in the manufacture of cigarettes by respondent or competing companies, but are used to make other tobacco products, such as chewing tobacco, snuff, and pipe tobacco. The tobacco that is purchased and used for cigarettes normally brings a higher price on the market than tobacco purchased and used for other products. The proportion of tobacco incorporated into Luckies to the total purchases of tobacco made by respondent at any given market varies, and is different from the proportion of tobacco used in competing brands to the total purchases of tobacco made in such market by the manufacturers of such competing brands. Such proportion, as applied to competitors, is unknown to respondent.

In truth and in fact, the prices which respondent pays for tobacco at auction markets does not indicate or reflect the actual prices which it pays for Lucky Strike cigarette tobacco from day to day, week to week, nor year to year. The average market price for tobacco sold at an auction market for a specified period as published by the Department of Agriculture does not show or indicate the average market price paid by cigarette producers for cigarette tobacco at such market during said period. In fact, the average market price paid for tobacco at auction markets by each of the major cigarette producers exceeds the general average market price for tobacco in such markets, as compiled by the Department of Agriculture.

For the reason hereinabove set forth in this paragraph, among others the representation made by respondent that it consistently pays more for cigarette tobacco purchased at auction markets than competitors pay for their cigarette tobacco at such markets, and the representation that it pays certain designated percentages more for its cigarette tobacco in certain designated markets than the average market price for all tobacco sold at such markets, as reported by the Department of Agriculture, have the capacity and tendency to, and do, deceive and mislead the purchasing public into the erroneous belief that Luckies are made consistently of more expensive tobacco than is actually the case. Because of such erroneous belief so entertained a substantial portion of the purchasing public is induced to purchase Lucky Strike cigarettes.

PAR. 4. The aforesaid representations made by the respondent, as set-out in paragraph 2 hereof, have the capacity and tendency to mislead and deceive the purchasing public into the belief that such representations are true and to purchase respondent's product, Lucky Strike cigarettes, in the belief that such representations are true. Thereby

substantial injury has been done and is being done by respondent to substantial competition in interstate commerce.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 9, 1943, issued and subsequently served its amended complaint in this proceeding upon the respondent, the American Tobacco Co., charging said respondent with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of the respondent's answer, testimony, and other evidence in support of and in opposition to the allegations of the amended complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission upon the amended complaint, the respondent's answer thereto, testimony, and other evidence, the recommended decision of the trial examiner and exceptions thereto, and briefs and oral argument of counsel; and the Commission, having duly considered the matter and having entered its order disposing of the exceptions to the recommended decision of the trial examiner, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, the American Tobacco Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business in New York, N. Y. Said respondent is engaged in the manufacture and processing of tobacco products, including cigarettes branded "Lucky Strike," also known as "Luckies," and in the sale and distribution of such products.

PAR. 2. The respondent causes, and for more than 5 years last past has caused, the aforesaid tobacco products, when sold, to be trans-

ported from its processing plants located in the States of Virginia and North Carolina to purchasers thereof located in various other States of the United States and in the District of Columbia. There is now, and for more than 5 years last past has been, a constant current of trade and commerce conducted by the respondent in its tobacco products among and between the various States of the United States and in the District of Columbia. The respondent is one of the largest manufacturers of tobacco products in the United States, and it is now, and for more than 5 years last past has been, in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale of tobacco products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of aiding and promoting the sale of its said Lucky Strike brand of cigarettes in commerce, as aforesaid, the respondent has disseminated, and has caused to be disseminated, by the United States mails, in magazines of Nation-wide circulation, in newspapers of interstate circulation, by radio broadcasts in Nation-wide hook-ups and by other means in commerce, advertisements in which it has represented, and caused to be represented, directly and by implication:

(*a*) That among independent tobacco experts—buyers, auctioneers, and warehousemen—Lucky Strike cigarettes have over twice as many exclusive smokers as have all other cigarettes combined; and that because such experts sell and handle tobacco, because they see the grade and quality of tobacco purchased at auction for use in Lucky Strike cigarettes, which is represented as being superior to and more expensive than that purchased for competing brands, and because they know tobacco best, twice as many of them smoke Lucky Strike cigarettes exclusively as smoke all other brands.

(*b*) That Lucky Strike cigarettes are less acid than other popular brands of cigarettes, and that other popular brands of cigarettes have an excess acidity over Lucky Strike cigarettes of from 53 to 100 percent.

(*c*) That Lucky Strike cigarettes are less irritating to the throat than are competing brands; that said cigarettes offer one throat protection and are easy on one's throat; that in said cigarettes one has protection against throat irritation and against coughing.

(*d*) That Lucky Strike cigarettes contain less nicotine than do four other leading brands of cigarettes.

PAR. 4. (*a*) The aforesaid representations by the respondent with respect to the smoking preference of independent tobacco experts

clearly convey the impression that the independent tobacco experts preferred Lucky Strike cigarettes because they knew that the tobacco used by the respondent in the manufacture of such cigarettes was superior to and more expensive than the tobacco used by competitors in the manufacture of competing brands. Such representations are claimed by the respondent to have been based on the results of a survey conducted by the respondent in 1941 to determine the smoking preferences of independent tobacco experts. Such survey consisted of interviews by representatives of the respondent with individuals designated by the respondent as independent tobacco experts. A total of 2,210 persons deemed within the respondent's definition of an independent tobacco expert were reportedly interviewed by respondent's representatives. The questions asked of the individuals interviewed with respect to their smoking preferences were: (a) What cigarette to you smoke, and (b) which one do you smoke consistently? The interviewers were instructed to ask question (b) only when more than one brand was mentioned by the person interviewed, in reply to question (a). The pertinent information received was recorded and sworn to by the representatives on forms supplied by the respondent. A summary of the answers received to the questions indicated that of the 2,210 persons interviewed, 1,184 were represented as exclusive smokers of Lucky Strike cigarettes, 128 as exclusive smokers of other brands, 540 as smokers of more than 1 brand, and 358 as nonsmokers of cigarettes. The evidence adduced with respect to the survey conducted by the respondent shows that of 440 of the 1,184 persons claimed by the respondent to be exclusive smokers of Lucky Strike cigarettes, approximately 50 did not smoke cigarettes at all. More than 100 of the 440 witnesses testified that they did not smoke Lucky Strike cigarettes exclusively, and a number of them testified that they smoked other brands exclusively. A number of such witnesses could not recall ever having been interviewed by a representative of the respondent. Such testimony also shows that a number of persons classified by the respondent as independent tobacco experts had no connection whatsoever with the tobacco business. A number of the independent tobacco experts claimed by the respondent to be exclusive smokers of Lucky Strike cigarettes were the recipients of free cigarettes or sums of money from the respondent. Some of them testified that they smoked Lucky Strike cigarettes in the presence of a representative of the respondent, and other brands when in the presence of competitors of the respondent.

The individuals designated by the respondent as independent tobacco experts do not know the grade, quality, type, or prices of all the

different kinds of tobacco composing the finished Lucky Strike cigarettes, or any other brand of cigarettes, nor do they know the proportionate amounts of the different grades or types of tobacco in such cigarettes. The blend of tobaccos used by the respondent in the manufacture of Lucky Strike cigarettes is a trade secret. The respondent manufactures approximately 200 different tobacco products, including 25 different brands of cigarettes. The tobacco required for these various products is purchased by American Suppliers, Inc., a subsidiary of the respondent. American Suppliers, Inc., also purchases the tobacco used by the American Cigar & Cigarette Co., manufacturer of various tobacco products, including Pall Mall and Herbert Tareyton cigarettes; and, until 1939, purchased the tobacco leaf requirements of the John Wix Co., of London, England, manufacturers of cigarettes known as Kensitas. Tobacco is commonly sold by tobacco growers at auction to the highest bidder. Competitors of the respondent bid on and purchase the same types and grades of tobacco as are bid on and purchased for the respondent. When a pile of tobacco is purchased by American Suppliers, Inc., the auctioneer—or any other independent tobacco expert—cannot tell whether such tobacco will be used by the respondent in the manufacture of Lucky Strike cigarettes. Consequently, any preference which independent tobacco experts may have had for Lucky Strikes did not result from the knowledge that such independent tobacco experts had as to the quality of the tobacco used by the respondent in the manufacture of Lucky Strike cigarettes.

The Commission is of the opinion therefore, and finds, that the results of the aforesaid survey conducted by the respondent could not and did not accurately reflect the smoking preferences of independent tobacco experts, and that the aforesaid representations made by the respondent predicated upon such survey are misleading and deceptive.

(*b*) Scientific evidence in the record established that there is no significant difference in the acid in the tobacco used in the manufacture of popular brands of cigarettes or in the smoke therefrom. In addition to the testimony of experts that there is no particular or significant difference in the acidity of the popular brands of cigarettes and that there would be no difference in the effect of the acidity on the persons smoking any of the popular brands of cigarettes, the record contains reports of actual tests of the acidity of smoke from samples of different leading brands of cigarettes, which reports show that the smoke from the Lucky Strike cigarettes involved in the tests was not less acid than the smoke from other leading brands of cigarettes involved in the tests. Facts established by the evidence in the

record with respect to the kinds of tobacco used in the leading brands of cigarettes, the manner in which tobacco is customarily purchased by the manufacturers of the leading brands of cigarettes, and the chemical constituents of the tobacco in and the smoke from such cigarettes, all of which have a bearing on the respondent's representations that Lucky Strike cigarettes are less acid than other popular brands of cigarettes, are set forth hereinafter in the findings with respect to other representations by the respondent. The Commission finds from all the evidence in the record that Lucky Strike cigarettes do not contain less acid than other leading brands of cigarettes, and that respondent's representations to the contrary are false, misleading, and deceptive.

Respondent contends that since the representations concerning the acidity of Lucky Strike cigarettes were discontiued several years prior to the issuance of the amended complaint in this proceeding, the issuance of an order to cease and desist such representations would not be in the public interest. The respondent further contends, however, that such representations are not shown to be false, misleading, or deceptive. Under these circumstances, it is manifestly in the public interest for the Commission, through the issuance of an appropriate order, to prevent the resumption of the use of such representations.

(*c*) While admitting the dissemination of advertisements containing substantially the representations that Lucky Strike cigarettes are less irritating to the throat than are competing brands, that said cigarettes offer one throat protection and are easy on one's throat, and that in said cigarettes one has protection against throat irritation and protection against coughing, respondent contends that all of said representations were true. The evidence in the record pertaining to said representations consists largely of testimony of experts, including physicians, chemists, professors, and others who have engaged in extensive research in the chemistry of tobacco and of tobacco smoke and who have conducted various tests and experiments to determine the effect on the human body of the various chemical constituents of cigarette smoke. The tobaccos used in the manufacture of Lucky Strike cigarettes and other popular brands of cigarettes contain irritating properties. The respondent, as well as its competitors, in the processing of the tobacco into cigarettes removes a portion of the irritants from the tobacco. No cigarette manufacturer, however, attempts to eliminate completely from the tobacco the constituents which are known to be irritating. While there is some disagreement among the experts who testified in this proceeding as to the irritating potency of the various constituents of the smoke from cigarettes, it is

established that the chief chemical constituents in cigarette smoke are the volatile bases, including nicotine and ammonia; the volatile acids, principally formic and acetic acid; the volatile aldehydes, mainly acetaldehyde; and the resins, essential oils, and oleo-resin which comprise the aromatics, together with waxy substances, all of which are grouped together under the general term "tars and resins."

Testimony of medical witnesses, as well as reports of tests and experiments conducted by chemists, establishes that there is no significant difference in either the tars and resins or the nicotine in the smoke from all the leading brands of cigarettes. The testimony of medical experts also establishes that the smoke from all the leading brands is irritating to the mucous membrane of the respiratory tract and that the differences in the chemical constituents of different brands of cigarettes, as shown by reports of tests, are so slight that the smoke from one brand of cigarettes is no less irritating than is the smoke from other brands. The smoke from Lucky Strike cigarettes is not easy on one's throat and the smoking of Lucky Strike cigarettes will not afford one protection against throat irritation or against coughing.

The Commission finds, therefore, that the smoke from Lucky Strike cigarettes is not less irritating to the throat than is the smoke from other leading brands, that said cigarettes do not offer one throat protection and are not easy on one's throat, and that in said cigarettes one does not have protection against throat irritation and protection against coughing, and respondent's representations to the contrary are false and misleading.

(*d*) The respondent admits that it disseminated advertisements containing representations that Lucky Strike cigarettes contained less nicotine than did competing brands, but contends that such representations were true, and further that no significance was claimed as a result of the lower nicotine content and that no representation was made as to any particular effect on the smoker which might flow from the lesser nicotine content. The respondent also contends that since such representations were discontinued prior to the commencement of this proceeding, the public interest does not require an order with respect thereto.

As hereinbefore stated, there is some disagreement among the experts who testified in this proceeding, as to the irritating potency of the various chemical constituents of cigarette smoke. It is established, however, that the nicotine found in all tobaccos and in the smoke from all the leading brands of cigarettes is one of the harmful constituents. The representations by the respondent that Lucky Strike cigarettes

contained less nicotine than did competing brands of cigarettes necessarily carried the implication that the smoke from Lucky Strike cigarettes contained less nicotine than the smoke from competing brands of cigarettes and that such lesser nicotine content was significant from the smoker's standpoint. The record in this proceeding is replete with evidence concerning the nicotine content of various types of tobacco which go into the manufacture of the leading brands of cigarettes. There is also considerable evidence, consisting of the testimony of experts, reports of various tests, and other data concerning the nicotine content of the tobacco in and smoke from Lucky Strike and competing brands of cigarettes, as well as testimony of medical witnesses as to the physiological and pharmacological significance of the difference in the nicotine in the smoke from the leading brands of cigarettes.

The leading brands of domestic cigarettes are manufactured from flue-cured, burley, Maryland, and Turkish tobaccos. The domestic tobacco used in the manufacture of Lucky Strike cigarettes is purchased principally at public auction. The respondent, through its purchasing subsidiary, bids upon and purchases substantially all grades of tobacco offered for sale at public auctions. Manufacturers of competing brands of cigarettes also bid upon and purchase, at the same public auction sales, the same grades of tobacco as those purchased for the respondent, and at substantially the same prices. The tobaccos used in the manufacture of Lucky Strike cigarettes are all of substantially the same grades as those used in the manufacture of competing brands of cigarettes. The nicotine content of the domestic tobacco used in the manufacture of the leading brands of cigarettes varies considerably, not only as among the several kinds or types of tobaccos, but also as among the individual plants of the same types of tobacco on the same farm and in the same field, and even among the leaves on the same plant. These variations are due to a number of variable factors, such as the maturity of the crop at the time of harvesting, the topping, spacing, variety grown, the kind of soil, fertilization used, method of curing and handling after harvesting, the position of the leaves on the plants, and seasonal conditions. It is impossible to determine with any degree of accuracy the nicotine content of a pile of tobacco merely from visual inspection of such tobacco. It is also impossible from a practical standpoint for the respondent or any of its competitors to analyze all of the tobacco purchased to determine the nicotine content. In view of the aforementioned variability in the nicotine content of the tobacco, it is impossible from a practical standpoint for the respondent, or any of its competitors, by blending or

otherwise, to maintain a given level of nicotine in the tobacco purchased for use in the manufacture of cigarettes.

In the processing of tobacco used in the manufacture of Lucky Strike cigarettes, the respondent subjects the tobacco to varying degrees of heat, and in such processing, portions of the nicotine, as well as other chemical constituents such as tars and resins, are removed from the tobacco. The manufacturers of other leading brands of cigarettes also remove a portion of the nicotine and other constituents from the tobacco during the manufacture of their cigarettes. No manufacturer attempts to remove all of the nicotine from the tobacco. To do so would destroy the tobacco for commercial purposes. Subjecting tobaccos of different nicotine content to the same degree of heat will not result in the reduction of nicotine in all of the tobaccos to the same level. It is not possible from a practical standpoint for the respondent or any of the other manufacturers of leading brands of cigarettes to maintain a constancy of nicotine in the finished cigarette. This fact is established not only by the testimony of experts, but also by various reports of tests conducted which show variations in the nicotine content of tobacco in the individual cigarettes involved in the tests, not only as among the leading brands, but also as among the individual cigarettes of the same brand.

