

2971.⁸ **Diamonds—Certification.**—Stipulation No. 2971 has been amended so that it now reads:

Joseph Hagn Co., engaged as a wholesaler in the sale and distribution of jewelry in commerce in competition with other corporations and with individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Joseph Hagn Co., in connection with the sale of its merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use or from supplying others for their use of advertisements or advertising matter of whatever kind or description which features or in any way makes use of the word "Certified" or of any other word or words of similar import or meaning to designate or as descriptive of diamonds except under the following conditions:

(1) That the identity of the certifier be clearly and plainly disclosed;

(2) That the certifier be qualified and competent to know what has been certified is true;

(3) That there be made available for the benefit of the ultimate purchaser of each diamond such a certificate.

It is further stipulated and agreed by Joseph Hagn Co. that as thus amended all of the terms and provisions of Stipulation No. 2971 shall remain in full force and effect. (1-13314, Apr. 13, 1951.)

3442.⁹ **Candies—Certification.**—Stipulation No. 3442 has been amended so that it now reads:

Luden's, Inc., a corporation, engaged in the business of manufacturing candies and in the sale thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Luden's, Inc., in connection with the offering for sale, sale or distribution, of candy products, agreed to cease and desist from the use of the word "Certified" or any other word or words of like meaning on its product, or label, except under the following conditions:

(1) That the identity of the certifier be clearly and plainly disclosed;

(2) That the certifier be qualified and competent to know what has been certified is true;

(3) That if the certifier be other than the seller, any connection between the certifier and the seller be clearly shown;

⁸ Amended. See 31 F. T. C. 1709.

⁹ Amended. See 34 F. T. C. 1665.

(4) That the certificate on the product or label thereof show clearly the qualities to which it appertains.

Luden's, Inc., further stipulated and agreed that, as thus amended, all terms and provisions of Stipulation 3442 shall remain in full force and effect. (1-16914, Mar. 9, 1951.)

3498.¹⁰ **Pharmaceuticals, Biologics and Serums—Certification.**—Stipulation No. 3498 has been amended so that it now reads:

Norden Laboratories, a corporation, engaged in the manufacture of pharmaceuticals, biologics, and serums for animal diseases, and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Norden Laboratories, in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) The use on its label or in its trade publicity of the word "certified" or any other word or words of like meaning except under the following conditions:

(1) That the identity of the certifier be clearly and plainly disclosed;

(2) That the certifier be qualified and competent to know what has been certified is true;

(3) That if the certifier be other than the seller, any connection between the certifier and the seller be clearly disclosed.

(b) Asserting or implying, contrary to the facts, that its hog cholera serum is the only certified serum.

(c) Representing directly or by implication that said product is the only serum tested under U. S. B. A. I. supervision for purity and potency; or otherwise disparaging competitive products by unwarranted innuendo that they are not in the same manner tested, prior to marketing, under the supervision of the United States Bureau of Animal Industry.

Norden Laboratories further agreed that, as thus amended, all terms and conditions of Stipulation No. 3498 shall remain in full force and effect. (1-16380, Apr. 13, 1951.)

3661.¹¹ **Tarpaulins—Finished Size.**—Stipulation No. 3661 has been amended so that it now reads:

Fulton Bag & Cotton Mills, a corporation, engaged in the sale and distribution of canvas goods including tarpaulins, or canvas coverings, in interstate commerce, in competition with other corporations and with individuals and concerns likewise engaged, entered into the

¹⁰ Amended. See 34 F. T. C. 1697.

¹¹ Amended. See 36 F. T. C. 1065.

following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Fulton Bag & Cotton Mills, in connection with the sale and distribution of tarpaulins, or canvas coverings, in commerce, as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of any label, brand, tag, advertisement, writing or representation which purports to designate or indicate the size or dimensions of any of such products that does not plainly disclose the actual size or dimensions thereof at the time of completion of manufacture. Such size shall be designated "finished size" and shall be accompanied by a statement clearly indicating that such "finished size" is the size at the time of completion of manufacture and revealing the fact, when such is the case, that the product is subject to shrinkage due to varying climatic conditions and possible retraction from tension applied in the course of manufacture, as for example:

"Finished Size (size at time of completion of manufacture) : 8 ft. by 10 ft."

"(This product is subject to shrinkage due to varying climatic conditions and possible retraction from tension applied in the course of manufacture.)"

Provided, however, that nothing herein shall be construed as prohibiting truthful disclosure of the cut-size of such product when such cut-size is shown in conjunction with, and with no greater conspicuousness than, any marking of the "finished size" and when explanation is made of the meaning of "cut-size." The term "cut-size" as used herein shall mean the size or dimensions of a tarpaulin, or canvas covering, before the making of its seams, hems or reinforcement turn-overs. Any conjunctive statement or markings of finished and cut-size dimensions shall be accompanied by a statement clearly indicating that the product is subject to shrinkage due to climatic conditions and possible retraction from tension applied in the course of manufacture, as for example:

"Finished Size (size at time of completion of manufacture) : 8 ft. by 10 ft. Cut Size (size before making seams, hems, and reinforcement turn-overs) : 8 ft. 6 in. by 10 ft. 6 in."

"(This product is subject to shrinkage due to varying climatic conditions and possible retraction from tension applied in the course of manufacture.)"

Fulton Bag & Cotton Mills further stipulated and agreed that, as thus amended, all terms and conditions of Stipulation No. 3661 shall remain in full force and effect. (1-17901, June 26, 1951.)

7848.¹² "Sun Lamps"—Therapeutic Properties, Scientific and Relevant Facts, Safety, Endorsements, Etc.—Substitute Stipulation No. 7848 has been amended so that it now reads:

¹² Amendment. See 45 F. T. C. 902.

Hanovia Chemical & Manufacturing Co., a New Jersey corporation with its principal place of business in Newark, N. J., advertiser-vendors, engaged in the manufacture, sale and distribution in commerce, of therapeutic equipment and quartz ware, in competition with other corporations and with individuals and concerns likewise engaged, entered into an agreement, in connection with the sale and distribution thereof, to cease and desist from representing, directly or by implication:

(a) That said lamps or others of like construction are "sun lamps"; or otherwise, by statement or inference, that their rays closely resemble or are equal or equivalent to those of the sun in physical or therapeutic properties, either at an altitude high in the mountains or elsewhere;

(b) That said lamps bring into your home the sun, the equivalent of pure mountain sunshine, or summer sun all the year around or at all; or otherwise, that by the use thereof one may enjoy all the health giving benefits of sunshine or of a complete sun bath;

(c) That the quartz burner is the only type of lamp which can honestly be called a sun lamp, or the only type which produces the healing and tonic qualities of ultraviolet; directly or by implication, that the Hanovia models for home use, because of their quartz burners or otherwise, produce all such healing and purportedly tonic qualities; or that the Hanovia for more than thirty years has furnished the standard or now furnishes the standard by which ultraviolet lamps have been judged;

(d) That only the Hanovia Alpine Sun Lamp can effectively actuate vitamin D; or by implication, that lamps equipped with other types of burners cannot do so;

(e) That the rays emitted by said lamp have energy, vitality, zest or pep giving properties; tone or rejuvenate muscles, tone up the system generally; restore, renew or increase strength, energy or vigor either physical or mental; instil vigor or buoyancy in the body; stimulate the blood building power of the body, except such slight beneficial effect as the lamps may have in cases of secondary anemia; bring relief from strain and exhaustion; are a tonic for men of all ages, or produce a highly beneficial or any significant tonic effect whatsoever;

(f) That the use of said lamp will give the user a clear, radiant or glowing skin, clear the complexion, eliminate practically all blemishes; build resistance against colds, free children from colds, fortify one against winter weather (by implication, the diseases associated with winter); enable one to feel his best throughout the entire year; or, without regard to the user's physical condition, is an indispensable means to enhance beauty or health;

(g) That the use of said lamp will assure sound teeth; may be depended upon always to make strong, straight, sturdy bones, fine,

even, strong teeth and robust bodies for children; free children's teeth from a tendency to decay, or prevent tooth decay for expectant and nursing mothers;

(h) That irradiation by said lamps builds up resistance against disease except diseases that may be benefited by the development in the body of vitamin D or the lamp's bacteriacidal action or stimulating effect on the outer layers of the skin; is a substantial resistance building factor against colds and associated children's diseases, a very effective means for maintaining the health of children; or will keep the business man fit for his consuming and difficult tasks;

(i) That the use of said lamp will stabilize the nerves; induce deeper, sounder or better sleep; successfully treat difficult children of a nervous disposition; relieve physical or mental strain, cause better elimination; provides health the year around for the entire family; is a distinct asset for the well-being of all men; has a general beneficial systemic effect; or that entire well-being is a definite result conferred upon the user;

(j) By stating that the ultraviolet rays emitted by said lamp prevent infection, or otherwise, that they kill all germs or bacteria in the air or on the skin; or that without exposure to sunshine one would lose his resistance to disease and would be doomed regardless of his food intake;

(k) That the rays of said lamp, or ultraviolet rays generally, will be an absolute safeguard against rickets; or that they have specific action, or any significant effect, in preventing or correcting dropped arches, flabby figure, or loss of hair following childbirth;

(l) That the use of said lamp will help convalescents more speedily back to health or otherwise shorten the period of convalescence, except in cases of disturbances of calcium and phosphorus metabolism which result from vitamin D deficiency; or that its rays give "summer holiday benefits" at home all the year around or at all, in the sense that they would provide an adequate and satisfactory substitute for the benefits of a summer vacation;

(m) That everyone needs said lamp if he would keep physically fit, that it should be in every home without regard to occupation or environment, that every woman can benefit from the use of its rays as a vitalizing factor; or that said lamp recaptures a form of natural energy with effects, for the user, of better appetite, steady nerves, restful sleep, freedom from fatigue or other tonicity;

(n) Without regard to one's physical condition, that said lamp is "safe"; or otherwise, by statement or implication, that it would be harmless for indiscriminate use by the layman; that artificially administered sunbaths by exposure to lamps such as this would be safer than exposure to natural sun, or that such is the claim of medical authority;

(o) That the ultraviolet afforded by the use of said lamp is a "sun bath," or by assertion or connotation that it is equal or equivalent to what is generally understood by such term or expression;

(p) That said lamp or any lamp of similar construction has the widest endorsement of the medical profession the world over or is endorsed by the medical profession all over the world for the conditions of use—unsupervised home treatment—for which it is advertised and sold;

(q) That there is only one short season of the year during which biologically effective amounts of ultraviolet rays are available unless the advertisements in which those representations are made are restricted in circulation to the specific portions of this country where there is only one season during which biologically effective amounts of ultraviolet are available in sunlight.

Hanovia Chemical & Manufacturing Co. also agrees to cease and desist from:

(r) The use of illustrations depicting persons exposed to the rays of said lamps without goggles to protect their eyes; or of any representation, pictorial or otherwise, which has or may have the capacity or tendency to cause the belief that such lamps may be safely used without injury to unshielded eyes;

(s) Disseminating any advertisement or trade literature pertaining to its ultraviolet lamps for home use which fails clearly to reveal that excessive exposure to said lamp either with respect to proximity or length of time may result in injury to the user; that said lamp should not be used in the case of pellagra, lupus erythematosus, or certain types of eczema; and that said lamp should never be used unless goggles are worn to protect the eyes; provided, however, that such advertisement need contain only the statement, "Caution: Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling, or both on the label and labeling, contain a warning to the above effect.

Hanovia Chemical & Manufacturing Co. further agreed that this stipulation is a substitute for, and in lieu of, Stipulation No. 3708, approved and accepted by the Commission on August 19, 1943,¹³ which stipulation has been rescinded.

Hanovia Chemical & Manufacturing Co. further agreed that the aforesaid amendment shall be effective as of the date of the approval thereof by the Federal Trade Commission. (1-16192, Oct. 10, 1950.)

8029. **Anti-Freeze—Qualities and Safety.**—Leo A. Sauer, an individual operating under the trade name of V-O Manufacturing Co., with his principal office and place of business located in North Hollywood, Calif., advertiser-vendor, engaged in the business of offering for sale and selling a product for use in automobile cooling systems, desig-

¹³ See 37 F. T. C. 703.

nated V-O Anti-Freeze, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

(a) That V-O Anti-Freeze prevents rust or protects automobile cooling systems against freezing or clogging from rust formation;

(b) That this product is the permanent type or that it will not evaporate or boil away; or

(c) That said product will not damage metal or rubber parts of an automobile cooling system. (1-21060, July 12, 1950.)

8030. **Cigars—Source, Manufacture and Producer of Raw Materials.**—West Cigar Manufacturing Corp., a New York corporation with its factory and principal place of business located in New York, N. Y., advertiser-vendor, engaged in the business of offering for sale and selling cigars in commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

(1) Using the term "Havana," or any other term or terms indicative of tobacco grown on the island of Cuba, to designate or describe cigars not made entirely from tobacco grown on such island; provided, however, that cigars containing a substantial quantity of tobacco grown on the island of Cuba may be designated or described as "blended with Havana" or by some other term of like meaning.

(2) Representing that its cigars are hand made, unless the cigars so designated or described are in fact hand made, as such term is understood in the cigar manufacturing industry.

(3) Representing, directly or by implication, that its cigars are made from tobacco grown on its own plantations, unless it actually owns the plantation on which such tobacco is grown. (1-22576, July 12, 1950.)

8031. **"Lemon Juice Powder"—Nature.**—Specialized Commodities, Inc., a New York corporation, with its principal office and place of business located in New York, N. Y., and Pearce O. Storck, Edward Spector, and Stephen A. O'Sullivan, officers of said corporation, engaged in the business of offering for sale and selling in commerce, artificial lemon juice powder designated as "Lemon Juice Powder" and as "Lemon Viva," entered into an agreement in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing said product in any manner as lemon juice powder unless at the same time it is clearly and conspicuously disclosed, in direct connection therewith, that said product or preparation is an artificial or synthetic product. (1-22711, July 31, 1950.)

8032. **Electric Water Heating Device—Qualities and Safety.**—John E. Gauthier, an individual, trading as Midwest Merchandise Mart, with his principal place of business located in Elkhorn, Wis., advertiser-vendor, engaged in the business of offering for sale and selling in

commerce an electric water heating device designated as the "Jiffy Electric Heater," which device consists of an electrical heating element with a nondetachable cord, in use, the heating portion of the device is immersed in a vessel of water and the nondetachable cord, which consists of heavily insulated wires, is connected to a conventional electrical outlet, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

(1) Exaggerating the speed with which said device will provide hot water;

(2) Distributing or selling said device unless the word "caution" or "warning" together with adequate directions for safe use of the device is firmly affixed thereto in a lasting manner plainly informing the user that failure to carefully follow directions may result in dangerous electric shock. (1-22950, Aug. 8, 1950.)

8033. **Hearing Aid—Qualities and History.**—American Earphone Co., Inc., a New York corporation with its principal place of business located in New York, N. Y., and Louis S. Scher, Sidney M. Scher and Bertha Scher, officers and directors of said corporation, advertiser-vendors, engaged in the business of offering for sale and selling a device designated as the "Audi-Ear" for use as a hearing aid, entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing directly or by implication that said device:

(1) Magnifies ordinary conversation or musical tones without any distortion;

(2) Embodies a new acoustical principle;

(3) That it is an effective aid for anyone having a loss of hearing sufficient to require the use of a hearing aid. (1-19478, Aug. 17, 1950.)

8034. **Mineral and Vitamin Supplement—Qualities and Composition.**—The LeBlanc Corp., a Louisiana corporation, with its principal office and place of business located in Lafayette, La., and Dudley J. LeBlanc, an individual, engaged in the business of offering for sale and selling a mineral and vitamin supplement designated "Hadacol," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or impliedly:

(a) That Hadacol will restore youthful feeling and appearance;

(b) That this preparation assures good health;

(c) That Hadacol has any therapeutic value other than such as results from the vitamin B-1, vitamin B-2, iron, and niacin it supplies, and then only when clearly limited to cases resulting from a deficiency of one or more of these nutritional elements; or that it has any dietary value except such as may result from providing vitamin B-1, vitamin

B-2, iron, and niacin, and one-third the minimum daily adult requirements of calcium and phosphorous; or

(d) That said preparation does not contain drugs or influences health without the use of drugs.

The LeBlanc Corp. and Dudley J. LeBlanc further agreed to cease and desist from exaggerating the frequency with which any disease, symptom or condition is due to a deficiency of vitamin B-1, vitamin B-2, iron, or niacin. (1-20984, Aug. 17, 1950.)

8035. **Vitamin-Mineral Preparations—Unique Nature and Nutritive Qualities.**—Oxford Products, Inc., an Ohio corporation with its principal place of business located in Cleveland, Ohio, and J. Sanford Rose, Robert H. Leler, officers thereof, engaged in the business of offering for sale and selling two vitamin-mineral preparations, one of which is designated "Tremett" and "Slix," the other is designated "Estra-Beta," entered into an agreement, in connection with the dissemination of advertising relating to those preparations, to cease and desist from representing, directly or by implication:

(a) That "Estra-Beta" is the highest potency B complex capsule advertised or offered for sale;

(b) That the use of "Slix" or "Tremett" in the dosage recommended will adequately compensate for the loss of energy and reduced nourishment occasioned by adherence to a restricted and effective reducing diet. (1-20873, Aug. 23, 1950.)

8036. **Paint Thinner—Manufacture and Composition.**—Elroy Naval Stores Co., a Georgia corporation, with its principal office and place of business located in Vidalia, Ga., engaged in offering for sale and selling, in commerce, a paint thinner designated "Lone Pine Paint Thinner," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

(a) Representing in any manner that the product is a distilled or redistilled product or that it is other than a blend of the ingredients of which it is composed;

(b) Representing through the use of such statements as "Blended Pine Products," through the use of depictions of pine trees and pine cones and through the use of the word "pine" in the brand name, or otherwise, that the product is composed solely or primarily of blended pine products or that it contains such products in a significant amount; provided, however, that this shall not be construed as an agreement not to use the word "pine" as a part of the trade name for the product if, in connection with the trade name "Lone Pine Paint Thinner," or any similar name, the respondent clearly and accurately states the percentage of blended pine products contained in said product;

(c) Representing in any manner that the product is based on gum derived from pine. (1-21353, Aug. 30, 1950.)

8037. **Insecticides—Qualities, Safety and Guarantees.**—See-Jay Exterminating Service, Inc., an Oklahoma corporation, with its principal place of business located in Oklahoma City, Okla., and Wilson D. Hand, as an individual and as an officer of said corporation, engaged in offering for sale and selling in commerce, insecticide preparations designated "See-Jay A. P. I." and "See-Jay 52 Roach Powder," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from disseminating any advertising in regard thereto which represents directly or by implication:

(1) That See-Jay 52 Roach Powder will eliminate roaches, or that said product will prevent roach reinfestation;

(2) That See-Jay 52 Roach Powder is nonpoisonous;

(3) That See-Jay API is an exterminator, or that said product will exterminate bedbugs, ants, fleas, lice and other insects;

(4) That said products, or either of them, are "guaranteed," unless clear and unequivocal disclosure is made in direct connection therewith of what is offered by way of security for the guarantee as, for example, "refund of the purchase price of the product guaranteed." (1-23213, Aug. 30, 1950.)

8038. **Paint—Relevant Facts.**—American-Marietta Co., an Illinois corporation, with its principal place of business located in Chicago, Ill., advertiser-vendor, engaged in the business of offering for sale and selling in commerce, paints and related products, including a paint designated as "Valdura Asphalt Aluminum Paint," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or inferentially:

That a single application of paint has been applied to advertising "chips" which have received more than one application of paint. (1-22523, Aug. 30, 1950.)

8039. **Office Furniture—Domestic as Foreign.**—Howard S. Cowan, an individual trading as Swedish-Line Chair Manufacturing Co., with his principal office and place of business located in Boston, Mass., engaged in offering for sale and selling in commerce, office furniture designated "Swedish-Line" Office Furniture, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing through the use of the word "Swedish" as a part of his trade name or as a part of the brand name of the furniture, or in any other manner that the said furniture is Swedish furniture or that it is made in Sweden; provided, however, that this shall not be construed as an agreement not to use the word "Swedish" as a part of his trade name if in connection with said trade name it is clearly disclosed that the furniture is made in the United States; and provided further that this shall not be construed as an

agreement not to represent that the furniture is a Swedish style or type of furniture. (1-23152, Aug. 30, 1950.)

8040. **Electronic Organ—Unique Nature.**—C. G. Conn, Ltd., an Indiana corporation, with its principal place of business located in Elkhart, Ind., engaged in offering for sale and selling, in commerce, a musical instrument designated Connsonata Electronic Organ, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and resist from representing directly or by implication:

(1) That the said instrument is the only electronic organ which creates or produces an individual tone by means of a patented use of a vacuum tube;

(2) That the said instrument is the only electronic organ in which each tone is produced by its individual source. (1-21610, Aug. 30, 1950.)

8041.¹ **Drug Preparations—Therapeutic Qualities.**—E. T. Browne Drug Co., Inc., a New York corporation, with its principal place of business located in New York, N. Y., engaged in offering for sale and selling in commerce drug preparations designated "Palmer's Skin Success Soap" and "Palmer's Skin Success Ointment," entered into an agreement, in connection with the dissemination of advertising relating to those products, to cease and desist from representing, directly or by implication:

That the said preparations, either singly or in combination, cure, heal, promote the healing of, or aid nature in healing externally caused blackheads, pimples, eczema, skin irritations, rash, or "upset skin" or have any beneficial effect thereon in excess of such relief as they may afford from the symptoms of itching.

It is also stipulated and agreed that this stipulation is supplemental to stipulation No. 02411 executed by E. T. Browne Drug Co., Inc., and approved and accepted by the Federal Trade Commission on July 24, 1939,² which stipulation remains in full force and effect. (1-13850, Aug. 30, 1950.)

8042. **Antihistamine Drug—Therapeutic Qualities and Safety.**—Previcol, Inc., a New York corporation, with its principal place of business located in Albany, N. Y., engaged in the business of selling in commerce, a certain drug, designating said drug as Previcol, entered into an agreement, in connection with the dissemination of advertising thereof, to cease and desist from representing directly or by implication:

(1) That the use of said preparation will cure, prevent, abort, eliminate, control or stop the common cold;

¹ Supplemental.

² See 29 F. T. C. 1526.

- (2) That its use will not result in drowsiness;
- (3) That Previcol will cure or prevent hayfever.