The nicotine content of the smoke of a cigarette is in direct proportion to the nicotine content of the tobacco contained in the cigarette itself. It is established by scientific evidence, including reports of various tests conducted, that the nicotine of the smoke of cigarettes varies not only as among the different leading brands of cigarettes but also as among the individual cigarettes of the same brand. It is also established by expert testimony, as well as by the aforesaid reports of tests, that the differences in the nicotine content of the tobacco in and smoke from the leading brands of cigarettes are so small as to have no significance from the smoker's standpoint. Respondent's representations clearly imply that the differences are significant from the smoker's standpoint. The testimony of expert medical witnesses establishes that there would be no difference in the effect on the human body as a result of the slight differences in the nicotine in the smoke of the different leading brands of cigarettes.

The Commission is of the opinion, and therefore finds, that the respondent's representations that Lucky Strike cigarettes contained less nicotine than did four other leading brands were misleading and deceptive. The fact that the respondent discontinued the representations concerning the nicotine content of Lucky Strike cigarettes prior to the commencement of this proceeding does not, as respondent contends,

make the issue with respect to such representations devoid of public interest. The Commission is not satisfied that the respondent might not resume the representations in the future, and in view of the finding that such representations were misleading and deceptive, it is manifestly in the public interest for the Commission, through the issuance of an appropriate order, to prevent such a resumption.

PAR. 5. While the amended complaint in this proceeding charges that certain representations in addition to those referred to herein, used by the respondent in promoting the sale of its Lucky Strike cigarettes, were false, deceptive, and misleading, the Commission is of the opinion, and finds, that such charges have not been sustained by the evidence.

PAR. 6. The use by the respondent of the false, deceptive, and misleading representations as set forth in paragraphs 3 and 4 hereof has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said representations were true and into the purchase of respondent's Lucky Strike cigarettes as a result of such false and erroneous belief, thereby resulting in a substantial injury to competitors in interstate commerce.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the respondent's answer thereto, testimony, and other evidence in support of and in opposition to the allegations of said amended complaint, the trial examiner's recommended decision and exceptions thereto, and briefs and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, the American Tobacco Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of its Lucky Strike

brand of cigarettes, do forthwith cease and desist from representing by any means, directly or by implication:

(1) That among independent tobacco experts, Lucky Strike cigarettes have twice as many smokers as all other brands of cigarettes combined; or that any greater proportion or number of independent tobacco experts or of any other group or class of people smoke Lucky Strike cigarettes than is the fact.

(2) That independent tobacco experts who smoke Lucky Strike cigarettes do so because of their knowledge of the grades or quality of the tobacco purchased by the respondent for use in the manufacture of Lucky Strike cigarettes.

(3) That Lucky Strike cigarettes or the smoke therefrom contains less acid than do the cigarettes or the smoke therefrom of any of the other leading brands of cigarettes.

(4) That Lucky Strike cigarettes or the smoke therefrom is less irritating to the throat than the cigarettes or the smoke therefrom of any of the other leading brands of cigarettes.

(5) That Lucky Strike cigarettes or the smoke therefrom is easy on one's throat or will provide any protection against throat irritation or coughing.

(6) That Lucky Strike cigarettes or the smoke therefrom contains less nicotine than do the cigarettes or smoke therefrom of any of the four other leading brands of cigarettes.

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

Syllabus

IN THE MATTER OF

HOUSE OF PLATE, 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 5744. Complaint, Mar. 1, 1950—Decision, June 20, 1951

Where the president of a corporation prior to its discontinuance of business, who directed and controlled its acts and practices, engaged in the competitive interstate sale and distribution of small plastic ducks under a course of conduct which included the shipment of said products to selected retailers whom he had theretofore advised of the "Reddest, Hottest, Sizzling Seller that has come your way in years," without further specification as to the merchandise, and that "so unless you tell us not to, we will be forwarding you the perfect test that demonstrates and sells on sight * * * a 20 day free trial offer without your investing a cent," and to whom, failing to receive a reply he sent six ducks, together with a descriptive circular showing the fair trade resale price, a return envelope on which postage was to be paid by the addressee, with the price to the retailer printed on the inside of the flap, and a letter advising him that by virtue of his reputation he was being intrusted with the shipment "without delay through the mails"; followed by an invoice subject to discount for payment within 10 days and other reminders and demands for payment—

(*a*) Represented, directly and by inference, that the retail merchant receiving the ducks was obligated to pay therefor or return them, through the act of shipping them without any previous order or authorization and making a charge therefor, and through the letter accompanying the shipment and subsequent letters;

(*b*) Represented that said individual was insured against the loss of the ducks in transit through a postal card which he sent to the retail merchant following a final letter insisting that the bill be paid or the ducks returned at the merchant's expense, and in which the retailer was advised that insurance claim for loss of the ducks in transit was being filed and information was requested on the attached business reply card as to whether they had been sold, would be returned or had not been received; and

(*c*) Represented through letters sent under the name of the "Certified Credit Bureau" and a different address, that the ducks were shipped under a contract of consignment, that the merchant's credit rating was endangered by failure either to pay for the ducks or return them, and that the account had been placed in the hands of an independent collection agency;

The facts being that the recipient of merchandise shipped without previous order and in the absence of an agreement to purchase, is not obligated to pay therefor or to return it; failure of the merchants to answer said first letter could not under the circumstances be considered as authorizing shipment and created no contracts of consignment; failure to pay for or return the same would not jeopardize the credit rating of the recipient with legitimate businessmen; said individual was not insured against loss in transit of the unauthorized shipment of said products; and said "Certified Credit Bureau"

was a fictitious name adopted by him and was not an independent collection agency;

With capacity and tendency to cause retail merchants erroneously to believe that said representations were true; create doubts in their minds as to their rights and obligations in regard to said merchandise and mislead and deceive them into the erroneous belief that they were obligated either to pay for or return the same and cause them to pay therefor; unfairly harass and inconvenience them; and unfairly divert trade to said individual from his competitors:

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

Mr. Joseph Callaway for the Commission.

Slyfield, Hartman, Reitz & Tait, of Detroit, Mich., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that House of Plate, Inc., a corporation and Robert T. Plate, an individual, 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, House of Plate, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 9325 East Forest Avenue, Detroit 13, Mich.

The individual respondent, Robert T. Plate, is president of the corporate respondent, has his office and principal place of business at the address of said corporate respondent, and has at all times hereinafter mentioned, formulated, directed, and controlled the acts, policies, and business affairs of the corporate respondent, including the acts and practices hereinafter mentioned.

PAR. 2. Respondents are now and have been for the past several years engaged in the business of selling novelty merchandise at wholesale. Among the novelty items sold by respondents are small plastic ducks, which they call "Glub Glub." Respondents cause such plastic ducks to be transported from their place of business in the State of Michigan to purchasers and prospective purchasers located in various other States of the United States. Respondents maintain and at all times mentioned herein have maintained a course of trade in said

plastic ducks in commerce among and between the various States of the United States. Respondents' volume of business in said commerce is substantial.

PAR. 3. Respondents are now and have been at all times hereinafter mentioned in substantial competition with other persons, firms, and corporations engaged in the interstate sale of novelty merchandise, including plastic ducks, similar to those sold by respondents.

PAR. 4. In the course and conduct of their said business and for the purpose of inducing the purchase of said plastic ducks, respondents engaged in the following acts and practices:

(1) A letter was sent to a selected list of retailers which did not mention the ducks but referred to the "Reddest, Hottest, Sizzling Seller that has come your way in years." This letter says "so unless you tell us not to, we will be forwarding you the perfect test that demonstrates and sells on sight * * * a 20 days free trial offer without your investing a cent."

(2) If no response was received to this letter, six ducks were sent about 3 weeks later. The box in which the ducks were sent had several enclosures, a descriptive circular, showing the fair trade retail sale price of the ducks, a return envelope, on which postage was to be paid by the addressee, which also had printed on the inside of the flap, the price to the retailer of the six ducks and a letter which usually stated among other things: "Your reputation for fair dealing and alert merchandising places you among the carefully chosen few whom we can entrust to bring this to you without delay through the mails."

(3) About 3 days later the retail merchant received an invoice for the ducks and a statement that if paid within 10 days the bill could be discounted 20 percent. Several other letters and reminders of the shipment and the amount claimed to be due were sent the retail merchant, some just before and some just after the so-called 20-day trial period had expired.

(4) If nothing was heard from the retail merchant, another letter was sent within a short time, which insisted that the bill be paid or the ducks returned at the expense of the respondents.

(5) If no answer to the last-mentioned letter was received, the retail merchant was advised by post card that insurance claim for loss of the ducks in transit was being filed, and requesting that information be given on a business reply card attached as to whether the ducks had been sold, would be returned, or had not been received.

(6) A short while later, if nothing was heard from the retail merchant, a letter was sent by respondents on the letterhead of and

signed by the Certified Credit Bureau which showed a different address from that of respondents. Although the wording of this letter varied from time to time, the following excerpt is typical:

> From a financial viewpoint, it is inadvisable for any company or individual to jeopardize their credit rating by neglecting to either pay for or surrender consignment merchandise. * * * Before we proceed further, will you please advise us in the enclosed envelope, what your intentions are in respect to this claim?

PAR. 5. Through the act of shipping the ducks without any previous order or authorization, and making a charge therefor, respondents represented, directly and by inference, that the retail merchant receiving them was obligated to pay for the merchandise or return it. This representation was also made through the letter accompanying the shipment and the subsequent letters. Through the use of the post card mentioned above, respondents represented directly and by inference that they were insured against loss of the ducks in transit. Through the letters sent under the name of the Certified Credit Bureau respondents represented, directly and by inference, that the ducks were shipped under a contract of consignment, that the retail merchants' credit rating was endangered by failure to either pay for the ducks or return them, and that the account had been placed in the hands of an independent collection agency for legal action if necessary.

PAR. 6. The aforesaid representations were false, deceptive, and misleading. In truth and in fact, failure of the retail merchants receiving respondents' first letter, to answer it, cannot, under the circumstances be considered as authorizing shipments of the ducks, and created no contract of consignment. The recipient of an unauthorized shipment of merchandise is not obligated to either pay for the merchandise or return it, and failure to do either does not jeopardize the credit rating of such retail merchants with legitimate businessmen. The respondents were not insured against loss in transit of the unauthorized shipments of the ducks. The name "Certified Credit Bureau" was a fictitious one adopted by respondents who well knew that legal action could not be maintained for either payment or return of the goods and was not an independent collection agency with which accounts have been placed by respondents for collection.

PAR. 7. The use by the respondents of the aforesaid acts and practices had the capacity and tendency to confuse many retail merchants, to create doubt in their minds as to their rights and obligations in regard to such merchandise and caused many of such merchants to pay for the merchandise so shipped, because of such doubts and confusion.

It also had the tendency and capacity to mislead and deceive a substantial number of other retail merchants into the erroneous belief that they were obligated to either pay for the merchandise or return it and caused many of them to pay for such merchandise because of such erroneous belief. It further had the tendency and capacity to and did unfairly harass and inconvenience those merchants who were neither confused or deceived. For the above reasons, the use by the respondents of the aforesaid acts and practices had the capacity and tendency to unfairly divert trade from their competitors.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 1, 1950, issued and subsequently served its complaint in this proceeding upon the respondents, House of Plate, Inc., a corporation, and Robert T. Plate, individually and as president of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce in violation of the provisions of that act. No answer was filed by the respondents. On June 28, 1950, a stipulation as to the facts was entered into by and between Daniel J. Murphy, Chief, Division of Litigation, of the Commission, and the individual respondent, Robert T. Plate, 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 against Robert T. Plate, an individual, or in opposition thereto, and that the Commission may proceed upon said statement of facts to make its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or filing of briefs. On July 3, 1950, a memorandum signed by the said Daniel J. Murphy was filed with the Commission stating that respondent House of Plate, Inc., a corporation, is no longer doing business and has filed a petition for dissolution in the Michigan court having jurisdiction.

The Commission having served upon the respondents its tentative decision, together with leave to show cause why such tentative decision

should not be entered as the final decision of the Commission, and said respondents not having appeared in response to the leave to show cause, this proceeding regularly came on for final consideration before the Commission upon the said complaint, stipulation, and memorandum, said stipulation having been approved, accepted, and filed; and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, House of Plate, Inc., was a corporation organized and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 9325 East Forest Avenue, Detroit 13, Mich. Said corporate respondent is no longer doing business. A petition for its dissolution has been filed in the Michigan courts. The Commission, having no reason to believe that the said corporate respondent will not be dissolved, is of the opinion that this complaint should be dismissed as to the said corporate respondent without prejudice to the right of the Commission to issue a new complaint or to take such further or other action against said respondent at any time in the future as may be warranted by the then existing circumstances. The term "respondent" as used hereinafter will, therefore, not include respondent House of Plate, Inc., unless the contrary is indicated.

Respondent, Robert T. Plate, an individual, was president of the corporate respondent, House of Plate, Inc., had his office and principal place of business at the address of said corporate respondent, and did at all times hereinafter mentioned formulate, direct, and control the acts, policies, and business affairs of the corporate respondent, including the acts and practices hereinafter mentioned.

PAR. 2. Respondent, Robert T. Plate, has for the past several years engaged in the business of selling novelty merchandise at wholesale. Among the novelty items sold by respondent were small plastic ducks. Respondent caused such plastic ducks to be transported from his place of business in the State of Michigan to purchasers and prospective purchasers located in various other States of the United States. Respondent maintained and at all times mentioned herein has maintained a course of trade in said plastic ducks in commerce among and between the various States of the United States. Respondent's volume of business in said commerce was substantial.

PAR. 3. Respondent, Robert T. Plate, was at all times mentioned hereinafter in substantial competition with other persons, firms, and corporations engaged in the interstate sale of novelty merchandise, including plastic ducks, similar to those sold by respondent.

PAR. 4. In the course and conduct of his said business, and for the purpose of inducing the purchase of said plastic ducks, respondent engaged in the following acts and practices:

(1) A letter was sent to a selected list of retailers which did not mention the ducks but referred to the "Reddest, Hottest, Sizzling Seller that has come your way in years." This letter says "so unless you tell us not to, we will be forwarding you the perfect test that demonstrates and sells on sight * * * a 20-day free trial offer without your investing a cent."

(2) If no response was received to this letter, six ducks were sent about 3 weeks later. The box in which the ducks were sent had several enclosures, a descriptive circular, showing the fair trade retail sale price of the ducks, a return envelope, on which postage was to be paid by the addressee, which also had printed on the inside of the flap the price to the retailer of the six ducks and a letter which usually stated among other things:

Your reputation for fair dealing and alert merchandising places you among the carefully chosen few whom we can entrust to bring this to you without delay through the mails.

(3) About 3 days later the retail merchant received an invoice for the ducks and a statement that if paid within 10 days the bill could be discounted 2 percent. Several other letters and reminders of the shipment and the amount claimed to be due were sent the retail merchant, some just before and some just after the so-called 20-day trial period had expired.

(4) If nothing was heard from the retail merchant, another letter was sent within a short time, which insisted that the bill be paid or the ducks returned at the expense of the respondent.

(5) If no answer to the last-mentioned letter was received, the retail merchant was advised by postal card that insurance claim for loss of the ducks in transit was being filed, and requesting that information be given on a business reply card attached as to whether the ducks had been sold, would be returned, or had not been received.

(6) A short while later, if nothing was heard from the retail merchant, a letter was sent by respondent on the letterhead of and signed by the Certified Credit Bureau which showed a different address from that of respondent. Although the wording of this letter varied from time to time, the following excerpt is typical:

From a financial viewpoint, it is inadvisable for any company or individual to jeopardize their credit rating by neglecting to either pay for or surrender consignment merchandise. * * * Before we proceed further, will you please advise us in the enclosed envelope, what your intentions are in respect to this claim?

PAR. 5. Through the act of shipping the ducks without any previous order or authorization, and making a charge therefor, respondent represented, directly and by inference, that the retail merchant receiving them was obligated to pay for the merchandise or return it. This representation was also made through the letter accompanying the shipment and the subsequent letters. Through the use of the postal card mentioned above, respondent represented directly and by inference that he was insured against loss of the ducks in transit. Through the letters sent under the name of the Certified Credit Bureau respondent represented, directly and by inference, that the ducks were shipped under a contract of consignment, that the retail merchant's credit rating was endangered by failure to either pay for the ducks or return them, and that the account had been placed in the hands of an independent collection agency.

PAR. 6. In truth and in fact, failure of the retail merchants receiving respondent's first letter to answer it, could not, under the circumstances, be considered as authorizing shipment of the ducks, and created no contract of consignment. The recipient of merchandise shipped without a previous order and in the absence of an agreement to purchase is not obligated to pay for the merchandise or to return it, nor will failure to pay for or return such merchandise jeopardize the credit rating of the recipient with legitimate businessmen. The respondent was not insured against loss in transit of the unauthorized shipments of the ducks. The Certified Credit Bureau was a fictitious name adopted by the respondent and was not an independent collection agency.

PAR. 7. The use by respondent, Robert T. Plate, of the aforesaid acts and practices has been and is deceptive and misleading and has had and now has the capacity and tendency to cause retail merchants erroneously to believe that said representations were and are true; to create doubts in their minds as to their rights and obligations in regard to merchandise shipped to them under the circumstances described; to mislead and deceive retail merchants into the erroneous belief that they were obligated to either pay for the merchandise or return it and to cause such merchants to pay for such merchandise; to unfairly harass and inconvenience such merchants; and to unfairly divert trade to the respondent from his competitors.

CONCLUSION

The aforesaid acts and practices of the respondent, Robert T. Plate, as herein found are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, a stipulation as to the facts entered into by and between Daniel J. Murphy, Chief, Division of Litigation, of the Commission, and the individual respondent, Robert T. Plate, in which stipulation the said individual respondent waived all intervening procedure and further hearing as to said facts, and a memorandum signed by the said Daniel J. Murphy stating that respondent House of Plate, Inc., a corporation, is in the process of dissolution in the Michigan courts, and the Commission having made its findings as to the facts and its conclusion that the individual respondent, Robert T. Plate, has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Robert T. Plate, an individual, his agents, representatives, and employees, in connection with the offering for sale, sale, or distribution of novelty merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that a recipient of merchandise shipped without a previous order and in the absence of an agreement to purchase is obligated to pay for the merchandise or to return it.

2. Representing, directly or by implication, that failure of a recipient to either pay for or return merchandise shipped to it without a previous order and in the absence of an agreement to purchase will jeopardize the credit rating of such recipient.

3. Representing, directly or by implication, that merchandise shipped without a previous order or agreement to purchase was shipped under a contract of consignment.

4. Representing, directly or by implication, that merchandise is insured against loss in transit when it is not so insured.

5. Representing by the use of the name "Certified Credit Bureau," or any other ficticious name, or in any other manner, that an account

has been placed in the hands of a collection agency when the account has not been so placed.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to respondent, House of Plate, Inc., a corporation, without prejudice, however, to the right of the Commission to issue a new complaint or to take such further or other action against said respondent at any time in the future as may be warranted by the then existing circumstances.

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

IN THE MATTER OF

WALTER W. GRAMER

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

Docket 5746. Complaint, Mar. 1, 1950—Decision, June 21, 1951

Where an individual engaged in the interstate sale and distribution of his drug preparation "Sulgly-Minol"; in advertisements through various circulars, including a card with testimonials printed on one side and a statement of said individual on the other—

(a) Falsely represented that said preparation was a cure and remedy for athlete's foot, and an adequate and competent treatment therefor;

(b) Falsely represented that it was a cure and remedy for all types of arthritis and an adequate and competent treatment therefor, and for the manifestations, including pain, soreness, and stiffness, of arthritis of all types; and

(c) Falsely represented that his said preparation was an effective treatment for boils and acne;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such statement and representations were true, and thereby into the purchase of substantial quantities of said product:

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

Before *Mr. John W. Addison*, trial examiner.
Mr. Joseph Callaway for the Commission.
Mr. Arthur A. Logefeil, of Minneapolis, Minn., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, Walter W. Gramer, is an individual, having an office and principal place of business at 3409 Blaisdell Avenue, Minneapolis, Minn.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of selling and distributing a drug

product, as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondent for the said product, and the formula and directions for use thereof are as follows:

Designation: "Sulgly-Minol" or "Sul-gly-minol."

Formula:

Sulphur, 3 pounds.
Glycerine, 16 ounces.
Lime, 1½ pounds.
Alcohol, 8 ounces.
Water q. s., 1 gallon.

Directions: Every night, just before retiring, apply Sulgly-Minol to the soles of both feet. That is easily done by tipping the bottle up, while holding palm of hand over open end of bottle and let just enough Sulgly-Minol escape to wet the palm of hand. Then rub in quite vigorously. Twice a week take a hot foot bath with tablespoon of Sulgly-Minol added to water. Bathe feet about twenty minutes, dry, and while still warm from bath, apply Sulgly-Minol as on previous nights. That is all there is to it. Should a rash appear, use foot bath only, mixing two tablespoons of Sulgly-Minol to one gallon of water. For athlete's foot, use foot bath only. If there are no open sores, apply full strength.

The directions given on the 4-ounce bottles in which the product is sold are as follows:

For external use only. For treatment of muscular pains, apply to soles of feet before retiring. Or add to bath water for sulphur bath. Add two tablespoons to one gallon of water for treatment of athlete's foot.

PAR. 3. Respondent causes the said product when sold to be transported from his place of business in the State of Minnesota to purchasers thereof located in various other States of the United States, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in said product in said commerce is and has been substantial.

PAR. 4. In the course and conduct of his business respondent, subsequent to April 17, 1945, has disseminated and caused the dissemination of advertisements concerning his said product by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act for the purpose of inducing and which were likely to induce directly or indirectly its purchase.

These advertisements include but are not limited to a circular headed "Gramer's Sulgly-Minol, price change announcement"; a circular headed "Arthritis, It's Grip Broken"; a circular headed "Copy of Original Letter"; a circular headed "A Light Should Not Be Hid-

den, Testimonials" and a circular headed "Partial List, Users of Sulgly-Minol."

Respondent has also disseminated and caused the dissemination of the advertisements referred to above for the purpose of inducing, and the said advertisements were likely to induce directly or indirectly the purchase of respondent's preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Through the use of said advertisements, repondent has made directly and by implication the representation's shown in the following subparagraphs identified as (*a*) to (*g*), inclusive. The said advertisements by reason of said representations are misleading in material respects and constitute false advertising as that term is defined in the Federal Trade Commission Act, by reason of the true facts which are set forth in subparagraphs (1) to (7) inclusive.

(*a*) That respondent's said preparation is a cure and a remedy for athlete's foot;

(1) Said preparation is not a cure or a remedy for athletes' foot.

(*b*) That respondent's said preparation is an adequate and competent treatment for athlete's foot;

(2) Said preparation is not an adequate or competent treatment for athlete's foot.

(*c*) That respondent's said preparation is a cure and a remedy for all types of arthritis;

(3) Said preparation is not a cure or remedy for any type of arthritis.

(*d*) That respondent's said preparation is an adequate and competent treatment for all types of arthritis;

(4) Said preparation is not an adequate or competent treatment for any type of arthritis.

(*e*) That respondent's said preparation is a cure and remedy for the manifestations, including pain, soreness, and stiffness of arthritis of all types;

(5) Said preparation is not a cure or remedy for any of the manifestations, including pain, soreness, and stiffness, of any type of arthritis.

(*f*) That respondent's said preparation is an adequate and competent treatment for and will relieve the manifestations, including pain, soreness, and stiffness, of arthritis of all types;

(6) Said preparation is not an adequate or competent treatment for, nor will it relieve any of the manifestations, including pain, soreness, and stiffness, of any type of arthritis.

(*g*) That respondent's said preparation is an effective treatment for boils and acne;

(7) Said preparation is not an effective treatment for either boils or acne.

PAR. 6. The use by respondent of the said false advertisements with respect to his said product has had the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained in the said advertisements were true; and into the purchase of substantial quantities of said product by reason of said erroneous and 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 June 21, 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 the first day of March, A. D. 1950, issued and subsequently served its complaint in this proceeding upon respondent, Walter W. Gramer, an individual, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After issuance of the complaint and the filing of respondent's answer thereto, hearings were held at which testimony and other evidence in support of, and in opposition to, the allegations of said complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and the testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by the trial examiner on the complaint, the answer thereto, testimony, and other evidence, proposed findings as to the facts and conclusions presented by counsel, oral arguments not having been requested; and the trial examiner, having considered the record herein, finds that this proceeding is in the in-

terest 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, Walter W. Gramer, is an individual, having an office and principal place of business at 3409 Blaisdell Avenue, Minneapolis, Minn.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of selling and distributing a drug product, as drug is defined in the Federal Trade Commission Act.

The designation used by respondent for the said product, and the formula and directions for use thereof are as follows:

Designation: "Sulgly-Minol"

Formula:

Sulphur, 3 pounds.
Glycerine, 8 ounces.
Lime, 1½ pounds.
Alcohol, 16 ounces.
Water q. s., 1 gallon.

Directions: Every night, just before retiring, apply Sulgly-Minol to the soles of both feet. That is easily done by tipping the bottle up, while holding palm of hand over open end of bottle and let just enough Sulgly-Minol escape to wet the palm of hand. Then rub in quite vigorously. Twice a week take a hot foot bath with a tablespoon of Sulgly-Minol added to water. Bathe feet about twenty minutes, dry and while still warm from bath, apply Sulgly-Minol as on previous nights. That is all there is to it. Should a rash appear, use foot bath only, mixing two tablespoons of Sulgly-Minol to one gallon of water. For athlete's foot, use foot bath only. If there are no open sores, apply full strength.

The directions given on the 4-ounce bottles in which the product is sold are as follows:

For external use only. For treatment of muscular pains, apply to soles of feet before retiring. Or add to bath water for sulphur bath. Add two tablespoons to one gallon of water for treatment of athlete's foot.

PAR. 3. Respondent causes the said product when sold to be transported from his place of business in the State of Minnesota to purchasers thereof located in various other States of the United States, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in said product in said commerce is and has been substantial.

PAR. 4. In the course and conduct of his business respondent, subsequent to April 17, 1945, has disseminated and caused the dissemination of advertisements concerning his said product by the United States mails and by various means in commerce as commerce is defined in the Federal Trade Commission Act for the purpose of inducing and which were likely to induce directly or indirectly its purchase.

These advertisements include a circular headed "Gramer's Sulgly-Minol, price change announcement"; a circular headed "Arthritis, It's Grip Broken"; a circular headed "Copy of Original Letter"; a circular headed "A Light Should Not Be Hidden, Testimonials" and a circular headed "Partial List, Users of Sulgly-Minol" and a card with testimonals printed on one side and a statement of respondent on the other side.

Respondent has also disseminated and caused the dissemination of the advertisements referred to above for the purpose of inducing, and the said advertisements were likely to induce directly or indirectly the purchase of respondent's preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Through the use of said advertisements respondent has directly and by implication represented:

1. That respondent's said preparation is a cure and remedy for athlete's foot.

2. That respondent's said preparation is an adequate and competent treatment for athlete's foot.

3. That respondent's said preparation is a cure and remedy for all types of arthritis.

4. That respondent's said preparation is an adequate and competent treatment for all types of arthritis.

5. That respondent's said preparation is a cure and remedy for the manifestations, including pain, soreness, and stiffness of arthritis of all types.

6. That respondent's said preparation is an adequate and competent treatment for and will relieve the manifestations, including pain, soreness, and stiffness of arthritis of all types.

7. That respondent's said preparation is an effective treatment for boils and acne.

PAR. 6. In truth and in fact respondent's said preparation:

1. Is not a cure or a remedy for athlete's foot.

2. Is not an adequate or competent treatment for athlete's foot.

3. Is not a cure or remedy for any type of arthritis.

4. Is not an adequate or competent treatment for any type of arthritis.

5. Is not a cure or remedy for any of the manifestations, including pain, soreness, and stiffness of any type of arthritis.

6. Is not an adequate or competent treatment for nor will it relieve any of the manifestations, including pain, soreness, and stiffness of any type of arthritis.

7. Is not an effective treatment for either boils or acne.

CONCLUSION

The use by respondent of the said false advertisements with respect to his said product has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained in the said advertisements were true; and into the purchase of substantial quantities of said product by reason of said erroneous and mistaken belief.

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

ORDER TO CEASE AND DESIST

It is ordered, That the respondent, Walter W. Gramer, an individual, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of the preparation designated as "Sulgly-Minol" or of any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

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

(*a*) That respondent's said preparation is a cure or a remedy for athlete's foot.

(*b*) That respondent's said preparation is an adequate or competent treatment for athlete's foot.

(*c*) That respondent's said preparation is a cure or a remedy for any type of arthritis.

(*d*) That respondent's said preparation is an adequate or competent treatment for any type of arthritis.

(*e*) That respondent's said preparation is a cure or remedy for any of the manifestations, including pain, soreness and stiffness of any type of arthritis.

(*f*) That respondent's said preparation is an adequate or competent treatment for or will relieve the manifestations, including pain, soreness or stiffness of any type of arthritis.

(*g*) That respondent's said preparation is an effective treatment for boils or acne.

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 or representation which contains any of the representations prohibited in paragraph 1 above.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent 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 June 21, 1951].

Note.—On June 26, 1951, the Commission issued an order in the matter of Clay Products Association, Inc. et al., Docket 5483, which modified the second paragraph of the conclusion in its April 19, 1951, decision. (See ante, 47 F. T. C. 1256 at 1272.) Said modifying order, as there set out, corrected, for the reasons set forth, the erroneous statement that three respondents included in said proceedings, namely, American Vitrified Products Co., Robinson Clay Product Co., and Clay City Pipe Co. had filed answer admitting all the material allegations set forth in the complaint. Said respondents, as to which the complaint was dismissed in Docket 5483, were joined as respondents in a cease and desist order in a similar proceeding in Docket 5484, in which order issued on August 20, 1951.

Syllabus

IN THE MATTER OF

CONSUMER SALES CORP. ET AL.

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

Docket 5680. Complaint, July 13, 1949—Decision, June 27, 1951

Where a corporation and its two officers, who held all its stock, directed its activities, and formulated and controlled its policies, engaged in the promotion and interstate sale of aluminum cookware, dinnerware, silver plate, and glassware through door-to-door salesmen;

In carrying on their business (1) through said salesmen whom they furnished with a card authorizing them to solicit and accept orders and collect deposits thereon; and sales kits containing, among other materials, order blanks for said products at varying prices, entitled, in large letters, "SPECIAL OFFER," and (2) under a procedure or practice whereby, following the customer's signing of an order requiring down payment of $1.90 and payment of the balance by monthly installments, and the making of a credit check, they delivered the merchandise to the buyer through their delivery man who secured the buyer's signature on a note for the balance due, and gave the buyer a brown manila envelope addressed to said corporation in which to mail to it the collected box tops below referred to—

(*a*) Encouraged, participated in, and benefited by and were responsible for, the representations of their salesmen who, through said order blanks and orally, falsely represented that they were offering said merchandise at a special low price;

(*b*) Encouraged, participated in, and benefited by and were responsible for the representations of their salesmen who also represented falsely that they were connected in some manner with one or more of the prominent soap manufacturing companies, which, in order to prove to the Government that their allocations of fats should be increased, were obtaining soap box tops from housewives as proof of their volume of sales, and that said corporation had been authorized by the soap companies to make such surveys and, in order to secure the necessary cooperation from housewives, had authorized said special offer; and

(*c*) Encouraged, participated in, and benefited by and were responsible for, the false representations of their salesmen that said merchandise was worth from $20 to $50 more than the price at which it was being offered and that such special offering was made on the condition that the buyer collect and turn in to said corporation a certain number of box tops from said soap manufacturers' products;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and with capacity and tendency so to do, and thereby induce the purchase of substantial quantities of their said merchandise:

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

As regards the above described sales approach, which, as disclosed by the evidence, was the usual and typical sales method of salesmen selling respondents' product, and respondents' contention that their sales representatives were independent contractors, since their applications sought to establish an independent contractor relationship, they acted independently of respondents in that they were not required to attend sales meetings, were not supervised in their sales, made no reports, submitting only a tally of their commissions, and were not reimbursed for expenses; and that they, the respondents, therefore, were not responsible for said false representations;

Said respondents by furnishing the salesmen with the aforesaid order forms which falsely represented they were making a special offer, by permitting them to request purchasers to collect box tops, and by furnishing self-addressed envelopes for the handling of such box tops, actively encouraged and participated in making said false representations and participated in and received the fruits resulting therefrom and were responsible therefor.