The stipulation further provides that nothing therein shall prevent Previcol, Inc., from representing in its advertisement that:

(a) The use of said preparation relieves or checks, and in many cases stops the symptoms or manifestations of the common cold and hayfever such as sneezing, nasal congestion, simple throat coughs, watering eyes or watery or mucous discharge from the nose;

(b) Said preparation is safe if taken in accordance with directions on the label. (1-23425, Sept. 5, 1950.)

8043. Antihistamine Drug—Therapeutic Qualities and Safety.—Plough, Inc., a Delaware corporation, with its principal place of business located in Memphis, Tenn., engaged in the business of selling in commerce a certain drug, designated as St. Joseph Anti-Histamine Tablets, entered into an agreement, in connection with the dissemination of advertisement relating to that product, to cease and desist from representing directly or by implication:

That the use of said preparation will cure, prevent, abort, eliminate, stop, or lessen the duration or severity of the common cold.

The stipulation further provides that nothing therein shall prevent Plough, Inc., from representing in its advertisement that:

(a) The use of said preparation 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;

(b) The preparation is safe if taken in accordance with directions on the label. (1-23491, Sept. 5, 1950.)

8044. Antihistamine Drug—Therapeutic Qualities and Safety.—Julius Blackman Corp., a New York corporation, trading as Supreme Pharmaceutical Co., with its principal place of business located in Jersey City, N. J., engaged in the business of selling in commerce a certain drug, designated as Historal, entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication that the use of said preparation will cure, prevent, abort, eliminate, stop, or lessen the duration or severity of the common cold.

The stipulation further provides that nothing therein shall prevent Julius Blackman Corp., a corporation trading as Supreme Pharmaceutical Co. from representing in its advertisement that:

(a) The use of said preparation 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;

(b) The preparation is safe if taken in accordance with directions on the label. (1-23518, Sept. 5, 1950.)

8045. Antihistamine Drug—Therapeutic Qualities and Safety.—The Pinex Co., Inc., an Indiana corporation, with its principal place of business located in Fort Wayne, Ind., engaged in the business of selling in commerce a certain drug, designated as Pinex Antihistamine Tablets, entered into an agreement, in connection with the dissemination of advertisements relating to that product, to cease and desist from representing, directly or by implication, that the use of said preparation will cure, control, stop, conquer or abort the common cold.

The stipulation further provides that nothing therein shall prevent The Pinex Co., Inc., from representing in its advertisement that:

(a) The use of said preparation relieves and 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;

(b) The preparation is safe if taken in accordance with directions on the label. (1-23497, Sept. 5, 1950.)

8046. Antihistamine Drug—Therapeutic Qualities and Safety.—Allied Pharmacal Co., an Ohio corporation, trading as Victor Drug Products Co., with its principal place of business located in Cleveland, Ohio, engaged in the business of selling in commerce, a certain drug, designated as Histonex, entered into an agreement, in connection with the dissemination of advertising relating to that product to cease and desist from representing, directly or by implication, that the use of said preparation will cure, prevent, abort, eliminate, stop, or lessen the duration or severity of the common cold.

The stipulation further provides that nothing therein shall prevent the Allied Pharmacal Co. trading as Victor Drug Products Co., from representing in its advertisement that:

(a) The use of said preparation 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;

(b) The preparation is safe if taken in accordance with directions on the label. (1-23490, Sept. 5, 1950.)

8047. Antihistamine Drug—Therapeutic Qualities and Safety.—Monticello Drug Co., a Florida corporation, with its principal place of business located in Jacksonville, Fla., engaged in the business of selling in commerce, a certain drug designated as A-H Anti-Histamine Tablets, entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication, that the use of said preparation will cure, prevent, abort, eliminate, stop, or lessen the duration or severity of the common cold.

The stipulation further provides that nothing therein shall prevent the Monticello Drug Co. from representing in its advertisement that:

(a) The use of said preparation 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;

(b) The preparation is safe if taken in accordance with directions on the label. (1-23424, Sept. 5, 1950.)

8048. Antihistamine Drug—Therapeutic Qualities and Safety.—Commerce Drug Co., Inc., a New York corporation, with its principal place of business located in Brooklyn, N. Y., engaged in the business of selling in commerce a certain drug, designated as Orastin, entered into an agreement, in connection with the dissemination of advertising relating to that product to cease and desist from representing, directly or by implication, that the use of said preparation will cure, prevent, abort, eliminate, stop, or lessen the duration or severity of the common cold.

The stipulation further provides that nothing therein shall prevent the Commerce Drug Co., Inc., from representing in its advertisement that:

(a) The use of said preparation 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;

(b) The preparation is safe if taken in accordance with directions on the label. (1-23483, Sept. 5, 1950.)

8049. Antihistamine Drug—Therapeutic Qualities and Safety.—Kirkland S. Lamb and Clyde A. Jones, copartners trading as C-B Drug Co., with their principal place of business located in Charlotte, N. C., engaged in the business of selling in commerce a certain drug, designated as C-B Anti-Histamine Tablets, entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication, that the use of said preparation will cure, prevent, abort, eliminate, stop, or lessen the duration or severity of the common cold.

The stipulation further provides that nothing therein shall prevent Kirkland S. Lamb and Clyde A. Jones, copartners trading as C-B Drug Co. from representing in its advertisement that:

(a) The use of said preparation 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;

(b) The preparation is safe if taken in accordance with directions on the label. (1-23524, Sept. 5, 1950.)

8050. Mason Jars—Unique Nature.—Kerr Glass Manufacturing Corp., a Nevada corporation, with its principal office and place of business located in Sand Springs, Okla., advertiser-vendor, engaged in the

business of offering for sale and selling, in commerce, Kerr Mason Jars, Caps, and Lids, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or impliedly:

By such expressions as "*The Self-Sealing Brand*" or "*The only Self-Sealing brand*," or otherwise, that Kerr Mason Jars, Caps, and Lids are the only ones which are of the thermo-plastic type. (1-22540, Sept. 12, 1950.)

8051. **Varnish—Durability and Comparative Merits.**—Vita-Var Corp., a New Jersey corporation with its principal place of business located in Newark, N. J., advertiser-vendor, engaged in the business of offering for sale and selling in commerce, paint products including a varnish designated as "*Vita-Var Spar Varnish*," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

- (1) That said varnish is weatherproof or alkali-proof;
- (2) That it is not adversely affected by exposure to the elements;
- (3) That it dries to a hard finish and is ready for use within four hours;

(4) That it lasts twice as long as "ordinary varnishes" or as competitive varnishes generally. (1-22335, Sept. 12, 1950.)

8052. **Paint Sprayers—War Surplus and Fictitious Prices.**—American Salvage Co., a New Jersey corporation, with its principal place of business located in Newark, N. J., and Abraham Seidman and Fannie Seidman, as individuals and officers of said corporation, engaged in the business of offering for sale and selling portable paint sprayers, salvage materials and miscellaneous products in commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

(1) That any article or product is "war surplus" unless said article or product was acquired directly or indirectly from an agency of the United States Government and has previously been designated by such agency as "war surplus."

(2) That the usual or customary price or "value" of any article or product is any figure or amount in excess of the actual, customary, or usual retail price thereof. (1-22129, Sept. 13, 1950.)

8053. **Paints—Comparative Merits and History.**—Cello-Nu Products, Inc., a New York corporation, with its principal office and place of business located in New York, N. Y., and Oliver A. Unger, individually and as a corporate officer, engaged in offering for sale and selling in commerce, various types of paints, entered into an agreement, in connection with any future offering for sale, sale, and distribution thereof, to continue to cease and desist from representing in any manner:

(a) That said paints differ substantially, in composition or otherwise, from many other good quality paints on the market;

(b) That said paints are the result of or constitute new discoveries. (1-19540, Sept. 12, 1950.)

8054. **Communication Device—Nature and Composition.**—Isaac Heller and Saul Robbins, copartners, trading as North East Sales Co. and as Remco Industries, with their principal office and place of business located in Newark, N. J., engaged in the business of offering for sale, and selling, in commerce, a communication device which they have designated a "Walkie-Talkie," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

(a) That this is an electronic device or that it operates on a new or electro-sonic principle;

(b) By picturization or otherwise, that this device has a tuning dial, control knobs or an extra mouth or ear piece, or that it has any features or equipment not actually a part thereof;

(c) By the unqualified use of the term "Walkie-Talkie," or otherwise, that this is a radio receiving and sending set, or that it is anything other than a device which transmits sound over a wire for distances not exceeding 25 feet.

Isaac Heller and Saul Robbins further agreed to cease and desist from designating this device a "Walkie-Talkie" unless it is clearly explained that sound transmission is accomplished only by means of a connecting wire. (1-23186, Sept. 12, 1950.)

8055. **Hair Oil—Therapeutic Qualities.**—L. B. Laboratories, Inc., a California corporation, with its principal place of business located in Glendale, Calif., and John H. Olson, Mary H. Olson, and O. A. Hill, as individuals and as officers of said corporation, engaged in the business of offering for sale and selling a preparation designated "L. B. Hair Oil," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication:

(1) That said preparation has any beneficial therapeutic effect in the treatment of the hair or scalp for dandruff, or that said preparation will dissolve, eliminate or remove dandruff from the hair and scalp;

(2) That said preparation will control dandruff;

(3) That said preparation has any beneficial therapeutic effect in the prevention or cure of a dry or itching scalp, or that said preparation penetrates the scalp or has any effect on the functioning of the scalp, the pores of the scalp, or hair follicles;

(4) That said preparation restores natural oils to the hair; or

(5) That said preparation protects the health of the hair or has

a beneficial therapeutic effect in preventing falling hair. (1-2171, Sept. 14, 1950.)

8056. **Water Filters—Nature.**—Puro Filter Corp. of America, a New York corporation, with its principal place of business located in New York, N. Y., engaged in offering for sale and selling in commerce water filters designated "Puro Filter-Purifier," entered into an agreement, in connection with the offering for sale, and distribution in commerce, to cease and desist from representing in any manner that its Puro Filter-Purifier purifies water, in excess of such purification as may be obtained by filtering, but does not agree that it will change the designation of its filter as a "Filter-Purifier." (1-22385, Sept. 12, 1950.)

8057. **Hair and Scalp Preparation—Therapeutic Qualities.**—M. Shemano Hair and Scalp Method, Inc., a California corporation, with its principal office and place of business located at San Francisco, Calif., and Mike Shemano, Rae D. Shemano, and Helen S. Shemano, as individuals and as corporate officers, engaged in the business of offering for sale and selling a product designated "Shemano's Hair and Scalp Method," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication:

(a) That the product will prevent baldness, stop falling hair, regrow hair or have a beneficial effect on a dry scalp condition;

(b) That the product will beneficially affect a scalp condition manifested by itching or oiliness except to such extent as it may relieve the itching or remove the accumulations of oil from the hair and scalp;

(c) That the product will have a beneficial effect on dandruff except to such extent as it may facilitate the removal of loose dandruff scales. (1-21094, Sept. 19, 1950.)

8058. **French Dressing—Foreign Source.**—Louis Milani Foods, Inc., an Illinois corporation, with its principal office and place of business located in Maywood, Calif., advertiser-vendor, engaged in the business of offering for sale and selling food products among which is a product designated "1890 French Dressing," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing in any manner that the formula for the product was originated by a Frenchman or in France or that either the product or its formula has any connection with France. (1-21908, Sept. 25, 1950.)

8059. **Indian Design Jewelry—Misleading Trade Name, Manufacture and Source of Product.**—Jack Michelson, an individual trading as Bell Indian Trading Post, with his place of business located in Albuquerque, N. Mex., engaged in the manufacture of Indian design jewelry and in offering for sale and selling the aforesaid Indian design jewelry in

commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing directly or indirectly by depiction, or implication, or otherwise:

(1) By use of the trade name "Bell Indian Trading Post" that he owns, operates, or absolutely controls an Indian trading post; or that he has been duly licensed as an Indian trader by the Bureau of Indian Affairs, United States Department of the Interior to purchase goods and merchandise from, and sell goods and merchandise to, Indians of any Indian reservation;

(2) That his business is located on, and is conducted from, an Indian reservation;

(3) That the Indian design jewelry he manufactures is handmade by Indian silversmiths and has been produced by traditional Indian production methods;

(4) That the Indian design jewelry he offers for sale and sells has been purchased directly or indirectly from Indian silversmiths. (1-22457, Sept. 29, 1950.)

8060. **Binoculars—Maker.**—Joseph A. Devlin and Stanley C. Koszyk, copartners, trading as Optical Instrument Co., with their principal place of business located in Philadelphia, Pa., advertiser-vendors, engaged in the business of offering for sale and selling in commerce, binoculars, bearing "Bausch & Lomb" name plates, and binocular carrying cases and straps, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

(1) Using "Bausch & Lomb" name plates or the name plates of any other manufacturer of binoculars on binoculars which are not assembled and produced as complete binoculars by such manufacturer, or representing in any manner that such binoculars are produced by such binocular manufacturer; Provided, however, that this shall not be construed as an agreement not to use a binocular manufacturer's name in sales literature pertaining to assembled binoculars if, whenever used, the manufacturer's name shall be preceded in equal conspicuousness by the name of the assembler as, for example, "Binoculars assembled by (name of assembler) from parts produced by (name of producer of the component parts);"

(2) Advertising, offering for sale or selling Army or Navy surplus binocular carrying cases and straps without adequately disclosing the fact that such products are Army or Navy surplus. (1-22910, Oct. 6, 1950.)

8061. **Binoculars—Maker, Government Source and Guarantee.**—L. J. Thomas, an individual trading as United Products Co. and as Vogue Jewelry Co., with his principal place of business located in Chicago, Ill., advertiser-vendor, engaged in the business of offering for sale

and selling in commerce, jewelry and optical goods, including binoculars, bearing "Bausch & Lomb" name plates, entered into an agreement in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

(1) Using "Bausch & Lomb" name plates or the name plates of any other manufacturer of binoculars on binoculars which are not assembled and produced as complete binoculars by such manufacturer, or representing in advertisements or any other sales material that such binoculars are produced by such binocular manufacturer; Provided, however, that this shall not be construed as an agreement not to use a binocular manufacturer's name in the sales literature pertaining to assembled binoculars if, whenever used, the manufacturer's name shall be preceded in equal conspicuousness by the name of the assembler as, for example, "Binoculars assembled by (name of assembler) from parts produced by (name of producer of the component parts)"; Provided that if the name of the assembler is unknown, that fact shall be stated immediately preceding the name of the producer of the component parts.

(2) Advertising, offering for sale or selling Army or Navy surplus binocular carrying cases and straps without adequately disclosing the fact that such products are Army or Navy surplus;

(3) The use of the initials "U. S. N." in connection with the description of binoculars which were not made for the United States Navy and which do not have incorporated therein such factors or qualities as are required for United States Navy binoculars;

(4) Designating or describing a warranty against defective material or workmanship as a Lifetime Guarantee. (1-22910, Oct. 6, 1950.)

8062. Insecticide—Unique Nature, Comparative Merits, Safety and Effectiveness.—Cook Chemical Co., a Missouri corporation, with its principal place of business located in Kansas City, Mo., advertiser-vendor, engaged in the business of offering for sale and selling an insecticide designated "Cook-Kill Bug Killer," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from disseminating any advertisement in regard thereto which represents directly or by implication:

(a) That this product contains any ingredient which is not present in any competing preparation; provided, that nothing in this inhibition shall be construed to be in derogation of such rights as Cook Chemical Co. may have under the patent and trade-mark laws of the United States;

(b) That this product is the successor to, or more effective than, DDT, unless expressly limited to the specific insects concerning which the product is more effective than DDT;

(c) That Cook-Kill Bug Killer is nontoxic to humans or will not harm humans, on external or internal administration;

(d) That this product is effective against all bugs and insects;

(e) By the publication of any test conducted under rigidly controlled or other special conditions, or otherwise, to the effect that any specified results can be obtained by the use of Cook-Kill Bug Killer, or that this product possesses any given relative effectiveness when compared to competitive preparations, unless such results can be obtained, or such relative effectiveness is true, under actual conditions of use; or

(f) That, when poured on ant hills, Cook-Kill Bug Killer will kill all ants in the hill. (1-20579, Oct. 6, 1950.)

8053. **Nursery and High Chair Pads—Waterproof and Healthful Qualities.**—Plymouth Rubber Co., Inc., a Massachusetts corporation, with its principal place of business located in Canton, Mass., engaged in offering for sale and selling in commerce, Vinylite-covered nursery pads and high chair pads, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing directly or by implication:

(1) That said Vinylite-covered nursery pads are waterproof, provided that nothing herein contained shall be construed as prohibiting any claim to the effect that Vinylite is a waterproof material;

(2) That said Vinylite-covered high chair pads will strengthen or support an infant's back. (1-21881, Oct. 10, 1950.)

8064. **Gift Items—Refunds.**—Mayfair Gifts, Inc., a New York corporation, with its principal office and place of business located at Forest Hills, N. Y., and New York Gifts, Inc., a New York corporation, with its principal office and place of business located in Forest Hills, N. Y., both corporations having the same officers dominating and controlling their affairs, engaged in the business of offering for sale and selling in commerce, various types of gift items, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

Engaging in the practice of retaining payments for goods not promptly deliverable and from engaging in the practice of substituting credit memoranda for prompt cash refunds without first securing the consent of those transmitting the payments. (1-22937, Oct. 11, 1950.)

8065. **Drug Preparations—Comparative Merits and Therapeutic Qualities.**—William Held, an individual with his principal place of business located in Chicago, Ill., advertiser-vendor, engaged in selling drug preparations designated as Oral Iodocer and Intravenous Iodocer, also heretofore engaged in selling a drug preparation designated as Endotens, entered into an agreement, in connection with the dissemination of advertising relating to those products, to cease and desist from representing, directly or by implication:

(1) That Oral Iodocer and Intravenous Iodocer, or either thereof, possess therapeutic properties comparable to those of sulfa drugs, penicillin, or streptomycin;

(2) That Oral Iodocer and Intravenous Iodocer, or either thereof, used as directed, are of therapeutic value in the treatment of inflammatory, toxic, bacterial, parasitical or infectious conditions;

(3) That Oral Iodocer and Intravenous Iodocer, or either thereof, used as directed, act as an antisepticum or internal disinfectant, aid in the formation of healthy granulation, promote the resorption of fibrous growths or exudates, exert any destructive action on malignant tumors, or have any healing effect on inflamed organs;

(4) That Oral Iodocer, used as directed, will relieve nausea, headache, gastro-intestinal disorders or any distress which may be incident to the malfunction of the intestines, biliary tract, kidneys, or other organs of the body;

(5) That Intravenous Iodocer is a competent or effective treatment or cure for epilepsy, gastro-intestinal conditions, respiratory conditions, virus infections, septicemia, salpingo-oophoritis, cysts, poliomyelitis, epididimitis, eczema, infections of any nature, sinusitis, migraine headache, arthritis, fibroid tumor, bed sores, pericarditis, prostate troubles, phlebitis, urethritis, erythema induratum, hypertension, or abscesses;

(6) That Endotens is a competent or effective treatment for hypertension or the complications thereof, such as hemorrhage in the eye, nose bleed, cerebral hemorrhage, arteriosclerosis, cardiac hypertrophy or aneurysm.

William Held further agreed not to publish, disseminate, or cause to be published or disseminated any testimonial or other statement containing any representation contrary to the foregoing agreement. (1-21992, Oct. 11, 1950.)

8066. **Foam Rubber Cushions—Composition.**—Charlton Co., Inc., a Massachusetts corporation, with its principal place of business located in Fitchburg, Mass., engaged in offering for sale and selling in commerce, foam rubber sofa cushions and foam rubber rocking chair seats, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing in any manner that its sofa cushions and the cushioned seats of its rocking chairs, exclusive of covering material, are composed entirely of foam rubber when such is not the fact. (1-23338, Oct. 23, 1950.)

8067. **Ball Point Fountain Pens—Prices.**—Abe Marks, an individual trading as Sumlar Co., with his place of business located in Brooklyn, N. Y., engaged in the business of offering for sale and selling ball point fountain pens in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution of ball point fountain pens now sold under the brand name "Winfield," or

any other pen of substantially the same value, to cease and desist from representing that such pen formerly sold for \$5.00 or that it is a \$5.00 value, and from otherwise representing that such pen has a value far in excess of the customary and usual retail price. (1-22922, Oct. 23, 1950.)

8068. **Bowling Alley Accessories—Manufacturing Status.**—Monumental Bowling & Billiard Corp., a Maryland corporation, with its principal place of business located in Baltimore, Md., engaged in the business of installing bowling alleys and offering for sale and selling bowling alley accessories and "Strikeasy" ten pins and duck pins which are manufactured by said corporation, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from using the phrase "Manufacturers of Strikeasy Products" and "Manufacturers and Distributors of Strikeasy Products" and from otherwise representing directly or by implication that it manufactures bowling alley equipment and accessories other than "Strikeasy" bowling pins, when such is not a fact. (1-23264, Oct. 25, 1950.)

8069. **Rodenticides—Effectiveness, Safety, etc.**—Jay B. Hazelrig and Thomas T. Hazelrig, copartners trading as American Chemical Co., with their principal place of business located in Birmingham, Ala., engaged in offering for sale and selling in commerce, rodenticide preparations designated "Hot Foot Mouse and Rat Killer," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from disseminating any advertising in regard thereto which represents directly or by implication:

- (1) That said product kills rodents instantly;
 - (2) That the bodies of rodents killed by the use of said product will not give off the usual odors or "smells" incident to putrefaction;
 - (3) That rodents killed by the use of said product will "dry up" or will not putrefy;
 - (4) That the use of said product will prevent typhus fever, provided that nothing herein contained shall prohibit the representation that the use of an effective rodenticide may help prevent typhus fever;
 - (5) That said product is non-poisonous;
 - (6) That facsimile labels used in advertising are true and exact copies of the label affixed to said product when such is not the fact.
- (1-23379, Oct. 27, 1950.)

8070. **Lumber—Size.**—Robinson Brothers, Inc., a Maryland corporation, with its principal office and place of business located at 1239 Kenilworth Avenue, NE., Washington 19, D. C., engaged in the business of offering for sale and selling lumber, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist with respect thereto, from representing, directly or by implication:

That lumber smaller than $1\frac{5}{8}$ " x $3\frac{5}{8}$ " is 2" x 4" lumber, or in any other manner from representing that its lumber is cut to accepted standard sizes within allowable tolerances, when such is not the fact. (1-23453, Oct. 31, 1950.)