As respects one of the two officers above referred to, who, with the other, actively participated in the establishment and operation of said corporation's sales policies but who severed his connection with the corporation on March 21, 1950, or 8 months after the issuance of the complaint, there was no assurance that he might not at some future time, under some other trade name, engage in the practices found to be illegal unless prohibited from so doing by order to cease and desist.

While the complaint also alleged that respondents falsely represented that their tableware was of Czechoslovakian origin, that their aluminum cookware was authorized to use Good Housekeeping Magazine's Seal of Approval, and that the aluminum cookware sold and distributed by them was approved by leading home economists, renowned professional chefs, and such recognized authorities as the United States Public Health Service, United States Bureau of Home Economics, the American Medical Association, and the American Hospital Association, the evidence of record was not sufficient to support any of said allegations.

Before *Mr. Clyde M. Hadley*, trial examiner.
Mr. Jesse D. Kash for the Commission.
Mr. Murray M. Segal, 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 Consumer Sales Corp., a corporation, Julius J. Blumenfeld and Myron J. Collin, individually and as officers of Consumer Sales Corp., 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. Consumer Sales Corp. is a corporation organized and established under and by virtue of the laws of the State of New York with its office and principal place of business located at 673 Broadway, New York, N. Y. Respondents, Julius J. Blumenfeld and Myron J. Collin, are president, secretary and treasurer, respectively, of respondent corporation with their office and principal place of business located at 673 Broadway, New York, N. Y. Said individual respondents direct and have directed the activities of respondent corporation and have formulated and controlled its policies and affairs, including the conduct of sales and the character of advertising representations made in connection therewith.

PAR. 2. The respondents are now and for more than 1 year last past have been engaged in the promotion and sale of aluminum cookware, dinnerware, and silverware through the medium of door-to-door salesmen.

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

PAR. 3. For some time it has been the custom of various major soap companies such as those mentioned herein to circularize the consuming public, especially housewives, enclosing certain gift certificates which when used by the housewives and taken to the grocery store enable the purchaser of the soap products to obtain a 10- or 15-cent discount on products so bought. It has also been the custom of said soap companies to offer the consuming public in return for a certain number of box tops or wrappers from their products certain articles of silverware, dinnerware, or aluminumware of proven merit at a nominal price. These practices of the major soap companies are well known to the consuming public, especially housewives, who in many instances have received substantial merchandise under the sponsorship of the various soap companies.

PAR. 4. In the course and conduct of their said business and for the purpose of promoting the sale of their said products through the medium of sales agents and sales representatives the respondents have made and are making many statements and representations to

the purchasing public. Among and typical of said statements are the following:

That respondents' salesmen and representatives are in the employment of Consumer Sales Corp., which corporation is an advertising agency for Procter & Gamble, Lever Bros., Colgate-Palmolive-Peet, and other prominent soap manufacturers;

That said manufacturing companies are interested in proving to the Federal Government that their allocations of fats should be increased. In order to prove to the Government how much soap is actually being used by the housewives, said soap companies are interested in obtaining from housewives the soap-box tops or labels from the soap they use;

That these box tops or labels will be turned in by the soap companies to the Federal Government as proof of the volume of sales;

That corporate respondent has been authorized by the said companies to make surveys to ascertain the extent and usage of soap products by the consuming public in order that the soap companies mentioned may present said data to the Federal Government for the purpose of obtaining additional allocations of fats;

That in order to obtain the cooperation of the public in securing this information and the return of box tops and labels from the public, corporate respondent has been authorized to sell sets of aluminumware, dining ware, and silverware which regularly sells for $100 or more at the nominal price of $56.90—$1.90 down-payment to the agent or representative and 11 monthly payments of $5 each to be sent corporate respondent by mail together with a certain number of box tops or labels from said soap corporations' products.

A further practice on the part of the respondents is that of including with some of the aluminumware sold a guarantee certificate reading as follows:

Guarantee Certificate

The Quality Aluminum

COOKWARE SET

Every Modern Housewife Is Proud to Own!
The quality cookware in this Matched Set is manufactured from Superior Quality Pure Heavy Virgin Aluminum by the most advanced precision manufacturing processes. Every piece in this Matched Cookware Set is guaranteed against defective workmanship or materials. . Any part or parts that may prove defective will be replaced.

REPLACEMENT OR REFUND OF MONEY
Guaranteed by Good Housekeeping
IF NOT AS ADVERTISED THEREIN

Approved ALUMINUM COOKWARE is approved by leading home economists, renowned professional chefs and such recognized authorities as the U. S. Public Health Service, U. S. Bureau of Home Economics, the American Medical Association and the American Hospital Association.

LITHO. IN U. S. A.

The Good Houskeeping guarantee stamp used thereon bears a star and is similar in all respects to the guarantee emblem used by said Good Housekeeping Magazine on its stamp of approval for various products. The tableware sold by respondents is described as Czechoslovakian or of Czechoslovakian origin by their salesmen.

After a customer has made her selection of the articles wanted, she is given an envelope in which to enclose box tops or labels taken from the products of the aforesaid mentioned soap companies which are to be sent to respondents monthly or with the last payment. She is also asked to sign a contract wherein she agrees to pay the sum of $56.90 as hereinabove set-out.

The original signed contract is retained by the salesman and the purchaser is given what is called a "customer copy" which does not bear the customer's signature and is labeled "this is your receipt for $1.90." A few days after the merchandise is delivered to the purchaser and before she has had an opportunity to examine her purchase, she is asked to sign a receipt, which is in fact a promissory note wherein she agrees to pay the balance as hereinabove indicated. Before the first payment of $5 is due, the customer receives a statement of account and notice from a savings bank or finance company that it has purchased her contract note and that payments are to be made direct to it.

PAR. 5. The foregoing statements and representations so made by the respondents and their agents and representatives in connection with the sale of their merchandise is grossly exaggerated, false, and misleading. In truth and in fact said corporate respondent is not an advertising agency for Procter & Gamble, Lever Bros., Colgate-Palmolive-Peet, or other major soap manufacturers. Respondents are not engaged in making surveys for said soap companies on the amount of soap consumed or in gathering statistics regarding the sale and distribution of soap in order to be used with the Federal Government for the allocation of additional fats for said soap companies, nor are they representing said soap companies in the obtaining of said soap-box tops or labels from their various soap products. The box tops or wrappers obtained are not to be turned over to the

Federal Government as proof of the volume of soap being used by the consuming public. The respondents are not agents or representatives of said soap companies and have not been authorized to offer high-quality merchandise at nominal cost in exchange for box tops or wrappers. The aluminum cookware sold and distributed by respondents has not been approved or guaranteed by Good Housekeeping Magazine and the manufacturers of the aluminumware so sold by respondents were never authorized by Good Housekeeping Magazine to use the guarantee bearing its seal of approval. The tableware sold by respondents is not of Czechoslovakian origin but is made of cheap non-china material. None of the tableware, silverware or aluminumware sold by the respondents is worth $100 or more per set and is not sold at a nominal price but at the customary price for which articles of a similar nature and construction are sold. The aluminum cookware sold and distributed by the respondents has not been approved by leading home economists, renowned professional chefs and such recognized authorities as the U. S. Public Health Service, U. S. Bureau of Home Economics, the American Medical Association, and the American Hospital Association.

PAR. 6. The use by the respondents of said false and misleading statements and representations in connection with the sale of their products has a tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and induce a substantial number of the public because of such erroneous and mistaken belief to purchase substantial quantities of respondents' said merchandise.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 13, 1949, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of respondents' answer, testimony, and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Com-

mission theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the respondents' answer thereto, the testimony, and other evidence, the recommended decision of the trial examiner and the exceptions thereto by counsel for respondents, and briefs and oral argument of counsel; and the Commission, having duly considered the matter and having disposed of the exceptions to the recommended decision 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, Consumer Sales Corp. is a New York corporation, with its office and principal place of business at 673 Broadway, New York, N. Y. Prior to March 21, 1950, respondents, Julius J. Blumenfeld and Myron J. Collin, with the same address, were the president, and the secretary and treasurer, respectively, of respondent corporation, held all of its capital stock and, with their wives, constituted its board of directors. On March 21, 1950, respondent, Julius J. Blumenfeld, transferred to the respondent corporation his 62½ shares of its common stock and resigned as its president and director. Prior to March 21, 1950, the individual respondents directed the activities of respondent corporation and formulated and controlled its policies and affairs including its sales and advertising policies.

PAR. 2. The respondents are now and for several years last past (with the exception of respondent Julius J. Blumenfeld since March 21, 1950), have been engaged in the promotion and sale of aluminum cookware, dinnerware, silver plate, and glassware, through the medium of door-to-door salesmen, causing the same, when sold, to be transported from their place of business in the State of New York to purchasers thereof in the States of New Jersey and Connecticut and maintaining a course of trade in said products in commerce between the State of New York and the States of New Jersey and Connecticut. Respondents' volume of business in said wares in such commerce has been and is substantial.

PAR. 3. In the conduct of their business, respondents select salesmen to solicit orders from door to door. Respondents furnish these salesmen with a sales kit and a card signed by the respondent corporation authorizing them to solicit and accept orders and to collect de-

posits on such orders. Said sales kit contains, among other materials, order blanks for dinnerware, silver plate, glassware, and alumnium cookware at prices varying from $49.90 to $56.90. Each order blank is entitled in large letters "Special Offer." By the use of such order blanks and of oral statements certain of the respondents' salesmen have represented that they were offering the respondents' merchandise at a special low price. The salesmen have also represented that they were connected in some manner with one or more of the prominent soap-manufacturing companies, that the said companies, in order to prove to the Federal Government that their allocations of fats should be increased, were obtaining soap-box tops from housewives to turn into the Government as proof of their volume of sales, that the corporate respondent had been authorized by the said soap companies to conduct this survey and that, in order to secure the necessary cooperation from housewives in the collection of box tops, it was authorized to make this special offer. The salesmen have also represented the said merchandise as being worth from $20 to $50 more than the price at which it was being offered and that this special offer was made on the condition that the buyer collect and turn in to respondent corporation a certain number of box tops from said soap manufacturers' products. The order signed by the buyer required her to pay the salesman a down payment of $1.90 and to pay the remainder by monthly payments. After a credit check by respondent corporation, the merchandise was delivered to the buyer by respondents' truck. In accordance with respondents' instructions, the delivery man, an employee of respondent corporation, before delivering the merchandise, secured the buyer's signature on a note for the balance due and gave the buyer a brown manila envelope addressed to respondent corporation and requested the buyer to mail the collected box tops to respondent corporation in the envelope so furnished.

PAR. 4. The prices, which respondents have represented as constituting a special offer, were in fact the same as the prices at which they customarily and regularly sold their merchandise. Respondents were not advertising agents for, nor were they connected with or representing in any manner, any soap company. They have not conducted any survey for any soap company, nor have they gathered statistics on soap consumption for use by any soap company in attempting to secure an increased allocation of fats. They have not been authorized by any soap company to collect box tops of their products for any purpose nor have they been authorized by any soap company to offer to sell or sell merchandise at a special low price as a premium for the collection of box tops.

PAR. 5. Respondents contend that their sales representatives are independent contractors and that, therefore, respondents are not responsible for their false representations. Respondents base their contention on the fact that their agents' applications seek to establish an independent contractor relationship, and on the fact that the agents acted independently of respondents in that they were not required to attend sales meetings, were not supervised in their sales, made no sales reports, submitting only a tally of their commissions, and were not reimbursed for expenses. However, by furnishing the salesmen with order forms falsely representing that they were making a special offer, by permitting the salesmen to request purchasers to collect box tops, and by furnishing self-addressed envelopes for the handling of the box tops, respondents actively encouraged and participated in making the said false representations. The evidence shows that the above-described sales approach was the usual and typical sales method of salesmen selling respondents' products. Respondents participated in and received the fruits resulting from such false representations and are responsible for them.

The individual respondents actively participated in the establishment and operation of respondent corporation's sales policies. Respondent, Julius J. Blumenfeld, severed his connection with the respondent corporation on March 21, 1950. This was over 8 months after the issuance of the complaint in this matter. There is no assurance that this respondent may not at some future time under some other trade name, engage in the same practices herein found to be illegal unless he is prohibited from so doing by an order to cease and desist.

PAR. 6. The complaint in this proceeding also alleged that respondents falsely represented that their tableware was of Czechoslovakian origin, that their aluminum cookware was authorized to use Good Housekeeping Magazine's seal of approval, and that the aluminum cookware sold and distributed by respondents was approved by leading home economists, renowned professional chefs, and such recognized authorities as the United States Public Health Service, United States Bureau of Home Economics, the American Medical Association, and the American Hospital Association. The evidence of record is not sufficient to support any of the allegations of the complaint referred to in this paragraph.

PAR. 7. The use by the respondents of the false and misleading statements and representations referred to in paragraphs 3 to 5, inclusive, in connection with the sale of their products, had a tendency and capacity to and did mislead and deceive a substantial portion of

the purchasing public into the erroneous and mistaken belief that such statements and representations were true and to induce a substantial number of the public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' said merchandise.

CONCLUSION

The acts and practices of the respondents as herein found (excluding those referred to in par. 6) were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, respondents' answer thereto, testimony, and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision and exceptions thereto by counsel for respondents and briefs and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Consumer Sales Corp., a corporation, and its officers, agents, representatives, and employees, and the individual respondents, Julius J. Blumenfeld and Myron J. Collin, 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 aluminum, cookware, dinnerware, silverware, or other merchandise, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(1) That the respondents or any of them are connected with or represent in any manner any soap manufacturer or any other company or organization unless such is the fact.

(2) That the respondents or any of them are making or conducting a survey.

(3) That the purchasers of the said merchandise are being given a reduced price for such merchandise or any other valuable consideration as a premium or reward for their collection of box tops, cooperation in furnishing information or participation in any other similar project or activity.

(4) That said merchandise is being sold at a special price when the price at which it is sold is the usual and customary price at which respondents sell such merchandise in the ordinary course of their business.

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

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ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.[1]

BRISTOL-MYERS CO. Complaint, March 16, 1950. Order, July 5, 1950. (Docket 5752.)

Charge: Advertising falsely or misleadingly as to qualities, properties, or results, scientific or relevant facts, and safety of product; in connection with the manufacture and sale of a drug designated Resistab.

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 Bristol-Myers Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Bristol-Myers Co. is a corporation organized and doing business under the laws of the State of Delaware with an office and principal place of business at 630 Fifth Avenue, city and State of New York.

PAR. 2. Respondent is now, and has been for more than 3 months last past, engaged in the business of manufacturing and selling a drug, as "drug" is defined in the Federal Trade Commission Act.

The said drug is designated by respondent as Resistab and is sold in tablet form, each tablet containing as its only active ingredient 25 milligrams of thonzylamine hydrochloride. The directions for use in connection with colds are as follows:

Directions for Use for Adults or Children*

How to relieve cold symptoms fast—At the "first sign" of a cold—running nose, dry, scratchy throat, sneezing, take one Resistab tablet. Follow with one tablet immediately before each meal and at bedtime up to three or four days. Do not exceed recommended dosage. If any drowsiness follows the use of this product, do not drive or operate machinery.

*For dosage of children under 6, consult your physician.

Respondent causes the said drug to be transported from the State in which it is manufactured to purchasers thereof located in other States

[1] During the period covered by this volume, the case of Leo Lichtenstein, et al., trading as Harlich Manufacturing Co., docket 3947, was closed on October 24, 1950, nunc pro tunc as of November 6, 1943, on which date said case, and the case in the matter of Leo Lichtenstein, et al., doing business as Loomis Manufacturing Co., etc., docket 4879 were consolidated and amended complaint, which bore docket No. 4879 was issued, and disposed of through findings and cease and desist order on June 30, 1950, 46 F. T. C. 984.

The case of Borden Novelty Co., Docket 5795, which involved alleged violation of a commercial standard adopted in 1933 by the voluntary participants in a conference to standardize gold-filled or gold-surfaced jewelry other than watches, through respondent's alleged improper marking of certain gold-covered watch bands as "gold-filled" and "gold-filled tops", and in which the Commission on December 3, 1951, announced the fruition on May 16, 1951 of an initial decision dismissing said complaint, will be found fully reported as of the later date in the following volume.

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 the said drug in commerce between and among the various States of the United States, and in the District of Columbia. Respondent's volume of business in such commerce is and has been substantial.

PAR. 3. In the course and conduct of its business, respondent, subsequent to November 1, 1949, has disseminated, and caused the dissemination of, certain advertisements concerning Resistab by the United States mails, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, its purchase, including but not limited to advertisements in the Washington, D. C., Times-Herald issue of December 1, 1949, and January 25, 1950; and respondent has disseminated and caused the dissemination of advertisements including, but not limited to, those referred to above, for the purpose of inducing, and which were likely to induce, directly or indirectly, its purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the statements and claims contained in said advertisements are the following:

Kills colds in one day.

Stop colds fast.

For in clinical tests, those who used Resistab at once got completely rid of their colds in an average of one day.

How Resistab can stop your cold in one day! At the first sign of a cold (or on exposure to someone else's cold) take one Resistab immediately. Don't wait! Then before each meal and at bedtime take another Resistab.

—Resistab to guard my family against colds.

At the first sign of a cold, take one Resistab immediately! Don't wait! For Resistab's spectacular ability to stop colds fast depends on use during early stages of cold. Before each meal—and at bedtime—take another Resistab. Taken this way Resistab strengthens your body's natural defenses against cold.

Resistab is absolutely safe when used as recommended.

PAR. 5. Through the use of the advertisements containing the statements and representations set forth in paragraph 4, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication:

(1) That Resistab is an adequate and competent treatment for and will cure the common cold.

(2) That Resistab is an adequate and competent treatment for and will cure all the manifestations of the common cold.

(3) That Resistab will protect the user against invasion by the common cold infection and against the development of the manifestations thereof.

(4) That in persons who have a common cold infection, and who, when it first becomes manifest or in the early stages of such manifestations, take Resistab, such manifestations will not become more severe, other manifestations will not develop, and all manifestations will be cured.

(5) That by taking Resistab the body's natural defenses against cold infections and their manifestations will be rendered more effective.

(6) That Resistab, taken as directed, is always safe, and is incapable of doing injury or harm to the user.

PAR. 6. The advertisements referred to herein 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:

(1) Resistab is neither a cure nor an adequate or competent treatment for the common cold.

(2) Resistab is neither a cure nor an adequate or competent treatment for the manifestations of the common cold.

(3) Resistab will not protect the user against invasion by the common cold infection nor against the manifestations thereof.

(4) The use of Resistab by persons who have a common cold infection, when such infection first becomes manifest or in the early stages of such manifestations, will not prevent such manifestations from becoming more severe, prevent the development of other manifestations, or result in a cure of all such manifestations.

(5) The use of Resistab in no way contributes to the operation of the defense mechanism of the body against its infection by the cold virus, against infection which has occurred, or against the manifestations of a cold infection.

(6) Resistab, taken as directed, may be unsafe, and produce injury or harm to the user.

PAR. 7. By including in the advertisements referred to herein the representations and claims set forth above, respondent has represented directly and by implication that it has knowledge and reliable information of facts which are sufficient to constitute adequate proof of the correctness of, and are an adequate basis for, the said representations concerning the prophylatic and therapeutic value of Resistab in connection with the common cold.

PAR. 8. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact respondent does not have knowledge and reliable information of facts which are sufficient to constitute adequate proof of the correctness of, or an adequate factual basis for, the representations and claims referred to herein

concerning the prophylactic and therapeutic value of Resistab in connection with the common cold.

PAR. 9. The use by respondent of the said advertisements has had the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained therein and referred to herein were true, and into the purchase of substantial quantities of said drug by reason of said erroneous and mistaken belief.

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

Complaint dismissed without prejudice by the following order:

It appearing to the Commission that the respondent, Bristol-Myers Co., has executed and tendered to the Commission an offer of settlement of this proceeding in the form of a proposed stipulation and agreement; and

It further appearing that under the terms of said stipulation and agreement the respondent agrees, among other things, not to disseminate or cause to be disseminated, in commerce, any advertisement which represents, directly or by implication, that its product, Resistab, will cure, prevent, abort, eliminate, stop, or shorten the duration of, the common cold: *Provided, however*, That nothing therein shall prevent the respondent from representing (*a*) that the use of the product relieves or checks and, in many cases, stops the symptoms or manifestations of the common cold, such as sneezing, nasal congestion, simple throat coughs, watering eyes, or watery or mucous discharge from the nose, or (*b*) that the product is safe if taken in accordance with the directions on the label; and

It further appearing that under the terms of said stipulation and agreement the Commission's approval thereof does not in any way prejudice the right of the Commission to resume formal proceedings against the respondent if at any time in the future such action may be deemed warranted; and

The Commission being of the opinion that in the circumstances the public interest will be best served by the settlement of this proceeding through the approval of the proposed stipulation and agreement:

It is ordered, That the proposed stipulation and agreement executed by the respondent on June 8, 1950, be approved and accepted.

It is further ordered, That the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Com-

mission to institute a new proceeding against the respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

Before *Mr. Earl J. Kolb*, trial examiner.

Mr. Randolph W. Branch and *Mr. Edward F. Downs* for the Commission.

Mr. Isaac W. Diggs, of New York City, for respondent.

ANAHIST CO., INC. Complaint, March 16, 1950. Order, July 5, 1950. (Docket 5753.)

Charge: Advertising falsely or misleadingly as to qualities, properties, or results, scientific or relevant facts, safety, and tests of product; in connection with the sale of a drug designated Anahist.

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 Anahist Co., Inc., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Anahist Co., Inc., is a corporation organized and doing business under the laws of the State of New York and having an office and principal place of business at Yonkers, N. Y.

PAR. 2. Respondent is now, and has been for more than 3 months last past, engaged in the business of selling a drug, as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondent for the said drug, its formula and the directions for use thereof are as follows:

Designation: Anahist

Formula: Each tablet contains:

	Grains
Thonzylamine Hydrochloride	0.3858
Amijel Powder	.126
Potato starch powder	.96
Terra alba	2.529

Directions: For adults or children: one tablet before each meal and at bedtime. Do not use in excess of recommended dosage.

Respondent causes the said drug to be transported from its place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in the said drug in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in such commerce is and has been substantial.

PAR. 3. In the course and conduct of its business, respondent, subsequent to September 26, 1949, has disseminated and caused the dissemination of, certain advertisements concerning Anahist by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, its purchase, including, but not limited to, advertisements in the Washington, D. C., Evening Star, issue of January 25, 1950, Washington, D. C., Times Herald, issue of November 17, 1949, various newspapers of general circulation, issues of November 25, 1949, Look magazine, issue of December 6, 1949, Omaha Nebr., Evening World Herald, issue of November 9, 1949, Atlanta, Ga., Constitution, issue of November 27, 1949, New York, N. Y., Sunday News, issue of December 4, 1949, Drug Topics magazine, issue of November 21, 1949, San Antonio, Tex., Express, issue of December 2, 1949, Rochester, N. Y., Times-Union, issue of December 13, 1949, and circulars in the form of large telegrams addressed to "Mr. and Mrs. America"; and respondent has disseminated and caused the dissemination of advertisements including, but not limited to, those referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, its purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the statements and claims contained in the said advertisements are the following:

Antihistamine—a clinical experiment by the U. S. Navy Medical Corps. Results were amazing. Marked relief of symptoms! Much shorter colds than usual! Many colds literally "nipped in the bud."

Although this same antihistamine had been prescribed by doctors for hay fever, allergies, and colds in increasing volume for more than three preceding years, it was not until September 2, 1949, that its sale to families everywhere without prescription was made possible.

The common cold usually begins as an allergic response which causes an outpouring of histamine into the cells of your nose and throat. This produces cold symptoms and weakens your natural defense against secondary bacterial invaders. But Anahist successfully combats the destructive histamine.

Medical research indicates that the common cold is initially an allergic response caused by the cold virus.

Anahist—keep intact your natural defenses against colds and their complications.

Anahist—helps maintain your natural defense against the common cold and its complications.

—by using Anahist—avoid—secondary complications and the danger of sinusitis, bronchitis, pneumonitis, or other serious ills resulting.

Furthermore by controlling the cold, Anahist helps to prevent secondary symptoms such as nasal congestion, coughing, fever, and muscular aches and pains due to colds.

Prevents sneezing, coughing, and running noses.

—this new antihistamine's effectiveness in eliminating the misery of colds; sneezing, running nose, watering eyes, coughing, and other symptoms that have plagued cold sufferers for centuries.

New Miracle Drug stops cold symptoms in a single day.

Now say Goodbye to colds with Anahist.

However, there is clinical evidence that in any phase of the common cold Anahist may reduce the complications and reduce the severity even after there has been invasion of the mucous membrane by secondary invaders.

The prophylactic administration of Anahist will in a large percentage of cases, prevent the incidence of the common cold.

Clinically proved effective protection against colds.

—Anahist for colds.

Arthur came home with a cold—Anahist. Next day Arthur hadn't a trace of a cold.

Anahist—dosage clinically proved effective for colds.

—wonderful results in treating colds.

Winning the 'cold' war. Americans suffer 500,000,000 colds a year—Yet until Anahist was made available, the public had no effective answer to this problem.

Yes, Anahist is safe—when taken as directed on the package.

Effectiveness without troublesome side reactions.

PAR. 5. Through the use of the advertisements containing the statements and representations set forth in paragraph 4, and others similar thereto not specifically set out herein, respondent has represented directly and by implication that:

(1) A clinical experiment was conducted by the United States Navy Medical Corps for the purpose of testing and determining the value of antihistamine drugs in averting or treating the common cold.

(2) That the so-called clinical experiment demonstrated that antihistamine drugs afford substantial relief to the manifestations of, substantially reduce the duration of, and abort the common cold and prevent the development of the common cold with its manifestations.

(3) That prior to September 2, 1949, the antihistamine contained in Anahist was prescribed by physicians for hay fever, allergies and colds in a dosage not significantly different from that which is furnished by Anahist, taken as directed.

(4) That the initial manifestations of a common cold are caused by the presence of excessive or abnormal amounts of histamine in the tissues of the nose and throat.

(5) That the initial manifestations of a cold are an "allergic response" to the presence of a cold virus.

(6) That by taking Anahist the natural defenses against colds, their manifestations and secondary infections and complications incident thereto will be maintained and these conditions averted.

(7) That the use of Anahist will prevent the manifestations of the common cold from making their appearance, and if they have appeared, will cure them.

(8) That by taking Anahist, colds will be averted.

(9) That Anahist will cure the common cold.

(10) That Anahist is an adequate and competent treatment for the common cold and for its manifestations.

(11) That Anahist, taken as directed, is always safe and is incapable of doing injury or harm to the user, and will produce no side reactions.

PAR. 6. The advertisements referred to herein 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—

(1) The so-called clinical experiment to which respondent refers was not conducted by the United States Navy Medical Corps.

(2) That from the so-called clinical experiment as reported in medical publications it cannot be validly concluded that antihistamine drugs afford substantial relief to the manifestations of, substantially reduce the duration of, or in many instances cure or prevent the development of the manifestations of the common cold.

(3) The usual dosage of antihistamine drugs prescribed by physicians in cases where they are indicated is far greater than that supplied by Anahist taken as directed.

(4) The initial manifestations of a common cold including sneezing, coughing, and discharge from the nose are not due to the presence of excessive amounts of histamine in the tissues of the nose and throat.

(5) The initial manifestations of a common cold, including sneezing, coughing, and discharge from the nose are the almost universal responses to the common cold infection and are in no sense an allergic response or a manifestation of an allergy.

(6) The use of Anahist in no way contributes to the operation of the defense mechanism of the body against its invasion by the cold virus; the body has no natural defense against the manifestations of the common cold except its ability to overcome the causative infection, and this will be in no way assisted by the use of Anahist; the use of Anahist in no way contributes to operation of the defense mechanism of the body against secondary infections or complications consequent to a common cold, nor will it avert them.

(7) The use of Anahist will neither prevent the appearance of, nor cure, the manifestations of the common cold.

(8) The use of Anahist will not avert colds.

(9) Anahist will not cure the common cold.

(10) Anahist is not an adequate or competent treatment for the common cold or for its manifestations.

(11) Anahist, taken as directed, may be unsafe, or may produce side reactions, injury, or harm to the user.

PAR. 7. By including in the advertisements referred to herein the representations and claims set forth above, respondent has represented, directly and by implication, that it has knowledge and reliable information of facts which are sufficient to constitute adequate proof of the correctness of, and an adequate basis for, the said representations and claims concerning the role of histamine in the common cold and the prophylactic and therapeutic value of Anahist in connection with the common cold.

PAR. 8. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, respondent does not have knowledge and reliable information of facts which are sufficient to constitute adequate proof of the correctness of, or an adequate factual basis for, the representations and claims referred to herein concerning the role of histamine in the common cold or the prophylactic or therapeutic value of Anahist in connection with the common cold.

PAR. 9. The use by respondent of the said advertisements has had the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained therein and referred to herein were true, and into the purchase of substantial quantities of said drug by means of said erroneous and mistaken belief.

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

Complaint dismissed without prejudice by the following order:

It appearing to the Commission that the respondent, Anahist Co., Inc., has executed and tendered to the Commission an offer of settlement of this proceeding in the form of a proposed stipulation and agreement; and

It further appearing that under the terms of said stipulation and agreement the respondent agrees, among other things, not to disseminate or cause to be disseminated, in commerce, any advertisement which represents, directly or by implication, that its product, Anahist, will cure, prevent, abort, eliminate, stop, or shorten the duration of, the common cold: *Provided, however*, That nothing therein shall pre-

vent the respondent from representing (*a*) that the use of the product relieves or checks and, in many cases, stops the symptoms or manifestations of the common cold, such as sneezing, nasal congestion, simple throat coughs, watering eyes, or watery or mucous discharge from the nose, or (*b*) that the product is safe if taken in accordance with the directions on the label; and

It further appearing that under the terms of said stipulation and agreement the Commission's approval thereof does not in any way prejudice the right of the Commission to resume formal proceedings against the respondent if at any time in the future such action may be deemed warranted; and

The Commission being of the opinion that in the circumstances the public interest will be best served by the settlement of this proceeding through the approval of the proposed stipulation and agreement:

It is ordered, That the proposed stipulation and agreement executed by the respondent on June 8, 1950, be approved and accepted.

It is further ordered, That the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding against the respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

Before *Mr. Earl J. Kolb*, trial examiner.

Mr. Randolph W. Branch and *Mr. Edward F. Downs* for the Commission.

Dwight, Royall, Harris, Koegel & Caskey, of New York City, for respondent.

WHITEHALL PHARMACAL CO. Complaint, March 20, 1950. Order, July 5, 1950. (Docket 5754.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results, scientific or relevant facts, and tests of product; in connection with the manufacture and sale of a drug designated Kriptin.

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 Whitehall Pharmacal Co., a corporation, hereinafter referred to as respondent has violated the provisions of the Federal Trade Commission 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 Whitehall Pharmacal Co. is a corporation organized and doing business under the laws of the State of

Illinois, and having an office and principal place of business at 22 East Fortieth Street, city and State of New York.

PAR. 2. Respondent is now, and has been for more than 3 months last past, engaged in the business of manufacturing and selling a drug, as "drug" is defined in the Federal Trade Commission Act.

The said drug is designated by respondent as Kriptin. It is sold in tablet form, each tablet containing approximately 25 milligrams of Pyranisamine Maleate as its sole active ingredient. The directions for its use in connection with colds are as follows:

For colds: Take 1 tablet at the very first indication of a cold and then 1 every 3 or 4 hours, but not more than 4 in any 24 hours. Continue treatment for 2 or 3 days.