8071. Knitting Yarns—Guarantees.—Tiger Yarn Co., a New York corporation with its principal place of business located in New York, N. Y., and Benjamin Goldman, an officer thereof, engaged in the business of offering for sale and selling knitting and crocheting yarns in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from labeling or otherwise representing such products as being "Fully Guaranteed" when as to color fastness or any other particular they are not guaranteed, and from using the word "guarantee" or any word of similar import as descriptive of a limited guarantee, without specifying in direct connection therewith the terms and limitations of the guarantee. (1-22960, Oct. 31, 1950.)

8072. Crib Mattresses, etc.—Waterproof and Healthful Qualities.—Jacob Doppelt, Simon Doppelt and Irving Doppelt, copartners trading as Nurserytyme Products, with their principal office and place of business located in Brooklyn, N. Y., advertiser-vendors, engaged in offering for sale and selling in commerce, various brands of carriage mattresses, crib mattresses, play pen pads and allied products, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

(a) That any of the products is waterproof unless and until such time as the complete outer covering thereof shall be impervious to water or moisture for the life of such product.

(b) That the mattresses (1) will keep a baby's spine straight, (2) will materially help a child to develop properly, or (3) will have an appreciable effect on a child's future health. (1-2184, Nov. 8, 1950.)

8073. Fountain Pens and Mechanical Pencils—Composition.—Avon Pen Products Co., Inc., a New York corporation with its place of business located in New York, N. Y., and Max M. Neuhoff, an officer thereof, engaged in the business of offering for sale and selling fountain pens and mechanical pencils in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from using the word "Goldtone" or any other word or term of similar import or meaning to designate or describe any part or parts thereof not composed of gold or an alloy of gold of at least 10 karat fineness. (1-22268, Nov. 2, 1950.)

8074. Lottery Devices—Interstate Sale.—Werts Novelty Co., Inc., an Indiana corporation, with its principal place of business located in Muncie, Ind., and Iva G. Werts, individually and as an officer of said corporation, engaged in the sale and distribution of tip cards, tip

books, push cards, jar deals, ticket books, and other devices in interstate commerce, entered into an agreement to cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, tip cards, tip books, push cards, jar deals, ticket books, 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. (1-11493, Nov. 14, 1950.)

8075. Punchboards—Interstate Sale.—Empire Press, Inc., an Illinois corporation, with its principal office and place of business located in Chicago, Ill., and Sylvea Zimmerman and Joseph Zimmerman, individually and as officers of said corporation, engaged in the sale and distribution of punchboards, in commerce, entered into an agreement to cease and desist from:

Selling or distributing in commerce as "commerce" is defined in the Federal Trade Commission Act, 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. (1-21326, Nov. 14, 1950.)

8076. Medicinal Product—Therapeutic Properties.—Whitehall Pharmaceutical Co., an Illinois corporation, with its principal office and place of business located in New York, N. Y., engaged in the business of offering for sale and selling a product designated "TIZ Tablets," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing directly or by implication that the product will be of aid in preventing athlete's foot. (1-23142, Nov. 22, 1950.)

8077. Electric Water Heater—Qualities and Safety.—The Ambory Corp., a Michigan corporation, with its principal office and place of business located in Hazel Park, Mich., engaged in the business of offering for sale and selling in commerce an electric water heating device designated "Jiffy Electric Water Heater"; the heating portion of the device, while in use, is immersed in a vessel of water and the cord, which consists of insulated wires, is connected to a conventional electric outlet; entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(1) Exaggerating the speed with which the product will provide a sufficient amount of hot water;

(2) Distributing or selling said product unless the word "caution" or "warning," together with adequate directions for safe use of the product, is firmly affixed thereto in a lasting manner plainly informing the user that failure to carefully follow directions may result in dangerous electric shock. (1-23124, Nov. 27, 1950.)

8078. Mange Treatment—Therapeutic Qualities.—John Peter Edge, Ltd., a New York corporation, with its principal office and place of business located in New York, N. Y., and John Peter Edge and Lila Edge, individually and as officers of said corporation, engaged in the business of offering for sale and selling a drug preparation for external administration to dogs designated "Tarcosulf," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication:

(1) That said preparation has any beneficial therapeutic effect in the treatment of conditions causing summer itch, summer eczema or dandruff;

(2) That said preparation will cure mange without limiting it to sarcoptic mange or without disclosing that it will not cure demodectic mange;

(3) That said preparation will promote and encourage the regrowth of hair or improve the condition of a dog's coat without either limiting such loss of hair or lack of condition to sarcoptic mange or without disclosing that said preparation will not encourage or promote regrowth of hair or improve the condition of a dog's coat where such loss of hair or lack of condition is due to demodectic mange. (1-22582, Nov. 27, 1950.)

8079. Prints on Cloth—Hand-Made.—Titus Blatter & Co., a New York corporation, with its principal office and place of business located in New York, N. Y., engaged in the business of manufacturing and distributing prints on cloth made by a rolling process and offering for sale and selling such products as "Hantone Print," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

By use of the words "Handtone," "Hantone," or other similar words or phrases that advertiser-vendor's products constitute fabrics printed by other than a roller process or fabrics printed by hand. (1-23233, Nov. 27, 1950.)

8080. Detergent Preparations—Navy Approval, etc.—Sumco Products, Inc., a New York corporation, with its principal place of business located in New York, N. Y., advertiser-vendor, engaged in the business of offering for sale and selling in commerce detergent preparations for use in boiler tubes and fuel oil bunkers and for other marine uses, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

That Sumco products have been approved by the United States Navy, have been specified for use on ships operated by the United

States Navy or have been specified for future use on such ships. (1-23466, Nov. 27, 1950.)

8081. **Garlic Medicinal Preparation—Therapeutic and Odorless Qualities.**—Roy H. Cochran, an individual trading as Excelsior Laboratory, with his principal place of business located in Atlantic City, N. J., advertiser-vendor, engaged in the business of offering for sale and selling in commerce, a medicinal preparation designated "D. Gosewich's Garlic Tablets," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication:

(a) That such preparation when taken as directed has any therapeutic value in the relief or cure of conditions such as stomach gas, belching, heaviness after eating, nervous dull stomach distress, gas pains due to intestinal disorders, flatulence or nervous stomach; or

(b) By use of words such as "whiffless," or "odorless" or "Garlic made Sociable" or in any other manner that such preparation is free from the odor of garlic. (1-23243, Dec. 5, 1950.)

8082. **Carbon Tetrachloride Cleaning Preparation—Comparative Merits, Unique Nature, Safety, etc.**—Goulard & Olena, Inc., a New York corporation, with its principal place of business located in Skillman, N. J., advertiser-vendor, engaged in the business of offering for sale and selling a cleaning preparation designated "Rid-O-Spot" in commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

(1) That said product is any different from other cleaning preparations or cleaning solutions containing substantial quantities of carbon tetrachloride and petroleum distillates;

(2) That said product is a preparation which cleans and does not leave a ring around the place to which it is applied on "spots" or stains caused by perspiration or insoluble aqueous staining mediums on bleached cotton fabrics, unbleached woolen cloth and dyed silk fabrics;

(3) That said product will clean white buckskin or white buckskin shoes;

(4) That said product will not injure the color of fabrics when such fabrics are colored with dyes which bleed in carbon tetrachloride and petroleum distillates;

(5) That said product is less inflammable, less explosive and safer to use than other cleaning preparations or cleaning solutions containing substantially the same quantities of carbon tetrachloride and petroleum distillates. (1-22253, Dec. 5, 1950.)

8083. **Serums and Bacterins—Preventive and Therapeutic Properties.**—Louis Brunke and F. S. Marstella, copartners, trading as Anchor Serum Co. of Indiana, with their principal place of business located in Indianapolis, Ind., engaged in the business of offering for sale and

selling serums and bacterins designated "Anchor Serum and Bacterins," entered into an agreement, in connection with the dissemination of advertising relating to such products, to cease and desist from representing, directly or by implication:

(1) That Mixed Bacterin Bovine Formula No. 1 is of value in the prevention and treatment of Keratitis (Pink Eye) in cattle;

(2) That their bacterins are effective in the control and treatment of various animal diseases without limiting such effectiveness to the prevention thereof;

(3) That Mixed Bacterin Equine Formula No. 1 is effective in the prevention and treatment of distemper and strangles in horses and mules;

(4) That Mixed Bacterin Equine Formula No. 2 is of value in the prevention and treatment of Navel-Ill and Joint-Ill in foals. (1-19442, Dec. 6, 1950.)

8084. Preparation for Automotive Machinery—Improving Qualities.—Isadore W. Goldberg, an individual operating under the trade name of The Gastine Co., with his principal office and place of business located in Bridgeton, N. J., advertiser-vendor, engaged in the business of offering for sale and selling a product for use in automotive machinery, designated "Gastine Tablets," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from disseminating any advertising in regard thereto which represents directly or by implication:

That Gastine Tablets have any beneficial effect on the performance of automotive engines. (1-22663, Dec. 15, 1950.)

8085. Regulator for Automobile Electric System—Improving Qualities.—Peter Cook, an individual trading as Scientific Electric Co., with his place of business located in Cleveland, Ohio, engaged in the manufacture, offering for sale and selling in commerce a regulator device for the electrical system of an automobile designated "Powermaster Wattage Regulator," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing directly, indirectly, by implication or otherwise:

(1) That said device will completely, practically or permanently end trouble in the electrical system of an automobile in which said device has been installed;

(2) That the longer the said device is used the better it operates, or that the operation of the said device when installed in an automobile improves in direct proportion to the length of time it is used;

(3) That the said device when installed in an automobile will produce better starting of the motor and will "keep up" the battery at all times;

(4) That automobiles in which said device is installed will never be stranded. (1-23076, Dec. 15, 1950.)

8086. **Hydraulic Brake Fluid Preparation—Durability.**—Quaker Supreme Chemical Corp., an Alabama corporation, with its principal place of business located in Montgomery, Ala., and Herman Aronov, Perry Mendel, Hilliard Aronov, and Aaron Aronov, as officers and as individuals of said corporation engaged in offering for sale and selling in commerce a hydraulic brake fluid preparation designated "Quaker Supreme Grade A Hydraulic Brake Fluid," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from disseminating any advertising in regard thereto which represents directly or by implication:

(1) That said product will not evaporate or that said product is nonevaporating;

(2) That said product is a high boiling brake fluid. (1-23437, Dec. 15, 1950.)

8087. **Metal Awnings—Economy and Durability.**—The F. C. Russell Co., an Ohio corporation, with its principal place of business located in Cleveland, Ohio, advertiser-vendor, engaged in offering for sale and selling in commerce, metal awnings designated "Rusco," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing directly or by implication:

(a) That such awnings require no maintenance;

(b) That the initial cost of such awnings is the only cost;

(c) That such awnings are windproof or stormproof. (1-23459, Dec. 18, 1952.)

8088. **Metal Awnings—Economy and Durability.**—John M. Jalanivich, an individual trading as Koolvent Metal Awning Co., of Mississippi, with his principal place of business located in Biloxi, Miss., advertiser-vendor, engaged in offering for sale and selling in commerce, metal awnings designated "Koolvent," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

(1) That Koolvent Awnings require no maintenance;

(2) That the initial cost of Koolvent Awnings is the only cost;

(3) That Koolvent Awnings are windproof or stormproof. (1-23458, Dec. 18, 1950.)

8089. **Fabric Plasticizer—Qualities.**—Synco Products Co., Inc., a Tennessee corporation, with its principal place of business located at Chattanooga, Tenn., and George Melvin Cooper, John Logan Cooper, and Leone Park Cooper, individually and as officers thereof, engaged in the business of offering for sale and selling a resin plasticizer designated "Glide," in interstate commerce, entered into an agreement in connection with the offering for sale, sale and distribution thereof,

to cease and desist from disseminating any advertisement in regard thereto which represents, directly or by implication:

That the use of "Glide" prevents the mildewing of fabrics. (1-23181, Dec. 21, 1950.)

8090. Rubber Flooring—Qualities.—Henry Westall, an individual, trading as Henry Westall Co., with his general offices and principal place of business located in Asheville, N. C., engaged in the business of offering for sale and selling in commerce, rubber flooring material designated "Spike-Proof Rubber Flooring," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

(1) By the use of the brand name "Spike-Proof," or otherwise, that said rubber flooring material is spike-proof, provided that nothing herein contained shall prohibit the representation that said product has sufficient spike-resistance to give adequate service when walked on in a normal manner by a wearer of golf shoes;

(2) That said rubber flooring material cannot be marred by spiked shoes;

(3) That said rubber flooring material is slip-proof. (1-23507, Dec. 28, 1950.)

8091. Granulated Soap—Competitive Products.—Iowa Soap Co., an Iowa corporation with its principal place of business located in Burlington, Iowa, engaged in the business of offering for sale and selling certain soap products, and within approximately the two years last past has engaged in offering for sale and selling a granulated soap designated "Wonder Suds," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing directly or by implication that synthetic detergents are harmful to the skin or to fabrics. (1-23256, Jan. 5, 1951.)

8092. Ribbons—Manufacturing Status and Composition.—Superior Ribbon Products Corp., formerly Superior Ribbon Mills, Inc., a New York corporation, with its principal office and place of business located in New York, N. Y., engaged in the business of offering for sale and selling, in commerce, ribbons, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist, with respect thereto, directly or impliedly:

(1) from representing in corporate or trade name or names, or otherwise, that it owns or operates a factory or factories, mill or mills, wherein ribbons which it sells are manufactured; or that it is a manufacturer or manufactures such products;

(2) from designating its ribbons containing rayon as "satin" without qualifying such designation with the word "rayon." (1-23394, Jan. 5, 1951.)

8093. **Misses' Coats—Misbranding Wool Products.**—Harrow Classics, Inc., a New York corporation, with its principal office and place of business located in New York, N. Y., and Alfred E. Harrow, individually and as an officer of said corporation, engaged in the business of manufacturing, offering for sale and selling in commerce, "wool products" as defined in and subject to the Wool Products Labeling Act of 1939, consisting of misses' coats, entered into an agreement, in connection with the introduction or manufacture for introduction into commerce, or the sale, transportation or distribution thereof, to cease and desist from failing to affix to such wool products a stamp, tag, label or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentum by weight of such fiber is 5 percentum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling or adulterating matter; (c) the percentages in words and figures plainly legible by weight of the wool contents of such wool product where said wool product contains a fiber other than wool; (d) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller of the product as provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of said act with respect to such wool product.

Harrow Classics, Inc., and Alfred E. Harrow, individually and as an officer of said corporation, further stipulated and agreed they will hereafter fully comply with the Wool Products Labeling Act of 1939 and the rules and regulations promulgated pursuant thereto. (1-23592, Jan. 5, 1951.)

8094. **Medicinal Preparation — Therapeutic Properties.**—Inner-Aid Medicine Co., Inc., a Kentucky corporation, with its principal place of business located in Covington, Ky., and William T. Maynard, Elizabeth N. Maynard and Murray L. Vorhees, as officers of said corporation, engaged in the business of offering for sale and selling a medicinal preparation designated "Inner-Aid," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication:

(1) That said preparation is a cure or remedy for constipation or will restore bowel regularity;

(2) That said preparation has any therapeutic value in excess of that which would be afforded by its laxative action in temporarily relieving constipation, by its action as a bitter appetizer and by its

action as a carminative in temporarily reducing flatulence and in assisting in the expulsion of gas or bloat from the gastrointestinal tract;

(3) That said preparation stimulates the activity of the liver and kidneys, invigorates the system, aids digestion, cleanses the bowels or cleanses the entire system;

(4) That said preparation has any value in the treatment of skin eruptions, rheumatic pains, dizzy spells, sleeplessness, acid indigestion or a weakened or worn-out feeling;

(5) That said preparation cleans acids from the digestive system, or neutralizes acids;

(6) That said preparation is a cure, or remedy, for headaches, coated tongue, bad breath or bad taste in the mouth, or will have any therapeutic value in these conditions in excess of the temporary relief afforded by an evacuation of the bowels in those cases in which such conditions are caused by constipation;

(7) That said preparation is of value in the treatment of stomach disorders or in the treatment of bowel disorders generally; or

(8) That persons who are on a restricted diet because of some stomach disorder will be enabled to "eat anything" after taking said preparation. (1-21767, Jan. 5, 1951.)

8095. Plastic Starch—Economic Qualities.—Sunlight Chemical Corp., a Rhode Island corporation, with its principal place of business located in Phillipsdale, R. I., and Leon W. Brower, Albert S. Brower, and Ernest T. Voight, as individuals and as officers of said corporation, engaged in the business of offering for sale and selling a resin plasticizer designated "Sunlight Plastic Starch," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from disseminating any advertisement in regard thereto which represents directly or by implication:

(1) That the use of said preparation can be relied upon to double the life of cottons or other fabrics, or to increase the wearing life of fabrics by any definite length of time;

(2) That 1 quart of such preparation makes a quantity of starch equivalent to two gallons without revealing, in direct connection therewith, that in this dilution the product would be suitable only for light starching. (1-23167, Jan. 5, 1951.)

8096. Beverage—Competitive Products.—General Foods Corp., a Delaware corporation, with its principal office and place of business located in New York, N. Y., engaged in the business of offering for sale and selling, among others, a product designated "Postum," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing in any manner that the drinking of coffee has an appreciable or pro-

nounced influence on, or on any rate of increase in, divorces, business failures, factory accidents, juvenile delinquencies, traffic accidents, fires, or home foreclosures or on any decrease in marriages or on any rate of decrease therein.

General Foods Corp. represents that on or about May 1, 1948, the company decided to discontinue the percentage type of advertisements; that said percentage type of advertisements have not been published since August 1948, and that it has no intention of resuming their publication. This action was taken prior to September 7, 1948, which was the date on which the Federal Trade Commission initially contacted General Foods Corp. regarding this matter. (1-22755, Jan. 10, 1951.)

8097. **Plastic Starch—Permanence.**—Taylor Paisley, an individual operating under the trade name of Korex Co., with his principal office and place of business located in Ferndale, Mich., engaged in the business of offering for sale and selling a resin plasticizer designated and advertised as "Korex Synthetic Permanent Starch," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from using the word "permanent" as a part of the brand name of the product or in connection with the advertising and sale of said product. (1-23145, Jan. 15, 1951.)

8098. **Fishing Plug—Government Approval and Success.**—Charles Helin, an individual with his principal place of business located in Detroit, Mich., engaged in selling a fishing plug designated "Flatfish," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

That the Interstate Commerce Commission or any other governmental agency has either tacitly approved or approved advertising claims or representations made by him with respect to his fishing plugs.

Charles Helin, in connection with the offering for sale, sale and distribution in commerce of his product designated "Flatfish," further agreed to cease and desist from:

Using any figure, amount or quantity purporting to represent the number of "Flatfish" plugs sold per day, which is in excess of the average daily sales during a calendar year of 365 days. (1-20570, Jan. 19, 1951.)

8099. **Lumber—"Mahogany."**—Frank Schneider and Julius Schneider, copartners trading as Schneider Brothers Lumber Co., engaged in the business of offering for sale and selling in commerce various species of hardwood lumber identified and designated at Santa Maria (Calophyllum Braziliense) under the designation "Chijole Mahogany," lumber identified and designated as Central American Walnut, Mexico Walnut and Conacaste under the designation "Juana

Costa Mahogany" and lumber identified and designated as Palo Blanco under the designation "Palo Blanco White Mahogany," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from the use of the word "Mahogany," alone or in conjunction with any other word or words, to designate or describe the aforesaid lumber identified as Santa Maria, Central American Walnut, Mexico Walnut, Conacaste, and Palo Blanco; or to use the word "Mahogany," alone or in conjunction with any other word or words, so as to import or imply, or so as to have the capacity and tendency to deceive purchasers into the belief, that lumber so designated or described is Mahogany when such is not the fact. (1-20326, Jan. 10, 1951.)

8100. **Plastic Starch—Preserving Qualities.**—Proxite Products, Inc., a New York corporation, with its principal place of business located at Brooklyn, N. Y., engaged in the business of offering for sale and selling a plastic starch designated and advertised as "Pro Lasting Plastic Starch," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

- (1) That such product retards mildew and mold growth on fabrics;
- (2) That its use can be relied upon to double or triple the life of fabrics or to increase the wearing life of fabrics by any definite length of time. (1-23043, Jan. 26, 1951.)

8101. **Plastic Starch—Preserving and Protective Qualities.**—Chemicals, Inc., a California corporation, with its principal place of business located in San Francisco, Calif., engaged in the business of offering for sale and selling a resin plasticizer designated "Dura Plastic Starch," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from disseminating any advertisement in regard thereto which represents directly or by implication:

- (1) That said preparation will restore the original color to faded fabrics or will protect colored fabrics from fading in light;
- (2) That said preparation will soften fabrics or make them more flexible;

- (3) That said preparation can be relied upon to double the life of fabrics or to increase the wearing life of fabrics by any definite length of time. (1-23023, Jan. 26, 1951.)

8102. **Electric Welding Device—Safety.**—Paul Morris, an individual doing business as Morris Welding Service, with his principal place of business located in Schenectady, N. Y., engaged in the business of offering for sale and selling in commerce an electric welding device designated as "110 Volt Arc-Welder," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(1) Advertising or representing that this device is entirely safe or is safe for home use unless affirmative disclosure is made as to the proper wiring and fusing of the circuit on which the device is used.

(2) Distributing or selling said device unless the word "Caution" or "Warning," together with adequate directions for safe use of the device, is firmly affixed to the device in a lasting manner plainly informing the user that failure to follow directions may create a dangerous fire hazard. (1-22558, Jan. 10, 1951.)

8103. Electric Welding Devices—Safety.—The Larkin Lectro Products Corp., an Arkansas corporation, with its principal place of business located in Pine Bluff, Ark., engaged in the business of offering for sale and selling in commerce, three electric welding devices designated as "Model 75G," "Lectro-Welder" and "Utility Welder," in interstate business, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

(1) Advertising or representing that these devices are entirely safe or are safe for home use unless affirmative disclosure is made as to the proper wiring and fusing of the circuit on which the device is used;

(2) Distributing or selling said devices unless the word "Caution" or "Warning," together with adequate directions for safe use of the devices, is firmly affixed to the devices in a lasting manner plainly informing the user that failure to follow directions may create a dangerous fire hazard. (1-22559, Jan. 10, 1951.)