For children: Nine years of age and over—same dosage as above. Six to nine years, ½ tablet 4 times a day. Under 6 years—consult your physician for dosage.

Do not use in excess of recommended dosage. If drowsiness occurs, do not drive your car, but continue to take Kriptin tablets only while remaining at home.

Respondent causes the said drug to be transported from the State in which it is manufactured to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in the said drug in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in such commerce is and has been substantial.

PAR. 3. In the course and conduct of its business, respondent, subsequent to November 1, 1949, has disseminated, and caused the dissemination of, certain advertisements concerning Kriptin by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, its purchase, including but not limited to, advertisements in the Washington, D. C., Evening Star, issue of December 12, 1949, and Washington, D. C., Post issue of January 24, 1950, and radio continuities broadcast by the National Broadcasting Co. on December 7, 1949, and respondent has disseminated, and caused the dissemination of, advertisements including, but not limited to, those referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, its purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the statements and claims contained in the said advertisements are the following:

Kriptin—Kills Colds
Stops colds at the start

Kill a cold at the very start—kill it completely—not in days but in hours
Doesn't just "ease" the symptoms, but kills the cold completely
Kriptin tablets taken at the first sign of a cold, can stop the attack like magic! The cold symptoms vanish—you stay on the job
No more sneezing—stopped up nose—aches and pains—no more miserable days in bed trying to "outlast" a cold
Remember, for the most spectacular results—to kill the cold completely—take Kriptin at the very first sneeze, chill or sniffle
For in clinical tests by the United States Navy Kriptin proved remarkably effective and efficient—

PAR. 5. Through the use of the advertisements containing the statements and representations set forth in paragraph 4, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication:

(1) That Kriptin is an adequate and competent treatment for and will cure the common cold;

(2) That Kriptin is an adequate and competent treatment for and will cure all the manifestations of the common cold;

(3) That in persons who have a common cold infection, and who, when it first becomes manifest, take Kriptin, such manifestations will not become more severe, other manifestations will not develop, and all manifestations will be cured;

(4) That Kriptin has been tested by the United States Navy.

PAR. 6. The advertisements referred to herein 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:

(1) Kriptin is neither a cure nor an adequate or competent treatment for the common cold;

(2) Kriptin is neither a cure nor an adequate or competent treatment for the manifestations of the common cold;

(3) The use of Kriptin by persons who have a common cold infection when such infection first becomes manifest, will not prevent such manifestations from becoming more severe, prevent the development of other manifestations, or result in a cure of all such manifestations;

(4) Kriptin has not been tested by the United States Navy.

PAR. 7. By including in the advertisements referred to herein the representations and claims set forth above, respondent has represented, directly and by implication, that it has knowledge and reliable information of facts which are sufficient to constitute adequate proof of the correctness of, and an adequate basis for, the said representations and claims concerning the therapeutic value of Kriptin in connection with the common cold.

PAR. 8. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact respondent does not have

knowledge and reliable information of facts which are sufficient to constitute adequate proof of the correctness of, or an adequate factual basis for, the representations and claims referred to herein concerning the therapeutic value of Kriptin in connection with the common cold.

PAR. 9. The use by respondent of the said advertisements has had the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained therein and referred to herein were true, and into the purchase of substantial quantities of said drug by reason of said erroneous and mistaken belief.

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

Complaint dismissed without prejudice by the following order:

It appearing to the Commission that the respondent, Whitehall Pharmacal Co., has executed and tendered to the Commission an offer of settlement of this proceeding in the form of a proposed stipulation and agreement; and

It further appearing that under the terms of said stipulation and agreement the respondent agrees, among other things, not to disseminate or cause to be disseminated, in commerce, any advertisement which represents, directly or by implication, that its product, Kriptin, will cure, prevent, abort, eliminate, stop, or shorten the duration of, the common cold: *Provided, however*, That nothing therein shall prevent the respondent from representing (*a*) that the use of the product relieves or checks and, in many cases, stops the symptoms or manifestations of the common cold, such as sneezing, nasal congestion, simple throat coughs, watering eyes, or watery or mucous discharge from the nose, or (*b*) that the product is safe if taken in accordance with the directions on the label; and

It further appearing that under the terms of said stipulation and agreement the Commission's approval thereof does not in any way prejudice the right of the Commission to resume formal proceedings against the respondent if at any time in the future such action may be deemed warranted; and

The Commission being of the opinion that in the circumstances the public interest will be best served by the settlement of this proceeding through the approval of the proposed stipulation and agreement:

It is ordered, That the proposed stipulation and agreement executed by the respondent on June 7, 1950, be approved and accepted.

It is further ordered, That the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding against the respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

Mr. Randolph W. Branch and *Mr. Edward F. Downs* for the Commission.

Mr. Gilbert S. McInerny and *Ide & Haigney*, of New York City, for respondent.

UNION PHARMACEUTICAL CO., INC. Complaint, April 7, 1950. Order, July 5, 1950. (Docket 5763.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results, scientific or relevant facts, and safety of product; in connection with the sale of a drug designated Inhiston.

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 Union Pharmaceutical Co., Inc., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Union Pharmaceutical Co., Inc., is a corporation organized, existing and doing business under the laws of the State of New Jersey, having its office and principal place of business at 400 Bloomfield Avenue, Montclair, N. J.

PAR. 2. Respondent is now, and for more than 3 months last past has been, engaged in the business of selling, among other things, a certain drug, as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondent for the said drug, its formula and directions for use are as follows:

Designation: Inhiston	*Mg. per tablet*
Formula:	
1-phenyl-1-(2-pyridyl)-3-dimethylaminopropane	10.31
TriCalcium Phosphate	98.80
Magnesium Carbonate U. S. P	77.32
Gelatin	14.00
Corn Starch	26.00
Talcum Powder	2.32
Sodium Sterate	.53
Dupanol, M. E	.35

Directions: At the first sign of sneezing or sniffles due to a cold—take 2 Inhiston tablets immediately. Follow with one tablet not oftener than every

four hours until symptoms are relieved, but not over 96 hours. Children 6–12: One Inhiston tablet immediately; one-half tablet thereafter as above.

IMPORTANT: Inhiston tablets are most effective when taken *within the first hour* of a cold's appearance. Carry Inhiston with you at all times. CAUTION: If this drug makes you drowsy at all, do not drive, or operate machinery, and do not take except while staying at home. Do not exceed recommended dosage.

Respondent causes the said drug to be transported from its said place of business in the State of New Jersey to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in the said drug in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in such commerce is, and has been, substantial.

PAR. 3. In the course and conduct of its business, respondent, subsequent to November 1, 1949, has disseminated and caused the dissemination of certain advertisements concerning Inhiston by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, its purchase including, but not limited to, advertisements in the Washington, D. C., Times Herald, issue of November 7, 1949, the Los Angeles, Calif., Times of the same date, the Chicago, Ill., Daily Tribune of the same date, Trained Nurse Magazine of the December 1949 issue, and radio continuities broadcast on or about January 24, 1950; and respondent has disseminated and caused the dissemination of advertisements including, but not limited to, those referred to above for the purpose of inducing and which were likely to induce, directly or indirectly, its purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the statements and claims contained in the said advertisements are the following:

After centuries of struggle medical science can

STOP

COLDS.

Man has at last won his first great victory over the common cold * * * 1949 will be an historic year in the annals of medicine * * * this is the year of Inhiston, the antihistamine.

But now you have Inhiston! And now you can at last take real hope—hope of a winter free from colds, by using Inhiston as directed, at the very first sign of a cold.

Colds can be stopped, in the great majority of cases, if antihistamine treatment is begun within an hour after appearance of the first cold symptom.

How *you* can help eliminate colds with Inhiston.

If you now have a cold, take Inhiston immediately to shorten the duration of the cold and reduce the sneezing, sniffling and coughing. That way your family runs less risk of catching your cold.

* * * the Inhiston formula is actually twice as effective in antihistamine action as any other formula offered for public sale.

Inhiston, therefore, is a truly effective antihistaminic for control of the common cold. When taken at the first sign of a cold it can abort the cold.

* * * the reduction of sneezing and coughing usually effected, regardless of the duration of the cold itself, reduces the spread of the common cold by eliminating droplet exposure.

Remember—in scientific research where antihistamine treatment began within an hour of the first cold symptom, the great majority of patients found that all signs of a cold disappeared!

And, Inhiston is safe when used as directed.

PAR. 5. Through the use of the advertisements containing the statements and representations set out in paragraph 4 above, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication:

(1) That Inhiston is a competent and effective treatment for, and will cure, the common cold.

(2) That by using Inhiston as directed, one can expect to prevent colds and to go through the winter without a cold.

(3) That one suffering from a cold can shorten its duration and reduce the symptoms of coughing, sniffling, and sneezing by taking Inhiston, thereby reducing the spread of the cold to others.

(4) That the antihistamine action of Inhiston is effective in curing and preventing colds.

(5) That Inhiston is safe when used as directed.

PAR. 6. The advertisements referred to herein 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:

(1) Inhiston is not a competent and effective treatment for, and will not cure, the common cold.

(2) Inhiston used as directed will not prevent a cold and will not enable one to go through the winter without a cold.

(3) The use of Inhiston will not result in shortening the duration of a cold and any reduction in sneezing, sniffling, or coughing resulting from its use for a cold will be relatively insignificant and insufficient to exert any influence in preventing or controlling the spread of the cold to others.

(4) The antihistamine action of Inhiston is not effective in curing or preventing colds.

(5) Inhiston, when used as directed, may be unsafe and result in injury or harm to the user.

PAR. 7. By including in the advertisements referred to herein the representations and claims set out above, respondent has represented,

directly and by implication, that it has knowledge and reliable information of facts which are sufficient to constitute adequate proof of the correctness of, and an adequate basis for, the said representations and claims concerning the therapeutic value of Inhiston in connection with the common cold.

PAR. 8. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, respondent does not have knowledge and reliable information of facts which are sufficient to constitute adequate proof of the correctness of, or an adequate factual basis for, the representations and claims referred to herein concerning the therapeutic value of Inhiston in connection with the common cold.

PAR. 9. The use by respondent of the said advertisements has had the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained therein and referred to herein were true and into the purchase of substantial quantities of said drug by reason of said erroneous and mistaken belief.

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

Complaint dismissed without prejudice by the following order:

It appearing to the Commission that the respondent, Union Pharmaceutical Co., Inc., has executed and tendered to the Commission an offer of settlement of this proceeding in the form of a proposed stipulation and agreement; and

It further appearing that under the terms of said stipulation and agreement the respondent agrees, among other things, not to disseminate or cause to be disseminated, in commerce, any advertisement which represents, directly or by implication, that its product, Inhiston, will cure, prevent, abort, eliminate, stop, or shorten the duration of, the common cold: *Provided, however*, That nothing therein shall prevent the respondent from representing (*a*) that the use of the product relieves or checks and, in many cases, stops the symptoms or manifestations of the common cold, such as sneezing, nasal congestion, simple throat coughs, watering eyes, or watery or mucous discharge from the nose, or (*b*) that the product is safe if taken in accordance with the directions on the label; and

It further appearing that under the terms of said stipulation and agreement the Commission's approval thereof does not in any way

prejudice the right of the Commission to resume formal proceedings against the respondent if at any time in the future such action may be deemed warranted; and

The Commission being of the opinion that in the circumstances the public interest will be best served by the settlement of this proceeding through the approval of the proposed stipulation and agreement:

It is ordered, That the proposed stipulation and agreement executed by the respondent on June 7, 1950, be approved and accepted.

It is further ordered, That the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding against the respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

Mr. R. P. Bellinger and *Mr. George M. Martin* for the Commission.

Mr. Irving H. Jurow, of Montclair, N. J., *O'Connor & Farber*, of New York City, and *Becker, Maguire & Reich*, of Washington, D. C., for respondent.

THE GROVE LABORATORIES, INC. Complaint, May 1, 1950. Order, July 5, 1950. (Docket 5772.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results, scientific or relevant facts, safety of product, and tests; in connection with the sale of a drug designated Antamine.

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

PARAGRAPH 1. Respondent the Grove Laboratories, Inc., is a Delaware corporation which has its office and principal place of business at 2630–2652 Pine Street, St. Louis, Mo.

PAR. 2. Respondent is now, and for more than 3 months last past has been, engaged in the business of selling, among other things, a certain drug, as "drug" is defined in the Federal Trade Commission Act.

Respondent designates the said drug as Antamine. It is sold in the form of a tablet, each tablet containing approximately 25 milligrams of pyranisamine maleate as its sole active ingredient. The directions for use with respect to colds are as follows:

Adults and Children over 12 years: Take one tablet immediately at first sign of distress. Then take one tablet after each meal and one at bedtime. Do not exceed four tablets a day.

For Children 5 to 12 years: ½ tablet after each meal and ½ tablet at bedtime. Do not exceed 4 half tablets per day.

Keep within recommended dosage. If drowsiness should occur, do not drive and take Antamine only at home.

Respondent causes the said drug to be transported from its place of business in the State of Missouri to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in the said drug in commerce between and among the various States of the United States and the District of Columbia. Respondent's volume of business in such commerce is and has been substantial.

PAR. 3. In the course and conduct of its business, respondent, subsequent to November 1, 1949, has disseminated, and caused the dissemination of, advertisements concerning its said preparation Antamine by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, its purchase, including but not limited to advertisements in the Washington, D. C., Times-Herald of December 6, 1949, the Washington, D. C., Evening Star of December 7, 1949, and December 13, 1949, the New York Sun of December 13, 1949; also as a Dealer Cooperative Newspaper ad in December 1949; and in radio continuities broadcast over the Mutual network on or about December 4, 1949, and February 5, 1950; and respondent has disseminated, and caused the dissemination of, advertisements including, but not limited to, those referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, its purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the statements and claims contained in the said advertisements are the following:

SENSATIONAL NEW DISCOVERY KILLS COLDS IN HOURS.

The new "wonder drug" you've read so much about! Tested and perfected by Navy doctors, the Antamine formula is safe, amazingly effective. In clinical tests 90% of colds were stopped in hours.

Antamine kills colds' sneezes, sniffles, as no other type drug can.

Just think of a winter without a single cold for you—or any one in your family! How wonderful to go from now until June without a sneeze or sniffle in your home.

Now for millions—no lost work or wages! No days out of school.

Don't ever spread your cold to your family. Take Antamine promptly at first sign of a cold.

Compounded after amazingly successful anti-histamine tests, as reported in Time Magazine, Reader's Digest, The U. S. Naval Medical Bulletin.

PAR. 5. Through the use of the advertisements containing the statements and representations set out in paragraph 4 above, and others similar thereto not specifically set out herein, respondent represented, directly and by implication:

(1) That Antamine is a competent and effective treatment for and will cure the common cold;

(2) That Antamine has been tested and perfected by Navy doctors, and is always safe to use, and clinical tests have resulted in colds being cured in 90 percent of cases;

(3) That Antamine will stop the sneezes and sniffles accompanying a cold;

(4) That the use of Antamine will prevent colds, sneezes, and sniffles, and will eliminate the loss of work days and school days due to colds;

(5) That by taking Antamine at the first sign of a cold one can prevent its spread to others.

PAR. 6. The advertisements referred to herein 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:

(1) Antamine is not a competent and effective treatment for and will not cure the common cold;

(2) Antamine has not been tested and perfected by Navy doctors, it is not always safe to use, and may be harmful to some users, and no reliable properly controlled tests with Antamine have resulted in curing 90 percent or any other appreciable proportion of colds;

(3) Antamine will not stop the sneezes and sniffles accompanying a cold;

(4) The use of Antamine will not prevent colds nor their accompanying sneezes and sniffles and will exert no influence upon the number of work days or school days otherwise lost by reason of colds;

(5) Antamine taken at any time will not prevent the spreading of colds.

PAR. 7. By including in the advertisements referred to herein the representations and claims set forth above, respondent has represented, directly and by implication, that it has knowledge and reliable information of facts which are sufficient to constitute adequate proof of the correctness of, and an adequate basis for, the said representations and claims concerning the role of histamine in the common cold and the prophylactic and therapeutic value of Antamine in connection with the common cold.

PAR. 8. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, respondent does not have knowledge and reliable information of facts which are sufficient to constitute adequate proof of the correctness of, or an adequate factual basis for, the representations and claims referred to herein concerning the role of histamine in the common cold or the prophylactic or therapeutic value of Antamine in connection with the common cold.

PAR. 9. The use by respondent of the said advertisements has had the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained therein and referred to herein were true, and into the purchase of substantial quantities of said drug by reason of said erroneous and mistaken belief.

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

Complaint dismissed without prejudice by the following order:

It appearing to the Commission that the respondent, the Grove Laboratories, Inc., has executed and tendered to the Commission an offer of settlement of this proceeding in the form of a proposed stipulation and agreement; and

It further appearing that under the terms of said stipulation and agreement the respondent agrees, among other things, not to disseminate or cause to be disseminated, in commerce, any advertisement which represents, directly or by implication, that its product, Antamine, will cure, prevent, abort, eliminate, stop, or shorten the duration of, the common cold: *Provided, however*, That nothing therein shall prevent the respondent from representing (*a*) that the use of the product relieves or checks and, in many cases, stops the symptoms or manifestations of the common cold, such as sneezing, nasal congestion, simple throat coughs, watering eyes, or watery or mucous discharge from the nose, or (*b*) that the product is safe if taken in accordance with the directions on the label; and

It further appearing that under the terms of said stipulation and agreement the Commission's approval thereof does not in any way prejudice the right of the Commission to resume formal proceedings against the respondent if at any time in the future such action may be deemed warranted; and

The Commission being of the opinion that in the circumstances the public interest will be best served by the settlement of this proceeding through the approval of the proposed stipulation and agreement:

It is ordered, That the proposed stipulation and agreement executed by the respondent on June 6, 1950, be approved and accepted.

It is further ordered, That the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding against the respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

Mr. R. P. Bellinger and *Mr. George M. Martin* for the Commission.

Rogers & Woodson, of Chicago, Ill., and *Mr. William Blum, Jr.*, of Washington, D. C., for respondent.

EDUCATIONAL TRAINING SERVICE, INC., SYDNEY A. WARSOWE, MORTON WIENER, AND SOPHIE MURAWSKI. Complaint, December 1, 1949. Order, July 17, 1950. (Docket 5714.)

Charge: Misrepresenting as to Government connection, job guarantee or employment, refund, special or limited offers, and opportunities in product or service and securing execution of contracts misleadingly; in connection with the sale of correspondence courses for United States Civil Service.

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 Educational Training Service, Inc., a corporation, and Sydney A. Warsowe, Morton Wiener, and Sophie Murawski, 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 its charges in that respect as follows:

PARAGRAPH 1. Educational Training Service, Inc., is a corporation organized and existing under the laws of the State of New Jersey with its principal office and place of business in the Smith-Austermuhl Building in the city of Camden, State of New Jersey. Respondents Sydney A. Warsowe, Morton Wiener, and Sophie Murawski are president and treasurer, secretary, and vice president, respectively, of said corporation, with their principal place of business at the address of said corporation. Said individual respondents as such officers formulate, control, and execute all of the business policies and practices of said corporation.

PAR. 2. For more than 2 years last past respondents have been and are now engaged in the sale and distribution in commerce between and among the various States of the United States and the District of Columbia of courses of study and instruction intended for preparing students thereof for examination for certain Civil Service positions under the United States Government, which said courses are pursued by correspondence through the medium of the United States mail. Respondents in the course and conduct of their said business cause said courses of study and instruction to be transported from said place of business in the State of New Jersey into and through States of the United States other than New Jersey and the District of Columbia to purchasers thereof in such other States. There has been at all times mentioned herein a course of trade in said courses of instruction so sold and distributed by respondents in commerce between and among the various States of the United States. The business done by respondents as aforesaid has been and is substantial.

PAR. 3. In the course and conduct of said business and in connection with the sale of said course of study and instruction, respondents employ agents or sales representatives who call upon prospective purchasers of said courses and for the purpose of inducing the sale thereof have made and are making numerous representations and statements to the effect that:

Said agent or representative is a Government employee or has some direct or indirect connection with the United States Civil Service Commission or some other government agency, and by presenting identifications or credentials which in appearance simulate the credentials of government employees, strengthen the representation or implication that he is employed by, or connected with, the United States government;

If a prospective purchaser will enroll for said course, the respondent company will guarantee a position in the United States Civil Service upon the completion by said student of said course;

In order to take a civil-service examination or obtain employment in the United States Civil Service Commission it is a necessary requirement to pursue said course of study;

In the event a student desired to discontinue said course the monies paid by him on account of the purchase price would be refunded by the corporate respondent;

The person solicited has been especially recommended or selected to take said course of study and for employment in the United States Civil Service;

Students may obtain positions in the U. S. Civil Service in localities selected by them.

In addition to the foregoing representations and implications, respondents' sales agents in many instances fail to disclose the terms of the contract of purchase of said course of study and do not afford prospective purchasers an opportunity to read and understand said contract before signing the same. On many occasions said sales representatives urge the execution of said contract upon the grounds that the sales agent is in a great hurry, would not be able to return, and that unless the contract is executed said prospective students will miss or pass up the opportunity of securing life-time employment with the United States Government, including substantial earnings with paid vacations, sick leave, short working hours, and high living standards.

PAR. 4. All of said statements, representations, and implications made orally by respondents' said salesmen are grossly exaggerated, false, and misleading. Neither the corporate or individual respondents nor their sales agents and representatives have any connection whatever with the United States Civil Service Commission or any other government agency. No one, including respondents, can guarantee or promise positions in United States Civil Service or can in any manner be effective in securing positions for any individual desiring to be employed in civil service. Respondents' course of study is not an essential prerequisite for the taking of any civil-service examination or obtaining employment in civil service. Respondents do not refund any monies paid on account of tuition, but as a matter of policy demand that all contracts be paid in full according to the terms thereof, regardless of whether a student completes said course or desires to discontinue it soon after having enrolled. The representations made by said agents in many instances that students have been especially selected or recommended for said course of study to the corporate respondent is without foundation in fact, and prospective students relying upon such false representations have been induced to execute a contract for the purchase of said course on account thereof. Prospective purchasers will not miss the opportunity of a lifetime by failing to enroll for said course.

PAR. 5. The vast majority of prospective students and purchasers consist of high-school graduates and young people who have neither the experience nor the judgment to evaluate the sales approach made by respondents' agents including the implications created by the presentation of credentials and who readily believe the representations made with respect to the contents of the contract which they are invited to execute and, relying fully upon the representations made as to the advantages that may be obtained in United States Civil Service, do not read or analyze the terms of the contract of enrollment.

PAR. 6. The use by respondents of the statements and representations as aforesaid has had and has the tendency and capacity to and does, confuse, mislead, and deceive members of the public into the erroneous and mistaken belief that such statements and representations are true and to induce them to purchase respondents' courses of study and instruction on account thereof.

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

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's Rules of Practice, the attached initial decision of the trial examiner did, on July 17, 1950, become the decision of the Commission.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

Initial Decision by Clyde M. Hadley, trial examiner.

This proceeding came on to be considered by the above-named trial examiner theretofore duly designated by the Commission, upon the complaint of the Commission, the answer of respondents' testimony and other evidence introduced in support of and in opposition to the allegations of the complaint, no proposed findings and conclusions having been presented by counsel and no oral argument requested; and it appearing that the allegations of the complaint have not been sustained by the evidence, that the respondents have discontinued the business on which this case was based, with no indication that the same will be resumed, and that no substantial public interest presently exists:

It is ordered, That the complaint in this proceeding be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should future facts warrant.

Mr. William L. Pencke for the Commission.

Mr. John M. Smith, Jr., of Philadelphia, Pa., for respondents.

JACK J. FELSENFELD. Complaint, August 31, 1945. Order, August 25, 1950. (Docket 5375.)

CHARGE: Neglecting, unfairly or deceptively, to make material disclosure as to imported product or parts as domestic; in connection with the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearl necklaces, cultured pearl necklaces, and other articles of jewelry.

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

PARAGRAPH 1. Respondent Jack J. Felsenfeld is an individual with his office and principal place of business located at 15 Maiden Lane, New York, N. Y.

PAR. 2. Respondent Jack J. Felsenfeld is now and for several years last past has been engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearl necklaces, cultured pearl necklaces, and other articles of jewelry in commerce among and between the various States of the United States and in the District of Columbia.

Respondent causes and has caused his said merchandise, when sold, to be shipped from his said place of business located in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia.

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

PAR. 3. In the course and conduct of his said business, respondent, in connection with the sale and distribution of his said products, has imported from Japan, Spain, and other foreign countries large quantities of imitation pearl necklaces and cultured pearl necklaces. During the last several years the respondent has also purchased large quantities of imitation pearls and cultured pearls made into necklaces of foreign origin from importers and others engaged in the sale of said products in the United States. Respondent sells and distributes his imitation pearl necklaces and cultured pearl necklaces of foreign origin in commerce, together with other articles of merchandise.

PAR. 4. At the time of the importation into the United States of the above-enumerated products and at the time the respondent Jack J. Felsenfeld received said products of foreign origin, said products have been and are all labeled or marked with the word "Japan" or the words "Made in Japan," or the word "Spain" or the words "Made in Spain," or marked with other word or words indicating the country of origin.

After said products are received in the United States, the respondent causes the words or marks indicating their foreign origin to be

removed therefrom, and thereafter sells and distributes the said products in commerce, as above set forth, without any words or marks thereon indicating their foreign origin, and causes the said products to be offered for sale and sold to members of the purchasing and consuming public in that condition, without informing the purchasers thereof that the said products are of foreign origin.

PAR. 5. There is a well-established practice among merchandisers generally to mark or label products of foreign origin and their containers with the name of the country of their origin in legible English words in a conspicuous place. By reason thereof, a substantial portion of the buying and consuming public has come to rely and now relies upon such labeling or marking and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, including imitation pearls. When products composed in whole or in substantial part of imported materials are offered for sale and sold in the channels of trade in commerce in the various States of the United States and in the District of Columbia, they are purchased and accepted as and for and taken to be products wholly of domestic manufacture and origin unless the same are labeled, marked or imprinted in a manner which informs the purchaser that said products or substantial parts thereof are of foreign origin.

PAR. 6. There is now, and for several years last past has been, among members of the buying and consuming public, including purchasers and users of articles made from imitation pearls, a substantial preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin, or from products made in substantial part of materials or parts of foreign origin. During recent years, and especially at the present time, there is a decided and overwhelming preference among American consumers for products of American manufacture and origin, as distinguished from products wholly or partly of Japanese manufacture and origin.

PAR. 7. The practice of respondent, as aforesaid, of offering for sale, selling, and distributing his products made from said imitation pearls and cultured pearls manufactured as aforesaid of Japanese, Spanish, or other foreign origin without any labeling or marking to indicate to purchasers the Japanese, Spanish, or other foreign origin of such imitation pearl necklaces and cultured pearl necklaces or parts thereof has had and now has the capacity and tendency to and has and does mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that said imitation pearl necklaces and cultured pearl necklaces and all the parts thereof are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief. Furthermore, respondent's said practice places in the hands of uninformed retailers of respondent's

products made from said imitation pearls and cultured pearls a means and instrumentality to mislead or deceive members of the buying and consuming public into the false and erroneous belief that such imitation pearl necklaces and cultured pearl necklaces and all the parts thereof are wholly of domestic origin and thus into the purchase thereof in reliance upon such erroneous belief.

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

Complaint dismissed by the following order:

This matter regularly came on for final consideration by the Commission upon the complaint, respondent's answer thereto, stipulations of counsel, testimony and other evidence, recommended decision of the trial examiner and exceptions thereto, and briefs and oral argument of counsel.

The complaint herein charges respondent with the use of unfair and deceptive acts and practices in connection with the offering for sale, sale, and distribution of imitation pearl and cultured pearl necklaces without disclosing the foreign origin of such products. However, by stipulation of counsel approved by the Commission on October 8, 1947, the proof was limited to respondent's acts and practices in connection with the sale of imported cultured pearls made into necklaces and other articles of jewelry. Upon consideration of the entire record herein, the Commission is of the opinion, for the reasons set forth in its opinion accompanying the findings as to the facts and order to cease and desist in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358,[1] that under the circumstances it should not require that necklaces or other articles of jewelry composed of imported cultured pearls be labeled or marked so as to disclose the foreign origin of the cultured pearls.

The Commission having duly considered the matter and being now fully advised in the premises:

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should future facts warrant.

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

Mr. B. G. Wilson and *Mr. Joseph Callaway* for the Commission.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., for respondent.

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[1] See *ante*, p. 43.

NATIONAL MINERAL CO. trading as HELENE CURTIS INDUSTRIES. Complaint, March 23, 1942. Order, September 7, 1950. (Docket 4738.)

Charge: Advertising falsely or misleadingly as to safety, qualities, properties or results, history, nature and composition of products, neglecting, unfairly or deceptively, to make material disclosure as to safety of product, and using misleading product name; in connection with the sale of certain hair dye cosmetics designated "Helene Curtis True-Tone Color Control Oil Shampoo Tint" and "Helene Curtis Hair Rinse."

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 National Mineral Co., a corporation, trading as Helene Curtis Industries, 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, National Mineral Co., is a corporation, created, organized, and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 2638 North Pulaski Road, Chicago, Ill.

PAR. 2. The respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of certain hair dye cosmetics designated "Helene Curtis Tru-Tone Color Control Oil Shampoo Tint" and "Helene Curtis Hair Rinse."

In the course and conduct of its business, the respondent causes said preparations when sold, to be transported from its place of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia.

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

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said products by the United States mails and by various means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said products, by various means,

for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of, the false, misleading, and deceptive statements and representations contained in said advertisements, concerning its said preparations, disseminated and caused to be disseminated as hereinabove set forth concerning "Helene Curtis Tru-Tone Color Control Oil Shampoo Tint" are the following:

Helene Curtis has solved the tint problem. We have eliminated, wholly and completely, all uncertainty and hazard which previously existed in the hair tinting field.

Rich, natural shades.
For youthful, natural, glamorous hair.
The greatest hair tint discovery ever made.

and concerning "Helene Curtis Hair Rinse" are the following:

It restores the natural tint to all colors of hair—blends streaked or gray hair into one natural hue—and restores a natural life and vigor that gives the hair a sparkling brilliance and healthy appearance.

A rinse—not a dye.

Remember, Helene Curtis Hair Rinse is a pure vegetable rinse made only of the finest certified food colors.

PAR. 4. By the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein respondent represents and has represented that the hazards and dangers which accompany the use of hair dyes are eliminated by the use of its preparation designated and advertised as "Helene Curtis Tru-Tone Color Control Oil Shampoo Tint"; that said preparation imparts a rich, natural shade to the hair; that its use will restore to hair a youthful, natural appearance; that said preparation represents the greatest discovery in hair tints ever made.

In the same manner respondent represents that the preparation advertised and designated as Helene Curtis Hair Rinse is a rinse and not a dye; that said preparation restores all types of hair to its former natural tint; that it transforms streaked or gray hair into one natural hue; and that its use will restore natural life and vigor to hair and give it a sparkling brilliance and healthy appearance.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, the hazards and dangers which accompany the use of hair dyes accompany the use of Helene Curtis Tru-Tone Control Oil Shampoo Tint. In fact, said preparation contains para-tolylene-diamine and para-phenylene-diamine, coal tar derivatives, in sufficient quantities to cause, in some cases, skin irritations and other harmful effects. Furthermore, the use of said preparation may cause a dermatitis with vesication and endema about the face and head, and the application of said preparation to the

eyebrows or eyelashes may cause blindness. The aforesaid preparation does not impart a rich natural shade to the hair. The use of said preparation will not restore to hair a youthful, natural appearance. Said preparation is not the greatest hair tint discovery ever made but is in fact an ordinary coal tar hair dye.