8104. Electric Welding Devices—Safety.—The Lincoln Electric Co., an Ohio corporation, with its principal place of business located in Cleveland, Ohio, engaged in the business of offering for sale and selling in commerce, two electric welding devices designated as "Linwelder 60" and "Powr-Kraft AC Arc Welder," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

(1) Advertising or representing that these devices are entirely safe or are safe for home use unless affirmative disclosure is made as to the proper wiring and fusing of the circuit on which the device is used.

(2) Distributing or selling said devices unless the word "Caution" or "Warning," together with adequate directions for safe use of the devices, is firmly affixed to the devices in a lasting manner plainly informing the user that failure to follow directions may create a dangerous fire hazard. (1-22347, Feb. 2, 1951.)

8105. Mattresses—"Wetproof."—Isidore Flomenbaum, an individual trading as Colgate Mattress Co., with his principal office and place of business located in Bronx, N. Y., engaged in offering for sale and selling in commerce various brands of mattresses, outer coverings of which are treated by or with the same coating process, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from repre-

senting by use of the word "wetproof" as descriptive thereof or in any other manner that any of such products are waterproof unless and until such time as the complete outer coverings thereof shall be impervious to water or moisture for the life of such products. (1-19140, Feb. 5, 1951.)

8106. **Medicinal Preparation—Therapeutic Properties.**—Marlo Products Co., an Ohio corporation, with its principal office and place of business located in Cleveland, Ohio, engaged in the business of offering for sale and selling a product designated "Hemocaps," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication, that the product will enable one to stop suffering the pain and discomfort of piles (hemorrhoids) or that it has any therapeutic effect on that condition in excess of such temporary relief from the pain and discomfort theretof as it may afford. (1-22502, Feb. 7, 1951.)

8107. **Cigarettes—Qualities, Properties or Results and Comparative Merits.**—Riggio Tobacco Corp., a New York corporation, with its principal place of business located in Brooklyn, New York, engaged in the business of offering for sale and selling Regent cigarettes, in interstate commerce, entering into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

(a) That the oval shape of Regent cigarettes or the smaller cross-section burning area of such cigarettes as compared with conventional round cigarettes, causes Regents to smoke cooler than round cigarettes;

(b) That Regent cigarettes will provide any defense against throat irritation due to smoking, or that the extra length of Regent cigarettes will cause the smoke from such cigarettes to be cooler than the smoke from cigarettes of standard length; *provided, however*, that nothing herein shall be construed as prohibiting representations that during the time the extra length of such cigarette is being smoked the smoke therefrom will contain less irritating properties and will be cooler than the smoke from standard length cigarettes. (1-23502, Feb. 12, 1951.)

8108. **Pens and Pencils—Guarantees.**—Eversharp, Inc., a Delaware corporation, with its principal office and place of business located in Chicago, Ill., engaged in the business of offering for sale and selling in commerce, pens and pencils designated "Eversharp" pens and pencils, in interstate commerce, entered into an agreement, in connection with the business, as hereinabove described, to cease and desist from soliciting authorization for additional servicing without calling attention to the nature of the services to which the purchasers are entitled under the applicable guarantee and without disclosing that

those services will be performed if the additional servicing is not desired. (1-22902, Feb. 12, 1951.)

8109. "Airwick" and "Airkem"—Qualities, Properties or Results and Composition.—Seeman Brothers, Inc., is a New York corporation, with its principal place of business located in New York, N. Y., and is engaged in offering for sale and selling in commerce a deodorant designated "Air-Wick," in interstate commerce.

Airkem, Inc., is a New York corporation, with its principal place of business located in New York, N. Y., and is engaged in offering for sale and selling in commerce a deodorant designated "Airkem," in interstate commerce.

Seeman Brothers, Inc., entered into an agreement, in connection with the offering for sale, sale and distribution in commerce of said product, "Air-Wick," to cease and desist from representing directly or by implication with respect thereto:

(1) That Air-Wick eliminates "all" unpleasant odors, or otherwise representing by the use of any other word or words that Air-Wick eliminates all unpleasant odors;

(2) That Air-Wick clears or freshens the air otherwise than according to its seeming effect;

(3) That Air-Wick contains pure chlorophyll as distinct from commercial chlorophyll;

(4) That the action of chlorophyll in Air-Wick is similar to the action of chlorophyll in nature;

(5) That the content of commercial chlorophyll as an active ingredient in Air-Wick provides a chief effect in the action of the product.

Airkem, Inc., entered into an agreement, in connection with the offering for sale, sale and distribution of their product, "Airkem," to cease and desist from representing directly or by implication with respect thereto:

(6) That Airkem does not mask odors;

(7) That Airkem "ends" odor problems, or otherwise representing by the use of any other word or words that Airkem ends odor problems;

(8) That Airkem freshens the air otherwise than according to its seeming effect;

(9) That Airkem restores some of the characteristics of outdoor air;

(10) That Airkem contains pure chlorophyll as distinct from commercial chlorophyll;

(11) That the action of chlorophyll in Airkem is similar to the action of chlorophyll in nature;

(12) That the content of commercial chlorophyll as an active ingredient in Airkem provides a chief effect in the action of the product.

(1-18994, Feb. 12, 1951.)

8110. **Leather Goods—Composition and Quality.**—Charles Doppelt & Co., Inc., an Illinois corporation, with its principal office and place of business located in Chicago, Ill., engaged in the business of offering for sale and selling leather goods in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist:

(1) From representing leather goods not composed exclusively of top grain cowhide leather as "Top Grain Cowhide" or "Genuine Top Grain Cowhide"; or

(2) From representing leather goods not composed exclusively of split cowhide as "Split Cowhide" or "Genuine Split Cowhide"; *provided that*, nothing in this agreement shall be construed as preventing the use of any of the aforesaid terms to designate a product which is in fact made of the leather so designated but which leather is backed with material other than leather, and clear disclosure is made of the fact that such leather is backed with certain other designated material. (1-22881, Feb. 14, 1951.)

8111. **"Bust Cream"—Qualities, Properties or Results.**—Henry Decker, an individual doing business under the trade names, Fashion-Glo and Fashion-Glo Cosmetics, with his principal place of business located in New York, N. Y., engaged in the business of offering for sale and selling a preparation designated "Bust Cream," sometimes called by the respondent "Fashion-Glo," entered into an agreement, in connection with the dissemination of advertising of said product, to cease and desist representing, directly or by implication:

(1) That the use of such Bust Cream will beneficially affect the firmness and structure of the breast;

(2) That after years of trying he has perfected a bust cream which will beneficially affect the firmness and structure of the breast. (1-23331, Feb. 21, 1951.)

8112. **Textiles for Embroidering—Prices.**—Harry Abrams, an individual operating under the trade names Embroidery Guild and Benay Manufacturing Co., with his principal office and place of business located in New York, N. Y., engaged in the business of offering for sale and selling textiles for embroidering, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist with respect thereto, from representing directly or by implication:

By use of the words "Wholesale Prices" or otherwise, that the prices charged for his products are less than the prices for which such products are ordinarily and customarily offered for sale and sold to producers thereof in the regular course of his business. (1-23324, Mar. 5, 1951.)

8113. **Insecticide—Effectiveness, Safety, Government Approval, etc.**—Rox Ex Co., Inc., a Michigan corporation, with its principal place

of business located in Detroit, Mich., and Edward Van Kinkle, an individual doing business under the name Stay Chemical Co., with his place of business located in Detroit, Mich., engaged in the business of offering for sale and selling a preparation designated as both "Stay Spray" and "Plastic Roxide," in interstate commerce, entered into an agreement, in connection with the dissemination of advertising relating to those products, to cease and desist from representing, directly or by implication:

(1) That Stay Spray or Plastic Roxide will kill all insects or all crawling insects that infest the interior of buildings;

(2) That after the use of Stay Spray or Plastic Roxide, insects will not again reinfest the areas treated unless such representations are limited to a period of about six weeks after treatment and to the insects to which the residue of the spray remains lethal for that period of time;

(3) That Stay Spray or Plastic Roxide will kill many insects not killed or exterminated by other methods until and unless such advertisements specify the conditions of use and the type or types of insects which will be killed by Stay Spray or Plastic Roxide, but will not be killed or exterminated by other methods;

(4) That Stay Spray or Plastic Roxide will kill many insects that are not killed or exterminated by DDT;

(5) That one quart of Stay Spray or Plastic Roxide is enough to spray most houses or the average house;

(6) That Stay Spray or Plastic Roxide is safe to use (or safe to use as directed) around food, children and pets, or that the product is not poisonous to warm blooded animals and human beings;

(7) That the Federal Trade Commission or other agencies or authorities of the Federal Government have found the claims made for Stay Spray or Plastic Roxide to be true or that the product is approved by the Federal Trade Commission or other agencies of the Federal Government. (1-23148, Mar. 9, 1951.)

8114. **Book—Old as New.**—Arco Publishing Co., Inc., a New York corporation, with its principal place of business located in New York, N. Y., and Milton Gladstone and David Turner, individually and as officers of said corporation, engaged in the publication, sale, and distribution of books and pamphlets, including, but not limited to, a book titled by them "How to Win Success in the Mail-Order Business," previously published by the United States Department of Commerce under the title "Establishing and Operating a Mail-Order Business," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(1) Representing directly or by implication that any such publication is a new work;

(2) Offering for sale any such publication without clearly disclosing the title under which it was previously sold. (1-23415, Mar. 9, 1951.)

8115. **Gasoline Additive—Improving Qualities.**—Winkenweder & Ladd, Inc., an Illinois corporation, with its principal office and place of business located in Chicago, Ill., engaged in the business of offering for sale and selling, in commerce, a product designated "Start," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing in any manner:

- (a) That the product removes water from the fuel system;
 - (b) That the product prevents frozen gas tanks or gas lines except to such extent as it may aid in so doing;
 - (c) That the product leaves no water in the gas tank to freeze or that it ends frozen gas lines;
 - (d) That the product ensures easy starting in cold weather;
 - (e) That the product is effective in forming a homogeneous mass with water and gasoline;
 - (f) That the product absorbs water in the fuel system;
 - (g) That by use of the product there is no risk of frozen gas lines.
- (1-21283, Mar. 12, 1951.)

8116. **Boys' Ranch Togs—Manufacturing Status and Source.**—De Luxe Ranch Togs, Inc., a New York corporation, with its principal office and place of business located in New York, N. Y., formerly doing business under the name, De Luxe Ranch Togs of California, Inc., which name was changed on or about July 20, 1950, engaged in the business of offering for sale and selling, in commerce, boys' ranch togs and other wearing apparel, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist, with respect thereto, directly or impliedly through the use of the corporate name De Luxe Ranch Togs of California, Inc., and/or the use of such name on labels, advertising, letterheads, and other printed matter or by any other means:

From representing that the boys' ranch togs or other wearing apparel sold by it are made in the State of California until said De Luxe Ranch Togs, Inc., owns, operates, or controls a factory in the State of California in which such ranch togs and other wearing apparel are made. (1-23443, Mar. 14, 1951.)

8117. **Plastic Starch—Manufacturing Status and Preserving Qualities.**—Gordon Chemical Co., Inc., a Pennsylvania corporation, with its principal place of business located at the Otis Building, Sixteenth and Sansom, Philadelphia 3, Pa., engaged in the business of offering for sale and selling a resin plasticizer designated "Plasta Starch," in interstate commerce, entered into an agreement, in connection with offering for sale, sale and distribution thereof, to cease and desist

from disseminating any advertisement in regard thereto which represents directly or by implication:

(a) That Gordon Chemical Co., Inc., is a chemical manufacturer or the manufacturer of Plasta Starch;

(b) That Plasta Starch resists mildew;

(c) That the use of said preparation can be relied upon to double the life of cotton or other fabrics or to increase the wearing life of fabrics by any definite length of time;

(d) That said preparation penetrates individual fibers or threads of fabrics. (1-23010, Mar. 16, 1951.)

8118. Sunglasses—Quality and Manufacture.—Sun Glass Industries, Inc., a New Jersey corporation, with its principal place of business located in Newark, N. J., engaged in the business of offering for sale and selling sunglasses, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

(a) That such sunglasses contain the finest lenses; and

(b) That the lenses of such sunglasses are ground and polished. (1-23101, Mar. 16, 1951.)

8119. Metal Awnings—Economy and Durability.—Koolvent Metal Awning Co., a Georgia corporation, with its principal place of business located in Atlanta, Ga., engaged in offering for sale and selling, in commerce, metal awnings designated "Koolvent," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

(a) That Koolvent Awnings require no maintenance;

(b) That the initial cost of Koolvent Awnings is the only cost;

(c) That Koolvent Awnings are windproof or stormproof. (1-23460, Mar. 16, 1951.)

8120. Boiler Repair Product—Nature and Effectiveness.—Norman A. Sommers, an individual and sole proprietor trading as Silver King Manufacturing Co., with his principal office and place of business located in Philadelphia, Pa., engaged in the business of offering for sale and selling, among other products, "Silver King Boiler Solder," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

(1) Representing directly or by implication that use of the product will affect a permanent repair of a leaky boiler;

(2) Using the word "Solder" as a part of the brand name or as otherwise descriptive of this product without clearly disclosing that the effectiveness of the product depends principally upon its vegetable fiber content. (1-23469, Mar. 23, 1951.)

8121. **Disinfectant—Effectiveness and Safety.**—Milner Products Co., a Mississippi corporation, with its principal place of business located in Jackson, Miss., and R. E. Dumas Milner, Howard S. Cohoon, and Thurman L. Pitts, as individuals and as officers of said corporation, engaged in offering for sale and selling in commerce, a pine oil disinfectant designated “Pine-Sol,” entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or impliedly:

(1) That said product will kill germs or is effective as a germicide unless said representations are limited to the effectiveness of said product in killing fungi and gram-negative bacteria;

(2) That said product is effective in killing spore forming bacteria;

(3) That said product will kill such germs as those causing pneumonia, tetanus and diphtheria;

(4) That said product will meet every standard of the ideal disinfectant and bactericide;

(5) That said product has a high coefficient of disinfection against many common pathogenic bacteria unless representations concerning its effectiveness as a disinfectant are limited to fungi and gram-negative bacteria;

(6) That said product is nontoxic and nonirritating to the skin. (1-23271, Mar. 27, 1951.)

8122. **Sunglasses—Tests, Certification and Relevant Facts.**—Safety Standards for Sun Glasses Inc., a New York corporation with its place of business located in New York, N. Y., and Daniel De Gorter, individually and as an officer of said corporation, engaged in the promotion of the sale of sun glass lenses made of thermally curved plate glass, and in the interest thereof, engaged in the sale of certain seals or stickers referred to as “20/20 labels” and certain certificates, referred to as “20/20 certificates,” used in the sale of such lenses and sun glasses containing such lenses, entered into an agreement, in connection with the promotion of the sale, sale, issuance or authorization thereof, to cease and desist from:

(1) Using, or authorizing others to use any seal, label, or certificate, or any advertising, which represents directly or by implication that such sun glass lenses have been control-checked or tested by an independent testing laboratory and found to meet certain specifications, unless and until the lenses concerning which such representation is made, have, in fact, been adequately sampled, the selections for testing are personally made by the laboratory’s representative from an entire stock of lenses and sufficient control is exercised to assure that the stock of lenses does in fact meet the specifications with which the lenses are claimed to comply;

(2) Using or authorizing others to use any seal, label, certificate or advertising containing the words “Twenty-Twenty” or the symbol

"20/20" in connection with or as descriptive of such sun glass lenses, except in compliance with paragraph (1) above, and further, unless a clear disclosure is made that the lenses are protective and not corrective;

(3) Representing directly or by implication that any specifications set or established by Safety Standards for Sun Glasses Inc. regarding the characteristics or quality of sun glass lenses are higher or more exacting than standards established by the National Bureau of Standards, or any other authority, when such is not a fact. (1-22832, Mar. 27, 1951.)

8123. Crib Mattresses, etc.—Qualities and Approval.—Bunny Bear, Inc., a Massachusetts corporation, with principal office and place of business located in Everett, Mass., engaged in offering for sale and selling in commerce, crib mattresses, play pen pads, and allied products, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing in any manner:

(a) That any of the products is waterproof unless and until such time as the complete outercovering thereof shall be impervious to water or moisture throughout the life of such product.

(b) That any of the products is stainproof when it is capable of being stained.

(c) That any of the mattresses (1) improve or materially affect posture or (2) develop or insure development of straight or sturdy bodies.

(d) That any of the products is recommended or approved by any person or group of persons by whom it is not recommended or approved. (1-21848, Mar. 27, 1951.)

8124. Fountain Pens—Composition, Value, Special Offers, Guarantee, etc.—Penman Co., Inc., an Illinois corporation, with its principal place of business located in Chicago, Ill., trading under the assumed name, M. P. K. Co., and Martin P. King, Nelson J. McMahon, and Edward H. Larson, individually and as officers of said corporation, engaged in the offering for sale, sale, and distribution of fountain pens, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing directly or by implication:

(1) That the purchaser's name or initials are engraved or printed in gold letters on such pens and pencils when in fact no gold is used in the lettering;

(2) That any part of the fountain pens is gold plated, unless it is mechanically plated with gold, or gold alloy of not less than 10 karat fineness, and the proportional weight and karat fineness of the plate is clearly shown in immediate conjunction with such representation;

(3) That purchasers save up to \$10 per set and from otherwise rep-

resenting that such pens and pencils have a value far in excess of the customary and usual retail price;

(4) That any offer which is regularly made in the usual course of business is a special or an introductory offer or is limited as to time;

(5) That such pens and pencils are guaranteed unless in direct connection with such representation a clear disclosure is made respecting the terms and limitations of the guarantee. (1-17618, Apr. 3, 1951.)

8125. **Starch—Economy, Durability, Competitive Products, etc.**—The Stevens-Wiley Manufacturing Co., Inc., a Pennsylvania corporation, with its principal office and place of business located in Philadelphia, Pa., engaged in the business of offering for sale and selling an aqueous dispersion of polyvinyl acetate, a water-soluble gum, preservative and perfume, designated "Plex," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist with respect thereto, from representing directly or by implication:

(1) That said preparation is a permanent starch;

(2) That said preparation can be relied upon to double the life of fabrics or to increase the wearing life of fabrics by any definite length of time;

(3) That ordinary starch merely coats the surface of fabrics;

(4) That said preparation penetrates individual fibers or threads of fabrics. (1-23052, Apr. 3, 1951.)

8126. **Skip Tracer Post Cards—Nature of Business.**—General Forwarding Co., Inc., a California corporation, with its principal place of business located in San Francisco, Calif., and David Fyne, Ruth Papkin, and Rita Crosier, as individuals and as officers of said corporation, engaged in the business of selling and distributing skip tracer post cards designed and intended to be used by creditors and collection agencies and others, in obtaining information concerning debtors, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

(1) Using the name General Forwarding Co., Inc., or any other name of similar import, to designate, describe, or refer to their business; or otherwise representing, directly or by implication, that they are connected in any way with the movement or transportation of goods or shipments, or with the delivery of goods or shipments to the consignees thereof;

(2) Representing directly or by implication that persons concerning whom information is sought through their post cards or other material are, or may be, consignees of goods or packages being held by them, or that the information sought through such means is for the purpose of enabling them to make delivery of goods or packages to such persons;

(3) Using, or supplying others for use, post cards or other material which represents directly or by implication that their business is other than that of obtaining information for use in the collection of debts, or that the information sought through such post cards or other material is for any purpose other than for use in the collection of debts. (1-23311, Apr. 3, 1951.)

8127. **Perfumes—Domestic as Foreign.**—Philip S. Willingmyre, an individual doing business under his own name, with places of business in Merchantville, N. J., and Philadelphia, Pa., engaged in the business of offering for sale and selling perfumes, entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from:

(1) Referring to such perfumes as "French" perfumes;

(2) Using the brand names "Tete-a-Tete," and "Etonnant" and "Faux-Pas" or any other French or other foreign terms or words to designate, describe or refer to such perfumes, or to any other toilet preparations, compounded in the United States, without clearly disclosing in connection therewith that such products are compounded in the United States. (1-20768, Apr. 10, 1951.)

8128. **Electric Fence Control Units—Operation.**—Norman F. Agnew and W. Porter Place, copartners trading as Farmers Engineering & Mfg. Co., and C. A. McDade, an individual trading as C. A. McDade Co., both with general offices and principal places of business located in Pittsburgh, Pa., engaged in the business of offering for sale and selling electric fence control units designated "Kleen-Line," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing directly or by implication:

That said electric control units will give trouble-free operation. (1-21473, Apr. 10, 1951.)

8129. **Reducing Devices—Healthful Qualities and Earnings.**—The Aciform Corp., an Illinois corporation, with its principal place of business located in Chicago, Ill., engaged in the business of offering for sale and selling devices designated "Gyro-Lator Equipment," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication:

(1) That use of its equipment reduces body measurements, normalizes fat distribution, effects the redistribution of body fat, increases or intensifies the oxidation of adipose tissue or otherwise brings about loss of weight or loss of body fat;

(2) That use of its equipment stimulates circulation or sluggish cells, energizes the body, stimulates, conditions or normalizes body functions, improves muscle tone, produces physical well-being or gives new vitality or life;

(3) That use of its equipment constitutes a health program, provides massage or internal massage or restores or produces figure beauty;

(4) That use of its vibratory equipment or the vibratory part of its equipment provides passive exercise;

(5) That use of its equipment effects complete physical or mental relaxation of nerve or muscle tension or freedom from fatigue, or vitalizes the scalp;

(6) That use of its equipment constitutes an adequate or effective foot or leg massage or relieves the feet or legs of fatigue;

(7) That purchasers of its equipment may reasonably expect earnings of \$18,000 and more per year or any other amount in excess of the net average earnings made by a substantial number of users of the equipment in the ordinary and usual course of business and under normal conditions and circumstances. (1-21810, Apr. 13, 1951.)

8130. **Metal Awnings—Economy and Durability.**—Koolvent Metal Awning Corp. of America, a Pennsylvania corporation, with its principal place of business located in Pittsburgh, Pa., engaged in the licensing of manufacturers to produce metal awnings designated "Koolvent," and in connection therewith preparing, offering for sale and selling advertising material purporting to describe such Koolvent Metal Awnings, in interstate commerce, entered into an agreement, to cease and desist from representing directly or by implication:

(1) That Koolvent Awnings require no maintenance;

(2) That the initial cost of Koolvent Awnings is the only cost;

(3) That Koolvent Awnings are windproof or stormproof. (1-22001, Apr. 13, 1951.)

8131. **Insecticide—Effectiveness and History.**—Eagle Products Co., Inc., a Tennessee corporation, with its principal office and place of business located in Chattanooga, Tenn., engaged in offering for sale and selling in commerce, an insecticide designated "Spra-Kill," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing in any manner:

(a) That the product is sure or instant in action or that it is safe;

(b) That the ingredients composing the product are entirely new. (1-23828, Apr. 13, 1951.)

8132. **Medicinal Preparation—Therapeutic Properties.**—The Occy Crystine Corp., a Connecticut corporation, with its principal office and place of business located in Salisbury, Conn., engaged in the business of offering for sale and selling a drug product designated Occy Crystine, entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication, that the product has a synergistic action or that it has any beneficial effect on diseases and physical con-

ditions except such benefit as it may afford to such extent as it may act as a laxative, cathartic, cholagogue and as to such mild diuretic effect as may be afforded through its use.

It is understood that if the Occy-Crystine Corp. should at any future date believe that this stipulation should be amended, it may advise the Federal Trade Commission of the reasons for such belief and request that the Federal Trade Commission consider amending this stipulation. (1-21467, Apr. 13, 1951.)

8133. **Dental Reliner—Effectiveness.**—Plasti-Liner Co., Inc., a New York corporation, with its principal place of business located in Buffalo, N. Y., engaged in the business of offering for sale and selling, in commerce, a dental reliner designated "Plasti-Liner" and "Brimm's Plasti-Liner," entered into an agreement in connection with the dissemination of advertising that product, to cease and desist from representing directly or by implication:

That application of this preparation will accomplish permanent results in the re-fitting or tightening of dental plates, or will assure perfect fitting plates. (1-20934, Apr. 18, 1951.)

8134. **Permanent Starch—Durability, Comparative Merits, etc.**—Texize Chemicals, Inc., a South Carolina corporation, with its principal office and place of business located in Greenville, S. C., engaged in the business of offering for sale and selling a resin plasticizer designated "Texize Permanent Resin Starch," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing directly or by implication:

(a) By use of the word "Permanent" as a part of the brand name thereof or in any other manner that garments once treated therewith need never be starched again;

(b) That the preparation starches fabrics in an entirely new way or in any other manner that there is any substantial difference between the methods of starching fabrics with the aforesaid preparation and with other starches;

(c) That the aforesaid preparation penetrates the individual fibers or threads of fabrics;

(d) That said preparation doubles the life or increases the wearing life of fabrics to which it is applied by any definite length of time. (1-23177, Apr. 20, 1951.)

8135. **Boiler Repair Compound—Qualities, Nature and Tests.**—Eagle Chemical Products Co., a Pennsylvania corporation with its principal place of business located in Philadelphia, Pa., and Charles Auslander, Alexander Auslander and Eda Auslander, as individuals and as officers of said corporation, engaged in offering for sale and selling in commerce a boiler compound preparation designated "Eagle Boiler Seal," in interstate commerce, entered into an agreement, in con-

nection with the offering for sale, sale, and distribution thereof, to cease and desist from representing directly or by implication that said preparation:

(a) Will permanently repair leaks or cracks or cracks in steam or hot water systems or in any of the component parts thereof;

(b) Seals leaks or cracks in steam or hot water systems or in any of the component parts thereof except to the extent that it may temporarily seal small or minor leaks appearing therein;

(c) Is a metallic solder or effects a metallic seal;

(d) Cleans a steam or hot water system or any of the component parts thereof;

(e) Was formulated or tested under the auspices of Columbia University. (1-23369, Apr. 23, 1951.)

8136. **Ribbons—Composition.**—Kessler & Gorman, Inc., a New York corporation, with its principal place of business in New York, N. Y., and Ben A. Grossman an individual, trading as Shari Ribbon Co., New York, N. Y., engaged in offering for sale and selling ribbons, in commerce, entered into an agreement in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

Using the words "Satin," "Taffeta" or "Velvet" in advertising, labeling, or branding, or otherwise as descriptive of ribbon material wholly composed of rayon fiber, provided, however, that such descriptive words may be used when, in connection therewith, a clear disclosure is made by use of the word "rayon" that such ribbon material is wholly composed of rayon, as for example, "Rayon Satin," "Rayon Taffeta" or "Rayon Velvet." (1-23361, Apr. 30, 1951.)

8137.¹ **Hair Cosmetics and Correspondence Course—Qualities.**—Alvin Eugene Boler and Amanda L. Boler, copartners doing business under the trade name Amanda-L Co., with their principal place of business located in Chicago, Ill., engaged in the business of offering for sale and selling cosmetics designated "Amanda-L Guaranteed Double Strength Hair Aid" and "Amanda-L Temple Salve" and a correspondence course in beauty culture designated "Amanda-L Correspondence Course," entered into an agreement, in connection with the disseminating of advertising relating to those products to cease and desist from representing directly or by implication:

(1) That Amanda-L Guaranteed Double Strength Hair Aid and Amanda-L Temple Salve have antiseptic, anti-bacterial, or germ-killing properties;

(2) That Amanda-L Guaranteed Double Strength Hair Aid rejuvenates the hair;

(3) That Amanda-L Guaranteed Double Strength Hair Aid relieves itchy scalp;

¹ Supplemental.

Alvin Eugene Boler and Amanda L. Boler also agreed that in connection with the offering for sale, sale, and distribution in commerce of a correspondence course, to cease and desist from representing:

(4) That the Amanda L Correspondence Course includes a course of study in hair growing.

It is also stipulated and agreed that this stipulation is supplemental to Stipulation No. 7537, executed by Alvin Eugene Boler and Amanda L. Boler and approved and accepted by the Federal Trade Commission on November 21, 1946,² which stipulation remains in full force and effect. (1-20319, May 4, 1951.)

8138. **Angora Rabbits—Opportunities, Profits, Prices, etc.**—William L. White, an individual trading as White's Rabbitry with his principal place of business located in Newark, Ohio, engaged in offering for sale and selling in commerce, Angora rabbits, in interstate commerce, entered into an agreement, in connection with the offering for sale, and selling Angora rabbits, to cease and desist from representing directly or by implication:

(1) That one grown Angora rabbit will produce one pound of rabbit hair per year;

(2) That the Angora rabbits which he sells are bred and raised by him when a substantial number of those sold are purchased from other breeders;

(3) That the price of rabbit hair per pound is a definite price when the time between quotation and publication is such as not to permit a current price quotation;

(4) That no experience is necessary in order to operate a profitable rabbitry;

(5) That raising Angora rabbits is a business in which success is guaranteed;

(6) That the market for Angora rabbit hair is unlimited, year-round, stable and protected;

(7) That Angora rabbit hair is ideal for surgical bandages;

(8) That a definite net profit per animal can be realized;

(9) That there is a demand for breeding stock and no pressure of competition;

(10) That every Angora rabbit sold is a healthy thoroughbred A-1 rabbit hair producer; and

(11) By giving a definite price per pound for Angora rabbit hair, that there is but one grade of rabbit hair, when as a matter of fact there are several grades, the prices of which fluctuate. (1-23397, May 11, 1951.)

8139. **Anemia Treatment—Therapeutic Properties.**—Bonquet Laboratories, Inc., a California corporation, with its principal place of business located in Glendale, Calif., Samuel J. Ripple, Dorothy M. Faia,

² See 43 F. T. C. 763.

and Lawrence A. Williams, individually and as officers thereof, and August Faia, individually, engaged in offering for sale and selling in commerce, a medicinal preparation designated "Bonquet Tablets," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing directly or by implication:

(a) That the product is effective in the treatment of anemia unless clearly limited to iron deficiency anemia caused by a deficiency of iron in the diet;

(b) That the product has any therapeutic value in the treatment of borderline anemia, nutritional anemia or secondary anemia;

(c) That the product is effective in the treatment of listlessness, a dragged-out feeling, tiredness, weakness, depression, an "all-in" feeling, lack of ambition, lack of energy, lack of vitality, premenstrual distress and pallor, nervousness, lack of appetite or restless sleep, unless clearly limited to cases resulting from iron deficiency anemia caused by a deficiency of iron in the diet;

(d) That the product increases the hemoglobin content of the blood, improves the red blood cell count, or otherwise "builds better blood" unless clearly limited to cases resulting from iron deficiency anemia caused by a deficiency of iron in the diet;

(e) That the yeast, liver concentrate or red bone marrow in the product have any value in the treatment of anemia;

(f) That anemia is more prevalent than is actually the case. (1-23773, May 14, 1951.)

8140. **Metal Awnings—Durability and Economy.**—Orchard Brothers, Inc., a New Jersey corporation, with its principal place of business located in Rutherford, N. J., engaged in offering for sale and selling in commerce, metal awnings designated "Alumaroll," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing directly or by implication:

(a) That Alumaroll Awnings require no maintenance;

(b) That the initial cost of Alumaroll Awnings is the only cost;

(c) That Alumaroll Awnings are stormproof. (1-22428, May 18, 1951.)

8141. **Dog Foods—Therapeutic Properties and Composition.**—A. K. Zinn & Co., a Michigan corporation, trading as Peerless Dog Food Co., with its principal office and place of business located in Battle Creek, Mich., engaged in the business of offering for sale and selling in commerce, dry dog foods, among them being those designated Peerless Ration, Peerless Kibbled Biscuit, Peerless Sportsman Dog Food, and Peerless Charcoal Biscuit, entered into an agreement, in connection with the dissemination of advertising relating to those products, to cease and desist from representing in any manner:

(a) That Peerless Charcoal Biscuit acts as a general conditioner, corrects stomach disorders, or tends to correct bad breath or indigestion;

(b) That the products contain meat. (1-21719, May 23, 1951.)

8142. **Rat Poison—Effectiveness and Safety.**—John Opitz, Inc., a New York corporation, with its principal office and place of business located in Long Island City, N. Y., engaged in offering for sale and selling in commerce, a product designated “J-O Paste,” in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing in any manner:

(a) That the product will rid premises of rats or completely eliminate them therefrom;

(b) That the product is safe; provided however that this shall not be construed as an agreement not to represent that it is safe except if taken internally by humans or domestic animals;

(c) That the product affords complete control of roach or rat infestations or that it is the most effective poison for rats or roaches, or that it contains the most toxic chemical used in pest extermination;

(d) That rats which consume the product will vanish from or leave premises to die. (1-16393, May 23, 1951.)

8143. **Shoes—Private Business as Guild.**—Lincoln Mathews and Paul G. Mathews, copartners trading as The Mathews Guild, with their principal place of business located in Weymouth, Mass., engaged in offering for sale and selling in commerce, shoes, in interstate commerce, entered into an agreement, to cease and desist from:

Using the word “Guild,” or any other word or words of similar import, as part of their trade name or from otherwise representing directly or by implication that their business is a guild or association or anything other than a commercial enterprise operated for profit. (1-23345, May 28, 1951.)

8144. **Paint Spray Gun—Comparative Merits.**—The American Brake Shoe Co., a Delaware corporation, with its principal place of business located at 230 Park Avenue, New York 17, N. Y., engaged in the business of offering for sale and selling a product for use in spraying paint designated “Micro-Spray”—a paint spray gun, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from disseminating any advertisement in regard thereto which represents, directly or by implication:

(1) That Micro-Spray gun produces a smoother paint finish, atomizes paint more finely, distributes paint more evenly or produces a better breakup of paint than competitive paint spray guns;

(2) That Micro-Spray gun uses less paint or requires less air than competitive paint spray guns. (1-23943, June 15, 1951.)

8145. **Knit Garments—Dealer Operating Mill.**—The L. N. Gross Co., an Ohio corporation, with its principal office and place of business located in Cleveland, Ohio, and Bradley Knitting Mills, Inc., an Ohio corporation, with its principal office and place of business located in Cleveland, Ohio, and Julius S. Gross, Nedward Gross and William V. Gross, individually and as officers of the corporations are engaged in the business of offering for sale and selling wearing apparel in interstate commerce.

Bradley Knitting Mills, Inc., agreed, that in connection with the offering for sale, sale and distribution of wearing apparel, it will forthwith cease and desist from using "knitting" or "mills" in its corporate name or from otherwise representing in any manner that it owns, operates or controls a knitting mill or that it manufactures the wearing apparel.

The L. N. Gross Co., Julius Gross, Nedward Gross and William V. Gross, and each of them agreed, that in connection with the offering for sale, sale and distribution of wearing apparel, they will forthwith cease and desist from representing in any manner that the corporation now known as Bradley Knitting Mills, Inc., owns, operates or controls a knitting mill or that it manufactures the wearing apparel. (1-23814, June 15, 1951.)

8146. **Electric Welding Device—Safety.**—Andre K. Birten, an individual trading as Magic Electro Welder Manufacturing Co., with his place of business located in New York, N. Y., engaged in the offering for sale and selling an electric welding device designated "Magic Welder," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(1) Advertising or representing that such device is entirely safe or is safe for home use unless affirmative disclosure is made as to the proper wiring and fusing of the circuit on which the device is used;

(2) Distributing or selling such device unless the word "Caution" or "Warning," together with adequate directions for safe use of the device, is firmly affixed to the device in a lasting manner plainly informing the user that failure to follow directions may create a dangerous fire hazard. (1-19637, June 13, 1951.)

8147. **Medicinal Preparation—Safety.**—Melvin Co., a California corporation, with its principal place of business located in South Pasadena, Calif., engaged in the business of offering for sale and selling a medicinal preparation designated "Dozets," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from failing to reveal that the taker shall "Follow the label—avoid excessive uses." (1-20518, June 26, 1951.)

8148. **Nylon Socks—Tests and Qualities.**—Abraham & Straus, Inc., a New York corporation, with its principal place of business located in New York, N. Y., engaged in the business of offering for sale and selling nylon socks, in commerce, entered into an agreement in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by inference:

(1) That any claim with respect to its socks is predicated upon research by a testing laboratory, unless such claim is based upon reports of actual tests conducted by a competent testing laboratory as represented;

(2) That such socks never lose their color;

(3) That such socks are mildewproof. (1-22670, June 26, 1951.)

8149. **Bed Boards—Therapeutic Properties.**—Sears, Roebuck & Co., a New York corporation, with its principal place of business located in Chicago, Ill., engaged in offering for sale and selling in commerce, bed boards, entered into an agreement, in connection with the disseminating of advertising relating to that product, to cease and desist from representing directly or by implication:

(a) That the bed boards are of any benefit for sacroiliac conditions, lumbago, or arthritis except where such conditions are aggravated by overly soft mattresses or sagging springs;

(b) That the bed boards are of any benefit in the treatment of heart conditions. (1-23947, June 29, 1951.)

8150. **Electric Welding Device—Safety.**—Ergolyte Manufacturing Co., a Pennsylvania corporation, with its principal place of business located in Philadelphia, Pa., engaged in the offering for sale, sale and distribution of an electric welding device designated "Ergolyte Junior Welding Kit," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

(1) Advertising or representing that such device is entirely safe or is safe for home use unless affirmative disclosure is made as to the proper wiring and fusing of the circuit on which the device is used;

(2) Distributing or selling such device unless the word "Caution" or "Warning," together with adequate directions for safe use of the device, is firmly affixed to the device in a lasting manner plainly informing the user that failure to follow directions may create a dangerous fire hazard. (1-22555, Mar. 23, 1951.)

DECISIONS OF THE COURTS¹

GOLD TONE STUDIOS, INC., ET AL. v. FEDERAL TRADE COMMISSION²

No. 178, Docket 21, 163—F. T. C. Docket 4779

(Court of Appeals, Second Circuit. July 5, 1950)

WORDS AND PHRASES—"TINTED" AND "COLORED" PHOTOGRAPHS—WHETHER SYNONYMOUS IN MINDS OF PUBLIC ARTISTS, OR PHOTOGRAPHERS

In proceeding to review and set aside order of Federal Trade Commission to cease and desist, in connection with offering for sale and sale and distribution in commerce of photographs, from using words "oil painted" or the like to refer to tinted or colored photographs, evidence sustained finding of Commission that "tinted" and "colored" are not, in the minds of the public, artists, or photographers, synonymous, in that "tinted" refers to a photograph which has been only partly touched with the pigment, while "colored" refers to a photograph fully covered with color.

APPELLATE PROCEDURE AND PROCEEDINGS—FINDINGS OF COMMISSION—IF SUPPORTED BY EVIDENCE

The findings of the Federal Trade Commission cannot be disturbed by the Court of Appeals when supported by substantial evidence.

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—TRADE OR CORPORATE NAMES—"GOLD TONE" FOR PHOTOGRAPHIC BUSINESS—IF NOT SUBSTANTIALLY ENGAGED IN FINISHING PRODUCT BY SUCH PROCESS

In proceeding to review and set aside order of Federal Trade Commission to cease and desist in connection with the offering for sale and sale and distribution in commerce of photographs, from using words "gold tone" or words of similar meaning in corporate name, evidence sustained Commission's finding that use of the term "gold tone" in petitioner's corporate

¹ During the period covered by this volume, namely, July 1, 1950 to June 30, 1951, the Supreme Court in *Federal Trade Commission v. Alberty et al.*, on Oct. 9, 1950, 340 U. S. 818, denied petition for writ of certiorari to review the decision of CA-DC of Mar. 20, 1950, 182 F. (2d) 36, 46 F. T. C. 1453, which modified and affirmed as modified, the Commission's desist order in *Alberty, et al.*, D. 5101, Feb. 4, 1948, 44 F. T. C. 475.

The court below had granted the relief requested by respondents in the Commission proceeding, by striking from the order the requirement that their advertisement of therapeutic effectiveness of "Oxorin Tablets" also state "that the condition of lassitude is caused less frequently by simple iron deficiency anemia than by other causes and that in such cases this preparation will not be effective in relieving or correcting it", and in connection with advertisements of "Phoso-B", striking the phrase "Under the principles of the Homeopathic School of Medicine."

² Reported in 183 F. (2d) 257. For case before the Commission, see 45 F. T. C. 206.

name to refer to a photographic business not substantially engaged in finishing photographs by the gold tone process had a probable tendency to deceive the purchasing public.

CEASE AND DESIST ORDERS—MISREPRESENTATION—TRADE OR CORPORATE NAMES—
“GOLD TONE” FOR PHOTOGRAPHIC BUSINESS—WHERE NOT SUBSTANTIALLY EN-
GAGED IN FINISHING PRODUCT BY SUCH PROCESS—IF PROBABLE TENDENCY TO
DECEIVE

The fact that use of term “gold tone” in name of corporation not engaged in finishing photographs by gold tone process had a probable tendency to deceive purchasing public was sufficient to sustain Federal Trade Commission’s cease and desist order forbidding use of such term in corporate name.

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—SELECTION
OF APPROPRIATE AS PRIMARILY IN COMMISSION DISCRETION

The selection of the appropriate remedy to prevent probable deception of purchasing public is a matter within the discretion of the Federal Trade Commission and will be reviewed only where abused.

CEASE AND DESIST ORDERS—SCOPE—TRADE OR CORPORATE NAMES—WHERE FURTHER
USE PROHIBITED—IF IDENTIFYING AND EXPLANATORY REFERENCE, IN CONTINUING
BUSINESS UNDER PERMITTED NEW NAME, ALSO PROHIBITED

Provision in cease and desist order of Federal Trade Commission forbidding corporation, in doing business under a permitted new name, to make it plain that it was the same corporation which formerly did business under the prohibited name, was an abuse of discretion and order would be modified so as to allow corporation to identify itself as one formerly doing business under prohibited name.

(The syllabus, with substituted captions, is taken from 183F. (2d) 257)

On petition to review and set aside order to cease and desist of Commission, order affirmed as modified.

MacFarlane, Harris and Goldman (Mr. Harry D. Goldman, of counsel) of Rochester, N. Y., for petitioners.

Mr. W. T. Kelley, General Counsel, Mr. James W. Cassidy, Associate General Counsel, and Mr. Alan B. Hobbes, Attorney, all of Washington, D. C., for the Commission.

Before SWAN, AUGUSTUS N. HAND and CHASE, *Circuit Judges*.

[258] CHASE, *Circuit Judge*:

This is a petition to review and set aside an order of the Federal Trade Commission requiring petitioners, among other things, to cease and desist, in connection with the offering for sale, sale, and distribution in commerce of photographs, from (1) using the words “oil painted portraits,” “oil painted” or the like to refer to a tinted or colored photograph; (2) using the words “oil colored portrait” “colored in oils” or the like to refer to a tinted photograph; and (3) using the words “Gold-Tone,” or words of similar import or meaning, as

a corporate or trade name or otherwise, to refer to a photographic reproduction which is not a product of a finishing process involving the use of a toning or developing bath using salts or chloride of gold, or to a photographic business "not substantially engaged" in finishing photographs by such a process. The Commission found such use of these words to be a deceptive act or practice in commerce and that a proceeding by it in respect thereof would be in the public interest. 15 U. S. C. § 45.

Petitioners argue, first, that the terms "oil colored" and "colored in oils" do not deceptively describe their photographic reproduction. These were, in major part, sepia photographs tinted or colored in varying degrees. There was, however, evidence to support the Commission's finding that "tinted" and "colored" are not, in the minds of the public, artists or photographers, synonymous, in that the former refers to a photograph which has been only partly touched with the pigment, while the latter refers to one fully covered with color. While there was evidence to the contrary, the Commission's findings cannot be disturbed by us when they are supported, as here, by substantial evidence. *Excelsior Laboratory, Inc. v. Federal Trade Commission*, 2 Cir., 171 F. (2d) 484. [45 F. T. C. 1087; 4 S. & D. 792.]

"Gold toning" or the "gold tone process" is a recognized method of finishing photographs by the use of a finishing bath containing gold chloride or some other gold salt. Petitioners do not object to so much of the Commission's order as forbids them from using the term "Gold-Tone" to refer to photographs not finished by that process. But they do claim that the use of the term in their corporate name does not, and is not likely to, deceive the general public and that, while in extraordinary circumstances an expert photographer might be deceived by the use of those words in the corporate name, in such cases the public interest is not [259] substantial. While there was no evidence that any member of the general public was even actually deceived, there was evidence that persons do specify "gold tone" when they place orders for additional copies of photographs they know have been finished with the "gold-tone" process; that some customers so specify on originally placing orders for photographs; and that amateur photographers who read photography publications are familiar with the technical meaning of that term. We think this evidence sufficient to support the Commission's finding that the use of the term "Gold-Tone," in petitioners' corporate name to refer to a photographic business not substantially engaged in finishing photographs by the "Gold-Tone" process, has a probable tendency to deceive the purchasing public. This is enough. *Fioret Sales Co., Inc. v. Federal Trade Commission*, 2 Cir., 100 F. (2d) 359. [27 F. T. C. 1702; 2 S. & D. 481.]