Respondent's preparation advertised and designated as Helene Curtis Hair Rinse is in fact a dye which imparts color to the hair. Said preparation does not restore hair to its former natural color or tint. The use of said preparation does not transform streaked or gray hair into a natural hue or color nor restore to it natural life and vigor.

PAR. 6. The respondent's advertisements of the preparation designated and advertised as "Helene Curtis True-Tone Color Control Oil Shampoo Tint," disseminated as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

In truth and in fact, the aforesaid preparation, as stated above, contains para-tolylene-diamine and para-phenylene-diamine, coal tar derivatives in sufficient quantities to cause, in some cases, skin irritations and other harmful effects. Furthermore, the use of said preparation may cause, in some cases, a dermatitis with vesication and endema about the face and head, and the application of said preparation to the eyebrows or eyelashes may cause blindness.

PAR. 7. Furthermore, the use by the respondent of the word "oil" in its trade designation is false and misleading in that such use of the word "oil" implies that said preparation contains oil when in truth and in fact it contains no oil.

PAR. 8. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to its said preparations, disseminated as aforesaid, has had and now has, the capacity and tendency to, and does, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true, and induces a number of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said preparations and to procure the application thereof by beauticians who administer the so-called treatments.

PAR. 9. The aforesaid acts and practices of the respondent as herein alleged, are all to the prejudice and injury of the public and constitutes 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, the attached initial decision of the trial examiner did, on September 7, 1950, become the decision of the Commission.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

Initial Decision by W. W. SHEPPARD, trial examiner.

This proceeding came on to be considered by the above-named trial examiner theretofore duly designated by the Commission, upon the complaint of the Commission, the answer of respondent, the motion of attorney in support of the complaint, that the case be closed without prejudice, and the consent of counsel for the respondent that said motion be granted, and it appearing to the trial examiner that the respondent herein had discontinued the manufacture and sale of the product described in the complaint on or about April 1948, and that there is not sufficient public interest to justify proceeding further in the case,

It is ordered, That the complaint in this proceeding be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should future facts warrant.

Mr. S. F. Rose, *Mr. Edward L. Smith* and *Mr. George M. Martin* for the Commission.

Mr. Adolph A. Rubinson, of Chicago, Ill., for respondent.

WILLIAM S. LA RUE. Complaint, July 1, 1949. Order, September 14, 1950. (Docket 5672.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results of product; in connection with the sale of a drug preparation designated "La Rue's Master Scalp Treatment."

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

PARAGRAPH 1. The respondent, William S. La Rue, resides in the city of Omaha, Nebr., with his office and place of business therein at 2309 Ames Avenue.

PAR. 2. The respondent is now and for more than 2 years last past has been engaged in the business of selling and distributing a preparation containing drugs as "drug" is defined in the Federal Trade Commission Act. The designation used by respondent for his preparation and directions for use are as follows:

Designation: La Rue's Master Scalp Treatment.

Directions for use:

APPLY La Rue's Master Scalp Treatment, by massaging gently but thoroughly into all parts of the scalp. This done, allow to remain five to ten minutes. Then APPLY La Rue's Lemon Cocoanut Shampoo, adding enough hot water to work up an abundant lather, rinse thoroughly. Again, apply a small amount of Shampoo and rinse thoroughly. (Use every 5 days until Scalp becomes normal.)

Respondent causes said preparation when sold, to be transported from his said place of business in the State of Nebraska to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in his said preparation in commerce between and among the various States of the United States. Respondent's volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of his aforesaid business, respondent, subsequent to March 21, 1938, disseminated and caused the dissemination of certain advertisements concerning his said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, by means of broadcasts of radio continuities over Station KOWH, Omaha, Nebr., during the last half of 1948 and over Station KFNF, Shenandoah, Iowa, between October 13, 1947, and October 18, 1947, and between September 27, 1948, and October 9, 1948, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of his said preparation; and respondent disseminated and caused the dissemination of the aforesaid advertisements for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of his said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

Are you worried about how your hair looks . . . dandruff . . . hair falling out badly . . . an itching scalp? If you dread the thought of growing bald . . . or if you long for the glamorous beauty of thick lustrous hair with the sheen and high lights of true attractiveness . . . try LA RUE MASTER SCALP TREATMENT. * * *

* * * If YOUR hair is falling badly, or if you have a bad case of dandruff . . . if your scalp is irritated and sore . . . this message is for YOU! Send for a bottle of LA RUE MASTER SCALP TREATMENT.

When you combed your hair this morning did you find the comb full of loose hair that had come out? No one likes the thought of becoming bald, but sooner or later . . . unless you do something about it . . . losing a lot of hair every day means baldness. Many folks have faced this same problem until they heard about LA RUE MASTER SCALP TREATMENT. Then they started massaging the scalp regularly with this remarkable hair conditioner. Now those folks say, they are proud of the beauty of their hair . . . excessive losses have stopped and their scalps feel better . . . more alive . . . fresh . . . and clean. There are many irritations of the human scalp . . . many conditions that cause premature

baldness if not corrected . . . that produce showers of dandruff flakes that are unsightly and annoying. Guard your hair and scalp . . . spend a few minutes each week massaging them with LA RUE MASTER SCALP TREATMENT. * * *

When you comb your hair in the morning and find a big mass of hair in the comb after you finish . . . it's time to worry. Perhaps there's a scalp condition there that's bad . . . one that means you'll be bald if you don't correct the trouble. Many people who have faced just such a problem are now using La Rue Master Scalp Treatment and report results that please them immensely. LA RUE MASTER SCALP TREATMENT is a hair and scalp CONDITIONER. * * *

Did you ever hear of a money-back guarantee on any hair tonic or shampoo? Well . . . here's a product that's not a tonic or shampoo, but a HAIR CONDITIONER . . . and it's ABSOLUTELY guaranteed. No matter how severe a case of dandruff you may have . . . no matter how much you may be annoyed by scalp irritations . . . this product is GUARANTEED to produce results that PLEASE and SATISFY you.

Here's an interesting announcement for every man or woman who is worried about the condition of hair or scalp. You may have unsightly dandruff flakes on your shoulders constantly . . . or your hair may be falling out excessively until you're worried for fear you may soon be bald. Perhaps you've tried many kinds of tonics and shampoos but the conditions still exist. Do this! Stop at the drug store today and ask for a bottle of LA RUE MASTER SCALP TREATMENT . . . the hair conditioner that has been developed after more than a quarter-century of study by a scalp specialist who has studied the human scalp and its troubles. LA RUE MASTER SCALP TREATMENT is sold with an ABSOLUTE MONEY-BACK guarantee. No strings tied to it whatever. Use the entire bottle . . . just massage a few drops of the scalp treatment into your scalp once a week until the bottle's empty. Then look in the mirror. If you aren't entirely satisfied that your hair looks better . . . that your scalp FEELS better . . . you may take the empty bottle back to your druggist and he's authorized to refund every cent you paid for it.

A fine head of hair is something to be proud of . . . prized possession for ANY man or woman. If you're fortunate enough to have beautiful hair, guard it carefully. Beware of dandruff or scalp irritations that may come from neglect. Groom your hair and scalp once a week with the aid of LA RUE MASTER SCALP TREATMENT. Massage a few drops of this excellent hair conditioner into the scalp. Rub it in well. You'll feel the tingle and glow as it penetrates the hair cells. There's a feeling of stimulation . . . refreshing . . . pleasant. And you'll be particularly delighted with the well-groomed appearance of your hair and its natural high-lights of beauty. Many people say they've had no trouble with dandruff since they've been using LA RUE MASTER SCALP TREATMENT regularly. Get a bottle from your druggist. Try it! You run no risk whatever, because LA RUE MASTER SCALP TREATMENT is sold on a wide-open money-back guarantee. If you don't feel that it has been beneficial to you . . . if you're not delighted with the improved condition of your hair and scalp after using the entire bottle of LA RUE MASTER SCALP TREATMENT . . . your druggist is authorized to refund every cent you paid for it.

* * * For some reason that man developed a scalp condition that puzzled everybody, even the doctors . . . His hair came out in spots and those spots spread until he had very little hair left . . . He was so embarrassed by his appearance that he never took his hat off when out in public . . . Today, his hair is thick and heavy and it looks fine * * *

* * * "For almost three years my hair had been falling out and I had dandruff and ugly pimples. After using fourteen treatments, one a week, and La Rue Master Scalp Treatment all of these conditions have cleared up."

Imagine how good this man feels now that he no longer has to worry about falling hair, dandruff and scalp pimples . . . The makers of La Rue Master Scalp Treatment guarantee that you, too, will benefit from using their scalp tonic * * *.

PAR. 5. Through the use of the statements in the advertisements above set forth respondent represented that his La Rue's Master Scalp Treatment, used as directed,

(1) will prevent excessive falling hair and baldness;

(2) will stimulate the growth of hair and cause hair to grow on bald heads;

(3) will relieve all itching and irritations of the scalp and cure conditions or diseases causing itching and irritations;

(4) will prevent the formation of dandruff on the scalp and cure the conditions or diseases causing dandruff;

(5) constitutes a competent and effective treatment for pimples and will cure the conditions or diseases causing pimples.

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, the use of respondent's preparation, as directed or otherwise, will not prevent baldness or excessive falling hair nor will it stimulate the growth of the hair or cause hair to grow on bald heads. While said preparation will relieve minor scalp irritations and itching, there are many irritations of the scalp of such severity that its use will not be effective. Its use will not be of value in the treatment of conditions or diseases causing irritations and itching. While the use of said preparation will facilitate the removal of dandruff scales by mechanical means, it will not prevent the formation of dandruff on the scalp and will not be of value in the treatment of and will not cure the conditions or diseases which may cause dandruff. It does not constitute a competent or effective treatment for pimples on the scalp and will not cure the conditions or diseases which may cause such pimples.

PAR. 7. The use by the respondent 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 respondent's said preparation.

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

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's Rules of Practice, the attached initial decision of the trial examiner did, on September 14, 1950, become the decision of the Commission.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

Initial Decision by FRANK HIER, trial examiner.

This proceeding came on to be considered by the above-named trial examiner theretofore designated by the Commission, upon the complaint, the answer of respondent, testimony and other evidence introduced in support of and in opposition to the complaint.

In the trial examiner's opinion, there is stipulated medical opinion in the record indicating that substantially all of the representations made by the respondent in connection with the sale of his hair tonic are exaggerated or untrue and therefore misleading and deceptive. The record also shows that respondent has been a barber for several decades and that the compounding of his hair tonic is incidental to his occupation; that he maintains no factory, laboratory, or staff of employees; that his total gross volume of business in his hair tonic in 1948 was $896.35 and in 1949 was $983.00 and that only half of this volume was in commerce. At 1 dollar per bottle retail this represents approximately 450 bottles sold in commerce outside of Nebraska, most of it being in the immediately adjacent area. In the opinion of the trial examiner this volume is inconsequential and does not support the allegation in the complaint that "respondent's volume of business in commerce is substantial." The trial examiner does not believe that further proceedings are in the public interest. Accordingly,

It is ordered, That the complaint in this proceeding be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should future facts warrant.

Mr. J. R. Phillips, Jr., for the Commission.

Swarr, May, Royce, Smith & Story, of Omaha, Nebr., for respondent.

EMERSON DRUG CO. Complaint, January 30, 1943.[1] Order September 21, 1950. (Docket 4854.)

Charge: Advertising falsely or misleadingly as to scientific or relevant facts and qualities, properties or results of product, and ne-

[1] Amended.

glecting, unfairly or deceptively, to make material disclosure as to safety of product; in connection with the manufacture and sale of a medicinal preparation known and designated as "Bromo-Seltzer."

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

PARAGRAPH 1. Respondent, Emerson Drug Co., is a corporation organized and existing under and by virtue of the laws of the State of Maryland with its principal office and place of business located at Bromo-Seltzer Tower Building, Baltimore, Md.

PAR. 2. Respondent is now and for some time last past, has been, engaged in the manufacture, sale and distribution of a medicinal preparation known and designated as "Bromo-Seltzer." Respondent causes said preparation, when sold, to be shipped from its said place of business in the State of Maryland and from warehouses in various States, to the purchasers thereof located in various States other than the States of origin of such shipments and in the District of Columbia.

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

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

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

Fight headaches 3 ways: a headache disturbs your nervous system; with jumpy nerves often goes an upset stomach; in turn affecting the pain in your head—thus making a vicious circle.

Bromo-Seltzer helps stop pain, calm nerves, settle the stomach.

Don't just "deaden" a headache—Bromo-Seltzer gives 3-way relief—it helps settle the stomach, calm the nerves in addition to relieving the pain.

Why not avoid morning-after misery? Try this simple before and after way—before bed time, take Bromo-Seltzer to counteract the effects of over-indulgence. While you are sleeping, it settles your upset stomach, soothes jittery nerves and ALKALIZES! After waking, another Bromo-Seltzer relieves the effects of fatigue caused by late bed time. You feel refreshed, more alert.

* * * it not only quickly relieves that *pain* of headaches but gives you 3 important EXTRA benefits. 1: Settles sickish upset stomach. 2: Calms jittery nerves. 3: Helps you feel more alert.

It alkalizes—reduces the excess acidity caused by overindulgence."

PAR. 4. Through the use of the settlements hereinabove set forth, and others similar thereto not specifically set forth herein, all of which purport to be descriptive of the therapeutic value and properties of the respondent's said preparation, respondent represents that overindulgence in food or drink causes excess acidity in the system and that the use of its said preparation counteracts the effects of overindulgence in food or drink, reduces excess acidity and alkalizes the system; that it will calm and soothe the nerves; that it settles a sickish or upset stomach, relieves the effects of fatigue caused by loss of sleep and rest and will make one feel refreshed and more alert.

PAR. 5. The aforesaid representations and advertisements used and disseminated by respondent are grossly exaggerated, false, and misleading.

In truth and in fact, overindulgence in food or drink will not cause excess acidity in the system and the use of respondents preparation will not counteract the effects of overindulgence in food or drink and will not reduce excess acidity or alkalize the system. It will not calm and soothe the nerves. It will not settle a sickish or upset stomach, relieve the effects of fatigue caused by loss of sleep and rest and will not make one feel refreshed and more alert.

PAR. 6. Respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of Bromo-Seltzer under the conditions prescribed in said advertisements, and under such conditions as are customary and usual.

The ingredients of Bromo-Seltzer and the amount of each contained in a heaping teaspoonful, are as follows:

	Grains
Acetanilid	2½
Sodium bromide	5
Caffeine (alkaloid)	0.9
An effervescent base	

The dosage of Bromo-Seltzer and the frequency of its administration recommended on the label of the container, are one heaping teaspoonful, which may be repeated after three hours, not exceeding two doses in 24 hours. Its continued use in a quantity exceeding the recommended dose, or with a greater frequency than the recommended frequency, may cause dependence upon the drug, skin eruptions, mental derangement and collapse, and its administration to children may be dangerous and injurious to their health.

The respondent represents that its product will relieve headaches and other pains. In many cases the headache or other pain will persist for an extended period of time and tend to recur after the palliative effect of an analgesic may have worn off. The palliative effect of respondent's product does not extend over a period exceeding 4 hours for each prescribed dose. Because of these facts, the usual and customary condition in cases of persistent headaches or other pain is and will be that there will exist a tendency for the sufferer to take more frequent and larger doses than prescribed. Such increased use will in itself tend to cause headache creating a tendency to take additional and more frequent doses. Respondent's advertisements contain no caution or warning against use of its product in greater amount or greater frequency than as stated on the label.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading advertisements, statements, and representations has had, and now has, the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said advertisements, statements, and representations are true, and that said preparation is safe and harmless for children, and harmless for use under the conditions prescribed in respondents advertisements, and under such conditions as are customary and usual, and to induce a substantial portion of the public, because of such erroneous and mistaken belief, to purchase respondent's said medicinal preparation.

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

Complaint dismissed without prejudice by the following order:

It appearing to the Commission that the respondent, Emerson Drug Co., has executed and tendered to the Commission an offer of settlement in this proceeding in the form of a proposed stipulation and agreement; and

It further appearing that under the terms of said stipulation and agreement the respondent agrees, among other things, not to disseminate or cause to be disseminated any advertisement concerning "Bromo-Seltzer" or any other preparation of substantially similar