While the Commission's order seems drastic at first glance, it does give petitioners a choice. If they can, and will, substantially use the gold tone process they may keep their present corporate name. Yet, however that may be, the selection of the appropriate remedy is a matter within the discretion of the Commission, which will be reviewed only where abused, *Herzfeld v. Federal Trade Commission*, 2 Cir., 140 F. (2d) 207 [38 F. T. C. 833; 4 S. & D. 109]. Petitioners do not object to so much of the order as prohibits the use of the terms "oil painted portrait," "oil painted," or the like to refer to their photographs. And the Commission concedes that its order does not prohibit the use of the term "portrait" alone or in conjunction with terms other than "oil painted," "oil colored" or words of similar import or meaning.

Perhaps, however, paragraph 4 of the order might be construed to mean that the corporation may not, in doing business under a permitted new name, make it plain that it is the same corporation which formerly did business under the name "Gold Tone Studios, Inc." To forbid that would, we think, be an abuse of discretion. Consequently paragraph 4 is modified by adding at the end thereof the following sentence: "Provided that the corporation may, in conducting its business under any permitted changed name, state that it is the same corporation which formerly did business under the name 'Gold Tone Studios, Inc.'"

As so modified the order is affirmed and an order of enforcement will be issued.

BENJAMIN D. RITHOLZ ET AL. TRADING AS NATIONAL OPTICAL STORES CO., ETC. v. FEDERAL TRADE COMMISSION¹

No. 10173—F. T. C. Docket 5176

(Court of Appeals, Second Circuit. August 15, 1950)

Order granting leave to petitioners to withdraw petition filed May 15, 1950, to review desist order of March 22, 1950, 46 F. T. C. 694 at 704, requiring respondents, individually and as copartners trading under the names National Optical Stores Co. and Dr. Ritholz Optical Co., their agents, etc., in connection with the offer, etc., of eyeglasses or other optical supplies, to cease and desist from:

- (1) Disseminating, etc., any advertisements which represent, directly or by implication—
 - (a) That the lenses in all or any of the glasses sold by the respondents are ground in accordance with prescriptions by doctors, when in fact said lenses are not accurately ground in accordance with the prescriptions of doctors, optometrists, or physician-oculists;
 - (b) That any of the respondents' glasses are offered for sale at prices substantially lower than the prices actually charged for said glasses; or

¹ Not reported in Federal Reporter. For case before Commission, see 46 F. T. C. 694.

that any offer of glasses at the respondents' usual or customary prices which is not limited in point of time is a special offer for a limited time only;

- (c) That the purchase price of glasses sold by the respondents will be refunded to dissatisfied customers, or that the respondents in the sale of their glasses guarantee satisfaction, when in fact said respondents do not in all instances accept the return of glasses from dissatisfied customers and refund the full purchase price thereof;
- (2) Entering into any arrangement, agreement, or understanding with any doctor, optometrist, or physician-oculist to advise any prospective purchaser that the condition of his eyes is such as to require glasses other than those advertised by the respondents, when such condition actually does not exist;
- (3) Representing that glasses advertised by the respondents at special low prices are unsuitable to correct the defective vision of any prospective purchaser, when such glasses would be adequate for such purpose.

Mr. Benjamin D. Ritholz, of Chicago, Ill., for petitioners.

Mr. James W. Cassidy, Assistant Chief Counsel, of Washington, D. C., for the Commission.

ORDER GRANTING LEAVE TO WITHDRAW PETITION FOR REVIEW

Before J. EARL MAJOR, *Chief Judge*.

On petition of Benjamin D. Ritholz, attorney pro se and on behalf of all petitioners in the above-entitled cause, it is ordered that leave be, and the same is hereby granted to the petitioners to withdraw instant the petition for review herein which was filed in this Court on May 15, 1950.

BRISTOL-MYERS CO. v. FEDERAL TRADE COMMISSION¹

No. 6049—F. T. C. Docket 4861

(Court of Appeals, Fourth Circuit. Nov. 9, 1950)

CEASE AND DESIST ORDERS—METHODS, ACTS, AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—COMPARATIVE USE AND INDORSEMENT OF PRODUCT

Evidence sustained order of Federal Trade Commission forbidding advertisements by toothpaste manufacturer that claimed twice as many dentists in the United States used manufacturer's toothpaste than any other dentifrice and that more dentists recommend manufacturer's toothpaste for their patients than any other two dentifrices combined as misleading and likely to deceive general public in that such sweeping statements were not justified by answers to questionnaires sent by manufacturer to list of dentists picked at random from subscribers to two dental magazines.

¹ Reported in 185 F. (2d) 58. For case before Commission see 46 F. T. C. 162.

CEASE AND DESIST ORDERS—METHODS, ACTS, AND PRACTICES—ADVERTISING
FALSELY OR MISLEADINGLY—SCIENTIFIC OR RELEVANT FACTS

Evidence sustained order of Federal Trade Commission forbidding advertisements which represented to public that modern American diet consists of such soft well-cooked foods that gums do not get exercise and stimulation which they need, and that massage with manufacturer's toothpaste would provide such exercise and stimulation and would prevent gum trouble generally as misleading and likely to deceive general public.

EVIDENCE—OPINION—IF BASED ON KNOWLEDGE OF EXPERTS, WITHOUT PERSONAL
EXPERIENCE WITH PRODUCT CONCERNED

Opinion evidence based on general medical and pharmacological knowledge of qualified experts, may constitute "substantial evidence" for cease and desist order by Federal Trade Commission, even if experts have had no personal experience with product to which cease and desist was directed.

EVIDENCE—TESTIMONY—IF CONFLICTING

Conflicts in testimony in proceedings before Federal Trade Commission are to be resolved by the Commission and not by courts whose function is limited to determining whether upon a review of the whole record it appears that Commission's findings are supported by substantial evidence.

EVIDENCE—WEIGHT AND INFERENCES

In proceedings before Federal Trade Commission, weight to be given to facts proved and inferences to be drawn from them are for the Commission to determine, not the court.

(The syllabus with substituted captions, is taken from 185 F. (2d) 58)

On petition to review and set aside order to cease and desist of Commission, order affirmed.

Mr. Gilbert H. Weil, of New York City, and *Mr. T. Justin Moore*, of Richmond, Va. (*Mr. Isaac W. Digges*, of New York City, *Mr. John W. Riely*, of Richmond, Va., and *Hunton, Williams, Anderson, Gay & Moore*, of Richmond, Va., on brief) for petitioners.

Mr. Donovan Divet, special attorney, of Washington, D. C. (*Mr. W. T. Kelley*, general counsel, *Mr. James W. Cassidy*, associate general counsel, and *Mr. A. B. Hobbes*, attorney, all of Washington, D. C., on the brief), for the Commission.

Before PARKER, SOPER AND DOBIE, *Circuit Judges*.

[59] SOPER, *Circuit Judge*:

This case arises upon the petition of Bristol-Myers Company, a Delaware corporation, engaged in the manufacture and sale of Ipana tooth paste, to review and set aside a cease and desist order entered against it by the Federal Trade Commission pursuant to findings that in advertising the product it had engaged in unfair and deceptive acts or practices in violation of Sections 5 and 12 of the Federal Trade

Commission Act, 15 U. S. C. A. §§ 45 and 52. The prohibitive provisions of the order, which are set out in full in the margin,¹ forbid advertisements which fall into two main categories: (1) advertisements that claim that twice as many dentists in the United States personally use Ipana as any other dentifrice; and that more dentists recommend Ipana for their patients than any other two dentifrices combined; (Sections 1 (a) and 1 (b) of the order); and (2) advertisements which claim that Ipana possesses therapeutic and prophylactic qualities in that when used with massage it stimulates circulation and imparts health to the gums and prevents "Pink Tooth Brush" and aids in the treatment of its causes. (Sections 1 (c), 1 (d), 1 (e) and 1 (f) of the order.)

[60] The Commission issued a complaint against the corporation and found upon substantial evidence that the corporation had represented in advertisements in the first category (1) that according to a national survey conducted in 1940 among thousands of dentists twice as many dentists personally use Ipana toothpaste as any other dentifrice; and (2) that more dentists recommend Ipana for their patients' daily use than the next two dentifrices combined. These advertisements were based upon the answers to a questionnaire sent by the corporation in 1940 to each of 10,000 dentists out of 66,000 in the United States picked at random from the subscribers to two dental magazines. The questionnaires asked the following questions: (1) What dentifrice do you personally use most often?, and (2) What dentifrice do you most often recommend to your patients? In reply 1,983 questionnaires were received which contained 2,467 replies to the first and 2,364 replies to the second question. The replies exceeded the questionnaires in number because some dentists named more than one product in their an-

¹ The order under review requires the petitioner to cease and desist from:

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

"(a) That twice as many dentists in the United States personally use Ipana tooth paste as any other dentifrice, or that any greater proportion or number of dentists use said product than is the fact;

"(b) That more dentists in the United States recommend Ipana tooth paste for use by their patients than any other two dentifrices combined, or that more dentists recommend said product than is the fact;

"(c) That use of Ipana tooth paste with massage will prevent 'Pink Tooth Brush' or aid in the treatment of its causes;

"(d) That Ipana tooth paste has any significant therapeutic value in the treatment of mouth, tooth, or gum diseases;

"(e) That modern or current diets, or soft well-cooked foods, do not give the gums the exercise and stimulation they need, or that such diets or foods make the gums susceptible to trouble;

"(f) That massage with Ipana tooth paste stimulates circulation in the gums, imparts firmness or health to the gums, or prevents gum trouble.

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

swers. Of the 2,467 replies to the first questions 621 dentists replied that they used Ipana most often, whereas the four nearest competing products were preferred by 258, 189, 144, and 128 dentists, respectively. In answer to the second question 461 dentists indicated that they most often recommended Ipana to their patients while the four nearest competing products were preferred by 195, 125, 106, and 94 dentists, respectively. Of the 461 dentists who recommended Ipana to their patients, 413 used it themselves and 48 did not use it. Other surveys conducted in 1941 and 1944 revealed substantially similar situations.

Based upon the results of the survey, the corporation published advertisements from which the casual reader would reasonably infer that careful inquiry amongst the members of the dentist profession had disclosed that a large majority of the dentists in this country not only used Ipana themselves but recommended it to their patients. Typical of these advertisements were the following:

"Do you know that the 1940 National survey recently conducted among thousands of dentists revealed the following remarkable fact—Twice as many dentists personally use Ipana Tooth Paste as any other dentifrice preparation.

"Dentists choose Ipana for Personal use 2 to 1 over any other dentifrice.

"* * * In a recent nationwide survey, more dentists said they recommended Ipana for their patients' daily use than the next two dentifrices combined. Which should help convince you * * * that for healthier gums, brighter teeth and a more attractive smile, you should begin now to massage with Ipana Tooth Paste.

"That is why so many dentists recommend massage with Ipana.

"So many dentists suggest the helpful stimulation of Ipana and massage."

We are of the opinion that these sweeping statements were not justified by the answers to the questionnaire and that in consequence, as the Board found, the advertisements were misleading and likely to deceive the general public. Certainly the average reader would not infer that the positive proof in the hands of the advertiser disclosed the personal preference of only 621 dentists and the customary recommendation of tooth paste to patients by only 461 dentists out of the 66,000 dentists in the United States, or that less than 20 percent of those who had been questioned had taken the trouble to reply, so that the use and practice of the remaining 80 percent were unknown. It may well be that an accurate estimate of public opinion or practice can be obtained by a sampling process or survey, but the record is devoid of information on this subject and in the absence of the proof of the scientific principles, if any, which underlie the practice, we must rely upon the impression which the advertisements would be likely to make upon the mind of a man of ordinary intelligence. This

is not to express the opinion that all advertisements based upon surveys must be barred, but merely that the information in the possession of the manufacturer in this case was insufficient to [61] support its advertisements, and hence that the action taken by the Commission in this respect was within its authority.

The remaining parts of the order were passed in respect to advertisements which represented to the public that the modern American diet consists of such soft well-cooked foods that the gums do not get the exercise and stimulation which they need, and that massage with Ipana will provide such exercise and stimulation, and will make the gums firm and healthy, guard against Pink Tooth Brush, a bleeding of the gums sometimes due to disease, and prevent gum trouble generally.² Sections 1 (c) to 1 (f) of the order were designed to prevent the dissemination of these statements. The order was based upon findings of the Commission that the preponderant weight of qualified dental opinion establishes the following facts: It is immaterial to the health of the gums whether the diet of a person is soft or coarse, and the modern American diet provides sufficient gum stimulation. The term "massage," as used by dentists, means a careful downward stroking or squeezing pressure applied to a quarter inch of the gum margin and teeth. The term "massage," as used in the manufacturer's advertisements, means to the general public a horizontal, vertical, or rotary scrubbing of the teeth and the gums with the brush, or a similar rubbing with the finger. Such uninstructed massage either with or without Ipana or any other tooth paste does not stimulate circulation in the gums, impart firmness thereto, or prevent gum trouble in general or pink tooth brush in particular. Even carefully instructed and properly performed massage is not needed in a mouth free from disease, and a layman is unable to ascertain whether or not he is in need of massage. Ipana tooth paste is a cleansing agent only,

² Typical of these advertisements were the following:

"Guard against 'Pink Tooth Brush' with the help of Ipana and Massage—It may not mean serious trouble, but find out. More than likely it is a warning of neglected gums, soft, flabby, underworked. And like thousands of dentists your dentist may suggest 'the healthful stimulation of Ipana massage.'

"That is why the daily use of Ipana and Massage—to help guard against 'Pink Tooth Brush.'

" * * * foods we eat nowadays do not give our gums the work they need to keep them firm and healthy—so they often become soft and susceptible to trouble. That's why so many dentists suggest massage with Ipana Toothpaste.

"That's why so many dentists say—Give your gums the healthful stimulation of Ipana Toothpaste—and massage * * * it gives your gums the kind of stimulation they need to help guard against gum trouble.

" * * * but when used with massage Ipana helps to give our gums the exercise and stimulation they fail to get from the soft, creamy foods we eat—a stimulation they need to help guard against gum trouble.

"For when you massage with Ipana you can actually feel its stimulating effect upon your gum tissues as lazy gums start to waken and circulation speeds up. And that helps bring greater health to your gums and consequently more radiance to your smile.

"You'll notice an invigorating 'tang'—exclusive with Ipana and massage. That tells you circulation is speeding up within the gums—helping gums to gain new firmness and new strength."

without therapeutic value, and possesses prophylactic value only insofar as it cleanses.

The manufacturer contends that these findings are not supported by substantial evidence insofar as they state that the use of Ipana in connection with massage has no beneficial effect. The testimony in support of the findings was given by four expert dentists who were distinguished in their profession and had published numerous articles in leading dental and medical journals. Two of them had published textbooks on dentistry. In opposition the petitioner produced one witness who had been educated in medicine, had been a medical director in industry and in the army, and was employed by the petitioner at the time of the trial. His testimony differed in material points from that of the Commission's expert.

It is not denied that the testimony of the Commission's experts supported its findings, but it is contended that it did [62] not constitute substantial evidence within the meaning of Section 5 (c) of the Federal Trade Commission Act, 15 U. S. C. A. § 45 (c), and Section 10 (e) of the Administrative Procedure Act, 5 U. S. C. A. § 1009 (e), because each of the witnesses based his opinion upon his clinical experience without experimenting with Ipana, and without making scientifically controlled experiments which the witness admitted were necessary for the acquisition of positive knowledge as distinguished from opinion. The witnesses, however, were in possession of the formula of Ipana which contained familiar ingredients concerning which they were competent to testify; and, in saying that their opinions were not based on scientifically controlled experiments, they did not take the position that their opinions, based upon general clinical experience, were valueless. It does not appear in this case that either the producer of the goods or anyone else has made a technically precise or exhaustive scientific investigation. The Commission based its findings upon the opinions of persons qualified in the field in much the same manner as the manufacturer purports to have acted in describing the beneficial qualities of his product to the public. In our opinion the Commission was justified in giving preference to the testimony of the experts who supported the allegations of the complaint and who, so far as the evidence shows, were the persons best qualified in the field to form a trustworthy judgment upon the matters under investigation. Opinion evidence based on the general medical and pharmacological knowledge of qualified experts has often been held to constitute substantial evidence, even if the experts have had no personal experience with the product. *Goodwin v. U. S.*, 6 Cir., 2 F. (2d) 200, 201; *Dr. W. B. Caldwell, Inc. v. F. T. C.*, 7 Cir., 111 F. (2d) 889, 891 [30 F. T. C. 1670, 3 S. & D. 218]; and this has been done even where witnesses who had personally observed the effects of the product testified to the contrary.

Justin Haynes & Co. v. F. T. C., 2 Cir., 105 F. (2d) 988, 989 [29 F. T. C. 1578, 3 S. & D. 134]; *Neff v. F. T. C.*, 4 Cir., 117 F. (2d) 495, 497 [32 F. T. C. 1842, 3 S. & D. 332]; *J. E. Todd, Inc. v. F. T. C.*, C. A. D. C., 145 F. (2d) 858 [39 F. T. C. 711, 4 S. & D. 291]; *John J. Fulton Co. v. F. T. C.*, 9 Cir., 130 F. (2d) 85, 86 [35 F. T. C. 946, 3 S. & D. 499]; cf. *Kidder Oil Co. v. F. T. C.*, 7 Cir., 117 F. (2d) 892, 899 [32 F. T. C. 1823, 3 S. & D. 317], where the evidence was found to be so speculative and uncertain that findings of the Commission were set aside. Conflicts in testimony are to be resolved by the Commission and not by us whose function is limited to determining whether upon a review of the whole record it appears that the Commission's findings are supported by substantial evidence. The weight to be given to the facts proved and the inferences to be drawn from them are for the Commission to determine, not the courts. *Corn Products Refining Co. v. F. T. C.*, 324 U. S. 726, 739 [40 F. T. C. 892, 4 S. & D. 331].

A judgment affirming the Commission's order will be issued.

Affirmed.

P. LORILLARD CO. v. FEDERAL TRADE COMMISSION¹

No. 6140—F. T. C. Docket 4922

(Court of Appeals, Fourth Circuit. Dec. 29, 1950)

PROCEEDINGS BEFORE COMMISSION—FACT STIPULATIONS—EFFECT

Fact stipulations approved by Federal Trade Commission have no greater sanctity than pretrial stipulations approved by judge.

PROCEEDINGS BEFORE COMMISSION—FACT STIPULATIONS—IF INADVERTENCE OR MISTAKE ON PART OF COMMISSION OR ITS COUNSEL

The Federal Trade Commission is not a private party but a body charged with the public interest, and the public interest should not be allowed to suffer as a result of inadvertence or mistake on the part of commission or its counsel where this can be avoided.

PROCEEDINGS BEFORE COMMISSION—FACT STIPULATIONS—IF APPROVED UNDER ERRONEOUS IMPRESSION MATERIAL ISSUES COVERED

Federal Trade Commission could rescind order approving a fact stipulation and could direct taking of testimony in case where Commission approved stipulation under erroneous impression that stipulation covered the material issues and Commission later discovered that highly important facts had not been stipulated.

PROCEEDINGS BEFORE COMMISSION—FACT STIPULATIONS—IF PRIOR APPROVAL RESCINDED—WHETHER HEARING OF EVIDENCE THEREAFTER BEFORE DIFFERENT TRIAL EXAMINER, PROPER

Where Federal Trade Commission rescinded order approving fact stipulation and directed taking of testimony, the hearing of evidence could be had

¹ Reported in 186 F. (2d) 52. For case before Commission see 46 F. T. C. 752 as modified in 47 F. T. C. 853.

before a different trial examiner than the one before whom the fact stipulation had been filed, in view of exclusion of fact stipulation from further consideration and making of report by examiner presiding at hearing at which evidence was taken.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—COMPARATIVE MERITS OF PRODUCT

Evidence warranted Federal Trade Commission's finding that tobacco company's advertising that cigarettes and smoke therefrom contained less nicotine and that smoke contained less tars and resins and was less irritating to throat than six other leading brands of cigarettes was false, misleading, and deceptive, so as to warrant cease and desist order.

EVIDENCE—EXPERT TESTIMONY—WEIGHT

The weight to be accorded to testimony of expert witness testifying in proceeding before Federal Trade Commission to prevent false advertising was for Commission.

METHODS, ACTS, AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—NON-DISCLOSURE—DECEPTIVE QUOTATION

Printing a small part of magazine article in such a way as to create an entirely false and misleading impression of advertiser's product constitutes false advertising which can be prevented by the Federal Trade Commission.

METHODS, ACTS, AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—NON-DISCLOSURE—DISCLOSURE OF PARTIAL TRUTH ONLY

To tell less than the whole truth in an advertisement is a well-known method of deception, and he who deceives by resorting to such methods cannot excuse the deception by relying upon the truthfulness per se of the partial truth by which the deception has been accomplished.

METHODS, ACTS, AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—APPRAISAL—EFFECT ON GENERAL PUBLIC AS PROPER CRITERION

In determining whether advertising is false or misleading, regard must be had, not to fine-spun distinctions and arguments that may be made in excuse, but to the effect which it might reasonably be expected to have upon the general public.

CEASE AND DESIST ORDERS—OPERATION—AS PROSPECTIVE

Orders of the Federal Trade Commission have relation to the future and not to the past.

CEASE AND DESIST ORDERS—SCOPE—ADVERTISING FALSELY OR MISLEADINGLY—AS PROPERLY INCLUDING ADVERTISING OF WHICH RESPONDENT GUILTY IRRESPECTIVE OF PARTICULAR NAME EMPLOYED

The Federal Trade Commission, forbidding false advertising in the future by tobacco company, could make the order broad enough to forbid false advertising of which the company had been guilty even though such advertising might be made with respect to cigarettes and tobacco sold under a different name.

CEASE AND DESIST ORDERS—SCOPE—ADVERTISING FALSELY OR MISLEADINGLY—
PREVENTION OF EVASION AS MEASURE OF POWER

The Federal Trade Commission can make its order forbidding false and misleading advertising broad enough to prevent evasion by merely changing the name of the product advertised.

CEASE AND DESIST ORDERS—SCOPE—ADVERTISING FALSELY OR MISLEADINGLY—
PREVENTION OF EVASION AS MEASURE OF POWER—THAT PROHIBITED ADVERTISING
MIGHT BECOME TRUTHFUL IN FUTURE

The possibility that false and misleading advertising prohibited by Federal Trade Commission might become truthful in future would not prevent Federal Trade Commission from prohibiting such advertising, since application could be made to Commission for revision of order in event of change.

CEASE AND DESIST ORDERS—ADVERTISING FALSELY OR MISLEADINGLY—COMPARATIVE
DATA OR CLAIMS

Federal Trade Commission's order prohibiting tobacco company whose cigarette advertising was false and misleading from thereafter making comparisons with six other leading brands was proper, where the false and misleading advertisements contained comparisons with six other leading brands.

(The syllabus, with substituted captions, is taken from 186 F. (2d) 52)

On petition to review order of the Commission, petition denied and order enforced.

Mr. L. P. McLendon, of Greensboro, N. C. (*Mr. G. Neil Daniels*, of Greensboro, N. C., *Mr. F. J. Daniels* and *Mr. T. L. Perkins*, both of New York City, on brief) for petitioner.

Mr. Joseph S. Wright, assistant general counsel, Federal Trade Commission, of Washington, D. C. (*Mr. W. T. Kelley*, general counsel; *Mr. James W. Cassidy*, assistant general counsel; *Mr. John W. Carter, Jr.*, *Mr. John R. Phillips, Jr.*, and *Mr. A. B. Hobbes*, attorneys, Federal Trade Commission, all of Washington, D. C., on brief) for respondent.

Before PARKER, SOPER and DOBIE, *Circuit Judges*.

[53] PARKER, *Chief Judge*:

This is a petition to set aside an order of the Federal Trade Commission which directed that the P. Lorillard Co. cease and desist from making certain representations found to be false in the advertising of its tobacco products. The Commission has filed answer asking that its order be enforced. The company was ordered to cease and desist "from representing by any means directly or indirectly:

[54] That Beech-Nut cigarettes, or any other cigarette composed of substantially the same blend of tobaccos, or the smoke therefrom, will not harm or irritate the throat, or will provide any defense against throat irritation; or that the extra length of Beech-Nut cigarettes, or of any cigarette of substantially the same length, will filter out or eliminate the harmful properties in

the smoke from such cigarettes or will cause the smoke from such cigarettes to be cooler than the smoke from cigarettes of standard length; provided, however, that nothing herein shall be construed to prohibit the respondent from representing that during the time the extra length of any such cigarette is being smoked the smoke therefrom will contain less irritating properties and will be cooler than the smoke from standard length cigarettes;

(2) That Sensation cigarettes, or any other cigarette composed of substantially the same blend of tobaccos, are made of extra-choice imported and domestic tobaccos, or are top quality cigarettes, or are made from the finest tobacco that can be bought;

(3) That Old Gold cigarettes or the smoke therefrom contains less nicotine, or less tars and resins, or is less irritating to the throat than the cigarettes or the smoke therefrom of any of the six other leading brands of cigarettes; or

(4) That Friends smoking tobacco, or any other smoking tobacco manufactured in substantially the same manner, is rum-cured, or that the process by which a rum flavoring is added to such tobacco enriches the tobacco or causes the smoke therefrom to be any less irritating to the throat or any cooler than if such rum flavoring were not added; or that the smoke from Friends smoking tobacco, or from any other smoking tobacco composed of substantially the same blend of tobaccos, will not irritate the mouth or throat of a smoker, or is cool, or is free from bite, burn or harshness.

The company does not contend that the falsity of the representations referred to in paragraphs (1), (2) and (4) of the above order was not established by substantial evidence but does make that contention with respect to its advertising of Old Gold cigarettes referred to in paragraph (3). It contends, also, that the Commission was without power to make the order because of alleged procedural irregularities and that the order exceeds the authority and jurisdiction of the Commission and is fatally vague and ambiguous in its terms. Three questions are presented for our consideration: (1) whether the Commission was without power to enter the order complained of because of the alleged procedural irregularities; (2) whether paragraph three of the order relating to Old Gold cigarettes is supported by substantial evidence; and (3) whether the order exceeds the power of the Commission or is otherwise invalid.

1. THE PROCEDURAL QUESTIONS

The principal procedural question raised by the company is whether the Commission, after approving a fact stipulation, could rescind its order to that effect and direct the taking of testimony in the case. The facts are that after the proceeding was instituted, counsel for the company and the Commission agreed upon a stipulation as to the facts with respect to most of the questions presented but provided for the taking of testimony as to two of them. The Commission approved the stipulation and set the case down for hearing. It later discovered that facts in the case which it regarded as highly important had not been stipulated, viz., facts relating to the nicotine,

tar and resin content of Old Gold cigarettes as compared with other leading brands of cigarettes. Upon the refusal of the company to agree to an amendment of the stipulation so as to cover this matter, counsel for the Commission moved that it withdraw its approval of the stipulation. This motion was allowed and the order of approval was rescinded and the case was reopened for the taking of additional testimony. The company made a motion to strike this order from the record which the Commission denied, setting forth at length its reasons for the action taken as follows:

In approving these stipulations, the Commission acted under the erroneous impression, not in any way due to respondent, that with the exception of the two charges mentioned the stipulation covered all other [55] material issues raised by the complaint. When, however, the matter came on for final consideration and the preparation by the Commission of its findings as to the facts and order to cease and desist, it was found that the facts stipulated afforded no basis for findings as to the facts and order to cease and desist with respect to charges in the complaint that Old Gold cigarettes contain tobaccos other than "prize crop" tobaccos, that the tobaccos in Old Golds are not the finest money can buy, and that of the so-called seven leading brands of cigarettes Old Golds are not lowest in nicotine content or in throat-irritating tars and resins.

At the time of the issuance of the complaint the Commission had reason to believe that these charges were well founded, and there had been no intervening cause for any change in this belief. The Commission was further of the opinion that the charge concerning nicotine, tar, and resin content as set out in subparagraph (f) of paragraph four and controverted in subparagraph (8) of paragraph nine of the complaint, from the standpoint of the public interest, was perhaps the most important charge in the complaint.

In these circumstances, at the direction of the Commission that appropriate action be taken to provide for determination of these issues upon their merits, the chief counsel on March 17, 1945, filed a motion to withdraw approval of the stipulations and reopen the case. Thereafter, pursuant to a rule to show cause, hearing was had upon this motion, and on June 2, 1945, the Commission entered an order rescinding approval of the stipulations and reopening the case for the taking of testimony in support of and in opposition of the allegations of the complaint.

From time to time in proceedings before the Commission, after entering into stipulations as to the facts with the Commission or filing admission answers to complaints, respondents have requested that the stipulations be set aside or asked leave to withdraw the admission answers. The grounds for such requests have been various and have included matters such as mistake, failure to appreciate the significance of the act, misunderstanding, and others. It has been, and is, the policy of the Commission to grant such requests and thereafter proceed to a determination of the issues upon such facts as may be established in the course of the trial of the case.

The Commission having fully considered the present matter, including the mistake of fact which resulted in approval of the stipulations, and being of the opinion that there is no warrant for an abandonment of the aforesaid charges, which would result from granting respondent's motion, that the public interest will be best served, and that the rights of respondent will be protected by an adjudication based upon a record established in the trial of the issues; * * *.

Little need be added to what the Commission itself has said with respect to the reopening of the case. Fact stipulations approved by the Commission certainly have no greater sanctity than pretrial stipulations approved by a judge; and no one would contend that a judge could not relieve against fact stipulations upon such a finding as was made by the Commission here. R. C. P. 16. It must not be forgotten that the Commission is not a private party, but a body charged with the protection of the public interest; and it is unthinkable that the public interest should be allowed to suffer as a result of inadvertence or mistake on the part of the Commission or its counsel where this can be avoided. As said by this court in *N. L. R. B. v. Baltimore Transit Co.*, 4 Cir. 140 F. (2d) 51, 55:

An administrative agency, charged with the protection of the public interest, is certainly not precluded from taking appropriate action to that end because of mistaken action on its part in the past. Cf. *Federal Communications Commission v. Pottsville Broadcasting Co.*, 309 U. S. 134, 145, 60 S. Ct. 437, 84 L. Ed. 656; *Houghton v. Payne*, 194 U. S. 88, 100, 24 S. Ct. 590, 48 L. Ed. 888. Nor can the principles of equitable estoppel be applied to deprive the public of the protection of a statute because of mistaken action or lack of action on the part of public officials. *United States v. [56] San Francisco*, 310 U. S. 16, 32, 60 S. Ct. 749, 84 L. Ed. 1050; *Utah Power & Light Co. v. United States*, 243 U. S. 389, 409, 37 S. Ct. 387, 61 L. Ed. 791; *United States v. City of Greenville*, 4 Cir. 118 F. (2d) 963, 966.

See also *McComb v. Homeworkers' Handicraft Corp.*, 4 Cir. 176 F. (2d) 633, 640, 641, and *Wallace Corporation v. N. L. R. B.*, 4 Cir. 141 F. (2d) 87, 91. The case last cited is very much in point. In that case we said with regard to action by the National Labor Relations Board:

Settlements approved by the Board should ordinarily be observed and administrative orders should not be lightly disregarded (Cf. *Matter of Simplicity Pattern Co.*, 16 N. L. R. B. 291); but these are guides for the exercise of discretion by the Board, not limitations upon its power. It is the duty of the Board to prevent unfair labor practices; and the fact that it may have certified a union as a bargaining representative does not limit its power later to declare such union to be company dominated and order its disestablishment, if such course is seen to be proper in the light of subsequent developments.

If the Commission had sustained the objection to the reopening of the case, there was nothing in law or in reason to prevent its directing that another case be instituted to deal with the advertising of Old Gold cigarettes; and it certainly could furnish no ground of complaint that the matter was dealt with in a pending case rather than in a separate one, which would properly have been consolidated with the pending case had it been instituted.

The company complains, also, because the hearing of evidence was had before a different trial examiner from the one before whom the fact stipulations had been filed. There is nothing in this. The fact

stipulations were excluded from further consideration when the case was reopened and the report was made by the examiner who presided at the hearings at which the evidence was taken and who saw and heard the witnesses. See *N. L. R. B. v. Dixie Shirt Co.*, 4 Cir. 178 F. (2d) 969, 971, and cases there cited.

2. THE QUESTION OF SUBSTANTIAL EVIDENCE

While the company questions the scope of the order as embodied in paragraphs (1), (2), and (4), a matter which we shall discuss later, no question is raised as to the sufficiency of the evidence to support the findings upon which those paragraphs are based to the effect that the company had engaged in advertising as therein indicated which was false and misleading. Its argument as to the sufficiency of the evidence relates to the advertising of its Old Gold cigarettes. With respect to this, the Commission found that the company had advertised that these cigarettes and the smoke therefrom contain less nicotine than any of the six other leading brands of cigarettes and that the smoke contains less tars and resins and is less irritating to the throat than cigarettes of the other leading brands, and that the advertising was false, misleading, and deceptive. The evidence amply supports this finding.

Laboratory tests introduced in evidence show that the difference in content of nicotine, tars, and resins of the different leading brands of cigarettes is insignificant in amount; and there is abundant testimony of medical experts that such difference as there is could result in no difference in the physiological effect upon the smoker. There is expert evidence, also, that the slight difference in the nicotine, tar, and resin content of cigarettes is not constant between different brands, but varies from place to place and from time to time, and that it is a practical impossibility for the manufacturer of cigarettes to determine or to remove or substantially reduce such content or to maintain constancy of such content in the finished cigarette. This testimony gives ample support to the Commission's findings.

The company introduced no evidence in the case but asks that we disregard the testimony of the expert witness who testified to the impossibility of determining, removing or substantially reducing the nicotine, tar or resin content of cigarettes, on the ground that he had had no experience in the manufacturing or blending of tobacco. The record shows, however, that this witness, Dr. McMurtry, is a plant [57] physiologist with the U. S. Department of Agriculture in the Division of Tobacco Investigation and that he has been so employed since 1917. It would seem that his testimony with respect to a matter of this sort should have great weight; but, of course, the weight to be accorded it is a matter for the Commission, not for us, and the

Commission believed it. Even if his testimony be disregarded, there remains the testimony of the experts to the effect that the difference in the nicotine, tar and resin content of cigarettes of the leading brands is insignificant and not sufficient to make any difference in the physiological effect upon the smoker. This of itself is sufficient to condemn the advertising as false and misleading, since it is intended to appeal to those who are interested in the physiological effect of the smoke of the cigarettes and who would be led by the advertising to believe that the smoke of the Old Gold cigarettes is less harmful to the smoker because containing appreciably less nicotine, tars and resins.

The company relies upon the truth of the advertisements complained of, saying that they merely state what had been truthfully stated in an article in the Reader's Digest. An examination of the advertisements, however, shows a perversion of the meaning of the Reader's Digest article which does little credit to the company's advertising department—a perversion which results in the use of the truth in such a way as to cause the reader to believe the exact opposite of what was intended by the writer of the article. A comparison of the advertisements with the article makes this very plain. The article, after referring to laboratory tests that had been made on cigarettes of the leading brands, says:

The laboratory's general conclusion will be sad news for the advertising copy writers, but good news for the smoker, who need no longer worry as to which cigarette can most effectively nail down his coffin. For one nail is just about as good as another. Says the laboratory report: "The differences between brands are, practically speaking, small, and no single brand is so superior to its competitors as to justify its selection on the ground that it is less harmful." How small the variations are may be seen from the data tabulated on page 7.

The table referred to in the article was inserted for the express purpose of showing the insignificance of the difference in the nicotine and tar content of the smoke from the various brands of cigarettes. It appears therefrom that the Old Gold cigarettes examined in the test¹ contained less nicotine, tars and resins than the others examined, although the difference, according to the uncontradicted expert evidence, was so small as to be entirely insignificant and utterly without meaning so far as effect upon the smoker is concerned. The company proceeded to advertise this difference as though it had received a citation for public service instead of a castigation from the Reader's Digest. In the leading newspapers of the country and over the radio it advertised that the Reader's Digest had had experiments conducted

¹ In some other tests of the same leading brands of cigarettes, evidence of which was produced before the Commission, Old Gold Cigarettes were not the lowest in nicotine, tar or resin content.

and had found that Old Gold Cigarettes were lowest in nicotine and lowest in irritating tars and resins, just as though a substantial difference in such content had been found. The following advertisement may be taken as typical:

**"OLD GOLDS FOUND
LOWEST IN NICOTINE**

**OLD GOLDS FOUND
LOWEST IN THROAT-IRRITATING
TARS AND RESINS**

See Impartial Test by Reader's Digest July Issue.

See How Your Brand Compares with Old Gold.

Reader's Digest assigned a scientific testing laboratory to find out about cigarettes. They tested seven leading cigarettes and Reader's Digest published the results.

The cigarette whose smoke was lowest in nicotine was Old Gold. The cigarette with the least throat-irritating tars and resins was Old Gold.

[58] On both these major counts Old Gold was best among all seven cigarettes tested.

Get July Reader's Digest. Turn to page 5. See what this highly respected magazine reports.

You'll say, 'From now on, my cigarette is Old Gold.' Light one? Note the mild, *interesting* flavor. Easier on the throat? Sure: And *more* smoking pleasure: Yes, its the *new* Old Gold—finer yet, since 'something new has been added'."

The fault with this advertising was, not that it did not print all that the Reader's Digest article said, but that it printed a small part thereof in such a way as to create an entirely false and misleading impression. Not only as to what was said in the article, but also as to the quality of the company's cigarettes. Almost anyone reading the advertisements or listening to the radio broadcasts would have gained the very definite impression that Old Gold cigarettes were less irritating to the throat and less harmful than other leading brands of cigarettes because they contained substantially less nicotine, tars, and resins, and that the Reader's Digest had established this fact in impartial laboratory tests; and few would have troubled to look up the Reader's Digest to see what it really had said. The truth was exactly the opposite. There was no substantial difference in Old Gold cigarettes and the other leading brands with respect to their content of nicotine, tars, and resins and this was what the Reader's Digest article plainly said. The table whose meaning the advertisements distorted for the purpose of misleading and deceiving the public was intended to prove that there was no practical difference and did

prove it when properly understood. To tell less than the whole is a well known method of deception; and he who deceives by resorting to such method cannot excuse the deception by relying upon the truthfulness per se of the partial truth by which it has been accomplished.

In determining whether or not advertising is false or misleading within the meaning of the statute, regard must be had, not to fine spun distinctions and arguments that may be made in excuse, but to the effect which it might reasonably be expected to have upon the general public. "The important criterion is the net impression which the advertisement is likely to make upon the general populace." *Charles of the Ritz Dist. Corp. v. F. T. C.*, 2 Cir. 143 F. (2d) 676, 679-680 [39 F. T. C. 657; 4 S. & D. 226]. As was well said by Judge Coxe in *Florence Manufacturing Co. v. J. C. Dowd & Co.*, 2 Cir. 178 F. 73, 75, with reference to the law relating to trade-marks: "The law is not made for the protection of experts, but for the public—that vast multitude which includes the ignorant, the unthinking, and the credulous, who, in making purchases, do not stop to analyze, but are governed by appearances and general impressions." See also *F. T. C. v. Standard Education Soc.*, 302 U. S. 112 [25 F. T. C. 1715, 2 S. & D. 429]; *Standley Laboratories v. F. T. C.*, 9 Cir., 138 F. (2d) 388 [37 F. T. C. 801, 3 S. & D. 596]; *Aronberg v. F. T. C.*, 7 Cir. 132 F. (2d) 165 [35 F. T. C. 979, 3 S. & D. 647]; *Ford Motor Co. v. F. T. C.*, 6 Cir. 120 F. (2d) 175 [33 F. T. C. 1781, 3 S. & D. 378]. We think that the Commission's determination here was reasonable and amply supported by the evidence before it, and that its order forbidding the advertising as false and misleading was well within the limits of its discretion. *Bristol-Myers Co. v. F. T. C.*, 4 Cir. 185 F. (2d) 58 [47 F. T. C. 1749]; *General Motors Corp. v. F. T. C.*, 2 Cir. 114 F. (2d) 33, 36 [31 F. T. C. 1852, 3 S. & D. 282].

3. THE VALIDITY OF THE ORDER.

Little need be said as to the validity of the order. The company contends that paragraphs (1), (2) and (4) exceed the powers of the Commission because they apply, not merely to the advertising of the tobacco products named therein, but also to any other cigarettes composed of substantially the same blend of tobaccos as Beech Nut or Sensation cigarettes or to any other smoking tobacco manufactured in substantially the same manner as Friends smoking tobacco. We think that this contention is entirely without merit. Orders of the Commission have relation to the future, not to the past. *American Chain & Cable Co. v. F. T. C.*, 4 Cir. 142 F. (2d) 909, 911 [38 F. T. C. 896, 4 S. & D. 186]; *United Corp. v. F. T. C.*, 4 Cir. 110 F. (2d) 473,

475 [30 F. T. C. 1659, 3 S. & D. 209]. And certainly it was proper in forbidding false advertising in the future, to make the order broad enough [59] to forbid false and misleading advertising of which the company had been guilty even though it might be made with respect to cigarettes and tobacco sold under a different name. The order ought not be so limited in scope that the company could evade it by merely changing the name of its products. The Commission is entitled to make its order broad enough to prevent evasion. *Hershey Chocolate Corp. v. F. T. C.*, 3 Cir. 121 F. (2d) 968, 971-972 [33 F. T. C. 1798, 3 S. & D. 392]; *Hill v. F. T. C.*, 5 Cir. 124 F. (2d) 104, 106 [34 F. T. C. 1800, 3 S. & D. 436]; *N. L. R. B. v. Express Publishing Co.*, 312 U. S. 426, 436-437. As said in the case last cited, which dealt with a cease and desist order of the Labor Board:

Having found the acts which constitute the unfair labor practice the Board is free to restrain the practice and other like or related unlawful acts. * * * The breadth of the order, like the injunction of a court, must depend upon the circumstances of each case, the purpose being to prevent violations, the threat of which in the future is indicated because of their similarity or relation to those unlawful acts which the Board has found to have been committed by the employer in the past.

It is argued that paragraph (3) of the order is void (1) because the advertising as to Old Gold cigarettes is not false, (2) because the comparison with the six other leading brands may be true sometime in the future, and (3) because the comparison in the advertising is restricted to the six other leading brands. The falsity of the advertising and its relation to the Reader's Digest article we have already sufficiently dealt with. As to the other objections, it is a sufficient answer to say that the order deals with the false advertising that was before the Commission; and the Commission properly framed its order to deal with the matter before it. If, in the future, advertising of the sort prohibited should become truthful because of a change in the character of the cigarettes to which it has reference, a very remote contingency, application can be made to the Commission for a revision of the order. It will be time enough to give consideration to that matter when the occasion for it arises. As to the prohibited comparison being limited to the six leading brands, there is nothing in this of which the company can complain. It was with these six leading brands that the comparison was made in the false and misleading advertisements, and the Commission properly observed the limits which they set in itself defining the advertising which was prohibited.

For the reasons stated, the petition to set aside the order will be denied and the order will be enforced.

Petition denied and order enforced.

STANDARD OIL CO. v. FEDERAL TRADE COMMISSION¹

No. 1—F. T. C. Docket 4389

(United States Supreme Court. Jan. 8, 1951)

INTERSTATE COMMERCE—WHAT DOES AND DOES NOT CONSTITUTE—STREAM OF COMMERCE—WHERE EXTRASTATE FLOW THROUGH MARINE TERMINAL TO LOCAL CUSTOMERS FAIRLY CONSTANT

Where stream of commerce flowed continuously from oil company's refinery in Indiana to marine terminal in Michigan and from there to Michigan customers, pursuant to a fairly constant demand, sales to Michigan customers were still in "interstate commerce" for purposes of Robinson-Patman Act, though gasoline was not brought to marine terminal pursuant to orders already taken and was temporarily stored before delivery on individual orders.

INTERSTATE COMMERCE—WHAT DOES AND DOES NOT CONSTITUTE—STREAM OF COMMERCE—IF TEMPORARILY INTERRUPTED

Temporary storage at Michigan marine terminal of gasoline brought in interstate commerce from Indiana refinery and accumulated at terminal during navigation season did not deprive the gasoline of its interstate character for purposes of Robinson-Patman Act.

METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE, ETC.—CLAYTON ACT AS AMENDED BY ROBINSON-PATMAN ACT—SECS. 2 (a) AND 2 (b)—PRICE DIFFERENTIALS—IF MADE IN GOOD FAITH TO MEET LOWER PRICE OF COMPETITOR

It is a complete defense to charge of price discrimination under Robinson-Patman Act for seller to show that its price differential had been made in good faith to meet a lawful and equally low price of a competitor.

CLAYTON ACT, AS AMENDED BY ROBINSON-PATMAN ACT—SECS. 2 (a) AND 2 (b)—PRICE DISCRIMINATION—JUSTIFICATION—IF MADE IN GOOD FAITH TO MEET LAWFUL AND EQUALLY LOW PRICE OF COMPETITOR

The legislative history of proviso in Robinson-Patman Act permitting seller to rebut prima facie case by showing that price discrimination was made in good faith to meet equally low price of competitors manifests intent to limit, but not to abolish, essence of the defense recognized as absolute in original Clayton Act.

COMPETITION—AS HEART OF NATIONAL ECONOMIC POLICY

The heart of our national economic policy long has been faith in the value of competition.

COMPETITION—AS INVOLVED IN SHERMAN, CLAYTON, AND ROBINSON-PATMAN ACTS

In Sherman and Clayton Acts as well as in Robinson-Patman Act, Congress was dealing with competition, which it sought to protect, and monopoly, which it sought to prevent.

¹ Reported in 340 U. S. 231, and 71 S. Ct. 240. For case before Commission, see 41 F. T. C. 263, and, as modified, 43 F. T. C. 56.

ROBINSON-PATMAN ACT—OBJECTIVES—COMPETITIVE PRICES AND SELLERS

[241] The Robinson-Patman Act did not seek to abolish competition or so radically to curtail it that seller would have no substantial right of self-defense against a price paid by a competitor.

METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE, ETC.—CLAYTON ACT AS AMENDED BY ROBINSON-PATMAN ACT—SECS. 2 (a) AND 2 (b)—PRICE DIFFERENTIALS—IF REDUCTION TO MEET LOWER PRICE OF COMPETITOR ALTERNATIVE TO LOSS OF CUSTOMER, AND HIGHER UNIT COST AND SALES PRICE—WHETHER EXTENSION OF REDUCED PRICE TO OTHER CUSTOMERS THEREBY REQUIRED

If a large customer requests seller to meet a temptingly lower price offered by seller's competitor, under such circumstances that loss of such customer would result in forcing a much higher unit cost and higher sales price upon seller's other customers, seller is not compelled by Robinson-Patman Act to choose only between ruinously cutting prices to all customers to match the price offered to one, or refusing to meet competition and then ruinously raising prices to remaining customers to cover increased unit costs, but seller may meet in good faith the price offered to such customer without necessarily changing price to other customers.

METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE, ETC.—CLAYTON ACTS AS AMENDED BY ROBINSON-PATMAN ACT—SECS. 2 (a) AND 2 (b)—PRICE DIFFERENTIALS—THAT BENEFICIARIES OF REDUCTION MAY DERIVE COMPETITIVE ADVANTAGE OR REDUCE THEIR OWN RESALE PRICES TO CUSTOMERS—WHETHER GOOD FAITH THEREBY DESTROYED

The good faith purpose of meeting a lawful equally low price of competitor, as defense to charge of price discrimination under Robinson-Patman Act, is not destroyed merely because beneficiaries of price reductions may derive a competitive advantage from them or may, in natural course of events, reduce their own resale prices to their customers.

CLAYTON ACT, AS AMENDED BY ROBINSON-PATMAN ACT—SECS. 2 (a) AND 2 (b)—PRICE DISCRIMINATION—JUSTIFICATION—IF MADE IN GOOD FAITH TO MEET LAWFUL AND EQUALLY LOW PRICE OF COMPETITOR—WHETHER NEW DEFENSE AND FURTHER COMPETITIVE APPRAISALS THEREBY ESTABLISHED AND REQUIRED

The proviso in Robinson-Patman Act, authorizing seller to meet prima facie case of price discrimination by showing that lower price was made in good faith to meet equally low price of competitor, merely continues in effect a defense which is equally absolute, but more limited in scope, than that which existed under original Clayton Act, and does not establish a new defense requiring potentially injurious effect of price reduction upon competition of all lower levels to be weighed against beneficial effect thereof in permitting seller to meet competition at its own level.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE, ETC.—WHERE "LARGE" JOBBER CUSTOMERS FAVORED OVER RETAIL STATION, TO THEIR COMPETITIVE INJURY—PROHIBITION OF DIFFERENTIAL AS ERRONEOUS, IF FINDINGS SILENT AS TO WHETHER MADE TO MEET EQUALLY LOW PRICE OFFERED TO JOBBERS BY COMPETITORS

The Federal Trade Commission erred in ordering oil company to cease and desist from making price differential in favor of large "jobber" customers

as compared with service station customers, without making findings on whether such differentials were made to meet equally low prices offered to jobbers by competitors, and such findings should be made notwithstanding proof that effect of discrimination was to injure, destroy and prevent competition with retail stations.

(The syllabus, with substituted captions, is taken from 71 S. Ct. 240)

Mr. Howard Ellis of Chicago, Ill., (*Mr. Weymouth Kirkland*, *Mr. Hammond E. Chaffetz*, *Mr. W. H. Van Ooserhout*, *Mr. Thomas E. Sunderland*, and *Mr. Gordon E. Tappan*, all of Chicago, Ill., and *Mr. Arthur J. Abbot* of Detroit, Mich., on the brief) for petitioner.

Mr. William Simon, of Chicago, Ill., *Mr. Cyrus Austin*, of New York City, and *Mr. Raoul Berger*, of Washington, D. C. for *amici curiae*.

Mr. James W. Cassidy, associate general counsel (*Mr. W. T. Kelley*, general counsel, on the brief) both of Washington, D. C., for Federal Trade Commission.

[242] MR. JUSTICE BURTON delivered the opinion of the Court.

In this case the Federal Trade Commission challenged the right of the Standard Oil Co., under the Rob[234]inson-Patman Act,¹ to sell gasoline to four comparatively large "jobber" customers in Detroit at a less price per gallon than it sold like gasoline to many comparatively small service-station customers in the same area. The company's defenses were that (1) the sales involved were not in interstate commerce and (2) its lower price to the jobbers was justified because made to retain them as customers and in good faith to meet an equally low price of a competitor.² The Commission, with one member dissenting, ordered the company to cease and desist from making such a price differential (43 F. T. C. 56). The Court of Appeals slightly modified the order and required its enforcement as modified (173 F. (2d) 210). We granted certiorari on petition of the company because the case presents an important issue under the Robinson-Patman Act which has not been settled by this Court (338 U. S. 865). The case was argued at our October Term, 1949, and reargued at this term (339 U. S. 975).

For the reasons hereinafter stated, we agree with the court below that the sales were made in interstate commerce but we agree with petitioner that, under the Act, the lower price to the jobbers was justified if it was made to retain each of them as a customer and in good faith to meet an equally low price of a competitor.

¹ Specifically under § 2 of the Clayton Act, as amended by the Robinson-Patman Act, 49 Stat. 1526, 15 U. S. C., § 13. For the material text of § 2 (a) and (b) see pp. 9-10 [1773], *infra*.

² The company contended before the Commission that the price differential allowed by it to the jobbers made only due allowance for differences in the cost of sale and delivery of gasoline to them. It did not, however, pursue this defense in the court below and does not do so here.

I. FACTS

Reserving for separate consideration the facts determining the issue of interstate commerce, the other material [235] facts are summarized here on the basis of the Commission's findings. The sales described are those of Red Crown gasoline because those sales raise all of the material issues and constitute about 90 percent of petitioner's sales in the Detroit area.

Since the effective date of the Robinson-Patman Act, June 19, 1936, petitioner has sold its Red Crown gasoline to its "jobber" customers at its tank-car prices. Those prices have been 1½ cents per gallon less than its tank-wagon prices to service station customers for identical gasoline in the same area. In practice, the service stations have resold the gasoline at the prevailing retail service station prices.³ Each of petitioner's so-called jobber customers has been free to resell its gasoline at retail or wholesale. Each, at some time, has resold some of it at retail. One now resells it only at retail. The others now resell it largely at wholesale. As to resale prices, two of the jobbers have resold their gasoline only at the prevailing wholesale or retail rates. The other two, however, have reflected, in varying degrees, petitioner's reductions in the cost of the gasoline to them by reducing their resale prices of that gasoline below the prevailing rates. The effect of these reductions has thus reached competing retail service stations in part through retail stations operated by the jobbers and in part through retail stations which purchased gasoline from the jobbers at less than the prevailing tank-wagon prices. The Commission found that such reduced resale prices "have resulted in injuring, destroying, and preventing competition between said favored dealers and retail dealers in respondent's [petitioner's] gasoline and other major brands of gasoline * * *" [243] (41 F. T. C. 263, 283). The distinctive [236] characteristics of these jobbers are that each (1) maintains sufficient bulk storage to take delivery of gasoline in tank-car quantities (of 8,000 to 12,000 gallons) rather than in tank-wagon quantities (of 700 to 800 gallons) as is customary for service stations; (2) owns and operates tank wagons and other facilities for delivery of gasoline to service stations; (3) has an established business sufficient to insure purchases of from 1 to 2 million gallons a year; and (4) has adequate credit responsibility.⁴ While the cost of petitioner's sales

³ About 150 of these stations are owned or leased by the customer independently of petitioner. Their operators buy all of their gasoline from petitioner under short-term agreements. Its other 208 stations are leased or subleased from petitioner for short terms.

⁴ Not denying the established industry practice of recognizing such dealers as a distinctive group for operational convenience, the Commission held that petitioner's classification of these four dealers as jobbers was arbitrary because it made "no requirement that said jobbers should sell only at wholesale" (41 F. T. C. at 273). We use the term "jobber" in this opinion merely as one of convenience and identification, because the result here is the same whether these four dealers are wholesalers or retailers.

and deliveries of gasoline to each of these four jobbers is no doubt less, per gallon, than the cost of its sales and deliveries of like gasoline to its service-station customers in the same area, there is no finding that such difference accounts for the entire reduction in price made by petitioner to these jobbers, and we proceed on the assumption that it does not entirely account for that difference.

Petitioner placed its reliance upon evidence offered to show that its lower price to each jobber was made in order to retain that jobber as a customer and in good faith to meet an equally low price offered by one or more competitors. The Commission, however, treated such evidence as not relevant.

II. THE SALES WERE MADE IN INTERSTATE COMMERCE

In order for the sales here involved to come under the Clayton Act, as amended by the Robinson-Patman Act, [237] they must have been made in interstate commerce.⁵ The Commission and the court below agree that the sales were so made (41 F. T. C. 263, 271, 173 F. (2d) 210, 213-214).

Facts determining this were found by the Commission as follows: Petitioner is an Indiana corporation, whose principal office is in Chicago. Its gasoline is obtained from fields in Kansas, Oklahoma, Texas, and Wyoming. Its refining plant is at Whiting, Ind. It distributes its products in 14 Middle Western States, including Michigan. The gasoline sold by it in the Detroit, Mich., area, and involved in this case, is carried for petitioner by tankers on the Great Lakes from Indiana to petitioner's marine terminal at River Rouge, Mich. Enough gasoline is accumulated there during each navigation season so that a winter's supply is available from the terminal. The gasoline remains for varying periods at the terminal or in nearby bulk storage stations, and while there it is under the ownership of petitioner and en route from petitioner's refinery in Indiana to its market in Michigan. "Although the gasoline was not brought to River Rouge pursuant to orders already taken, the demands of the Michigan territory are fairly constant, and petitioner's customers' demands could be accurately estimated, so the flow of the stream of commerce kept surging from Whiting to Detroit" (173 F. (2d) at 213-214). Gasoline delivered to customers in Detroit, upon individual orders for it, is taken from the gasoline at the terminal in interstate commerce en route for delivery in that area. Such sales are well within the jurisdictional requirements of the act. Any other conclusion [244] would fall short

⁵ Section 2 (a) of the Clayton Act, as amended, relates only to persons "engaged in commerce, in the course of such commerce * * * where either or any of the purchases involved * * * are in commerce * * *" (49 Stat. 1526, 15 U. S. C. § 13 (a)). Commerce is defined in § 1 of the Clayton Act as including "trade or commerce among the several states * * *" (38 Stat. 730, 15 U. S. C. § 12).

of the recognized [238] purpose of the Robinson-Patman Act to reach the operations of large interstate businesses in competition with small local concerns. Such temporary storage of the gasoline as occurs within the Detroit area does not deprive the gasoline of its interstate character. *Stafford v. Wallace*, 258 U. S. 495. Compare *Walling v. Jacksonville Paper Co.*, 317 U. S. 564, 570, with *Atlantic Coast Line R. Co. v. Standard Oil Co.*, 275 U. S. 257, 268.⁶

III. THERE SHOULD BE A FINDING AS TO WHETHER OR NOT PETITIONER'S PRICE REDUCTION WAS MADE IN GOOD FAITH TO MEET A LAWFUL EQUALLY LOW PRICE OF A COMPETITOR

Petitioner presented evidence tending to prove that its tank-car price was made to each jobber in order to retain that jobber as a customer and in good faith to meet a lawful and equally low price of a competitor. Petitioner sought to show that it succeeded in retaining these customers, although the tank-car price which it offered them merely approached or matched, and did not undercut, the lower prices offered them by several competitors of petitioner. The trial examiner made findings on the point⁷ but the Commission declined to do so, saying:

Based on the record in this case the Commission concludes as a matter of law that it is not material [239] whether the discriminations in price granted by the respondent to the said four dealers were made to meet equally low prices of competitors. The Commission further concludes as a matter of law that it is unnecessary for the Commission to determine whether the alleged competitive prices were in fact available or involved gasoline of like grade or quality or of equal public acceptance. Accordingly the Commission does not attempt to find the facts regarding those matters because, even though the lower prices in question may have been made by respondent in good faith to meet the lower prices of competitors, this does not constitute a defense in the face of affirmative proof that the effect of the discrimination was to injure, destroy and prevent competition with the retail stations operated by the said named dealers and with stations operated by their retailer-customers (41 F. T. C. 263, 281-282).

⁶ The Fair Labor Standards Act cases relied on by petitioner are not inconsistent with this result. They hold that, for the purposes of that statute, interstate commerce ceased on delivery to a local distributor. *Higgins v. Carr Bros. Co.*, 317 U. S. 572; *Walling v. Jacksonville Paper Co.*, *supra*. The sales involved here, on the other hand, are those of an interstate producer and refiner to a local distributor.

⁷ The trial examiner concluded:

"The recognition by respondent [petitioner] of Ned's Auto Supply Co. as a jobber or wholesaler [which carried with it the tank-car price for gasoline], was a forced recognition given to retain that company's business. Ned's Company at the time of recognition, and ever since, has possessed all qualifications required by respondent [petitioner] for recognition as a jobber and the recognition was given and has ever since been continued in transactions between the parties, believed by them to be bona fide in all respects * * *"
(Conclusion of Fact 2, under § IX, R. 5098-5099).

"The differentials on its branded gasolines respondent [petitioner] granted Ned's Auto Supply Co., at all times subsequent to March 7, 1938, and Stikeman Oil Co., Citrin-Kolb Oil Co., and the Wayne Co. [the four jobbers], at all times subsequent to June 19, 1936, were granted to meet equally low prices offered by competitors on branded gasolines of comparable grade and quality" (Conclusion of Fact, under § X, R. 5104).

The court below affirmed the Commission's position.⁸

[245] There is no doubt that under the Clayton Act, before its amendment by the Robinson-Patman Act, this evidence would have been material and, if accepted, would have [240] established a complete defense to the charge of unlawful discrimination. At that time the material provisions of § 2 were as follows:

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities * * * where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: And provided further, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.* [Emphasis added within the first proviso.] (38 Stat. 730-731, 15 U. S. C. (1934 ed.) § 13.)

The question before us, therefore, is whether the amendments made by the Robinson-Patman Act deprived those facts of their previously recognized effectiveness as a defense. The material provisions of § 2, as amended, are [241] quoted below, showing in italics those clauses which bear upon the proviso before us. The modified provisions are distributed between the newly created subsections (a) and (b). These must be read together and in relation to the provisions they supersede. The original phrase "that nothing herein contained shall prevent" is still used to introduce each of the defenses. The defense relating to the meeting of the price of a competitor appears only in subsection (b). There it is applied to discriminations in services or facilities as well as to discriminations in price, which alone are expressly condemned in subsection (a). In its opinion in the instant case, the Commission recognizes that it is an absolute defense to a charge of price discrimination for a seller to prove, under § 2 (a), that its price differential makes only due allowances for differences in cost or for price changes made in response to changing market conditions (41 F. T. C. at 283). Each of these three defenses is introduced by the same phrase "nothing * * * shall prevent," and all are embraced in the same word "justification" in the first sentence

⁸ "Now as to the contention that the discriminatory prices here complained of were made in good faith to meet a lower price of a competitor. While the Commission made no finding on this point, it assumed its existence but held, contrary to the petitioner's contention, that this was not a defense.

"We agree with the Commission that the showing of the petitioner that it made the discriminatory price in good faith to meet competition is not controlling in view of the very substantial evidence that its discrimination was used to affect and lessen competition at the retail level" (173 F. (2d) at 214, 217).

of § 2 (b). It is natural, therefore, to conclude that each of these defenses is entitled to the same effect, without regard to whether there also appears an affirmative showing of actual or potential injury to competition at the same or a lower level traceable to the price differential made by the seller. The Commission says, however, that the proviso in § 2 (b) as to a seller meeting in good faith a lower competitive price is not an absolute defense if an injury to competition may result from such price reduction. We find no basis for such a distinction between the defenses in § 2 (a) and (b).

The defense in subsection (b), now before us, is limited to a price reduction made to meet in good faith an equally low price of a competitor. It thus eliminates certain difficulties which arose under the original Clayton Act. For example, it omits reference to discriminations in price "in [242] the same or different communities * * *" and it thus restricts the proviso to price differentials occurring in actual competition. It also excludes reductions which undercut the "lower price" of a competitor. None of these changes, however, cut into the actual core of the defense. That still [246] consists of the provision that wherever a lawful lower price of a competitor threatens to deprive a seller of a customer, the seller, to retain that customer, may in good faith meet that lower price. Actual competition, at least in this elemental form, is thus preserved.

Subsections 2 (a) and (b), as amended, are as follows:

SEC. 2. (a) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality * * * where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: * * ** *And provided further, That nothing herein contained shall prevent price changes from time to time * * ** in response to changing conditions affecting the market for or the marketability of the goods concerned * * *.

(b) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, *the burden of rebutting the prima-facie case thus [243] made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: Provided, however, That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor."* [Emphasis added in part.] (49 Stat. 1526, 15 U. S. C. § 13 (a) and (b)).

This right of a seller, under § 2 (b), to meet in good faith an equally low price of a competitor has been considered here before. Both in *Corn Products Refining Co. v. Federal Trade Comm'n*, 324 U. S. 726 [40 F. T. C. 892; 4 S. & D. 331] and in *Federal Trade Comm'n v. Staley Mfg. Co.*, 324 U. S. 746 [40 F. T. C. 906; 4 S. & D. 346] evidence in support of this defense was reviewed at length. There would have been no occasion thus to review it under the theory now contended for by the Commission. While this Court did not sustain the seller's defense in either case, it did unquestionably recognize the relevance of the evidence in support of that defense. The decision in each case was based upon the insufficiency of the seller's evidence to establish its defense, not upon the inadequacy of its defense as a matter of law.⁹

In the *Corn Products* case, *supra*, after recognizing that the seller had allowed differentials in price in favor of certain customers, this Court examined the evidence presented by the seller to show that such differentials were [244] justified because made in good faith to meet equally low prices of a competitor. It then said:

Examination of the *testimony* satisfies us, as it did the court below, that it *was insufficient* to sustain a finding that the lower prices allowed to favored customers were in fact made to meet competition. Hence petitioners *failed to sustain the burden* of showing that the price discriminations were granted for the purpose of meeting competition." [Em[247]phasis added.] (324 U. S. at 741).¹⁰

In the *Staley* case, *supra*, most of the Court's opinion is devoted to the consideration of the evidence introduced in support of the seller's defense under § 2 (b). The discussion proceeds upon the assumption, applicable here, that if a competitor's "lower price" is a lawful individual price offered to any of the seller's customers, then the seller is protected, under § 2 (b), in making a counteroffer provided the seller proves that its counteroffer is made to meet in good faith its competitor's equally low price. On the record in the *Staley* case, a majority of the Court of Appeals, in fact, declined to accept the findings of the Commission and decided in favor of the accused seller.¹¹

⁹ In contrast to that factual situation, the trial examiner for the Commission in the instant case has found the necessary facts to sustain the seller's defense (see note 7, *supra*), and yet the Commission refuses, as a matter of law, to give them consideration.

¹⁰ In the *Corn Products* case, the same point of view was expressed by the Court of Appeals below: "We think the evidence is insufficient to sustain this affirmative defense" (144 F. (2d) 211, 217 (C. A. 7th Cir.)). The Court of Appeals also indicated that, to sustain this defense, it must appear not only that the competitor's lower price was met in good faith but that such price was lawful.

¹¹ The *Staley* case was twice before the Court of Appeals for the Seventh Circuit. In 1943 the case was remanded by that court to the Commission for findings as to wherein the discriminations occurred and how they substantially lessened competition and promoted monopoly and also "for consideration of the defense [under § 2 (b)] urged by the petitioners, and for findings in relation thereto." 135 F. (2d) 453, 456. In 1944, a majority of the court decided in favor of the seller. 144 F. (2d) 221. One judge held that the complaint was insufficient under § 2 (a) and that, therefore, he need not reach the seller's defense under § 2 (b). He expressly stated, however, that he did not take issue with the

This Court, on review, reversed that judgment [245] but emphatically recognized the availability of the seller's defense under § 2 (b) and the obligation of the Commission to make findings upon issues material to that defense. It said:

Congress has left to the Commission the determination of fact in each case whether the person, charged with making discriminatory prices, acted in good faith to meet a competitor's equally low prices. The determination of this fact from the evidence is for the Commission. See *Federal Trade Commission v. Pacific States Paper Trade Assn.*, 273 U. S. 52, 63 [11 F. T. C. 636; 1 S. & D. 583] *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, 73 [18 F. T. C. 669; 2 S. & D. 247]. In the present case, the Commission's finding that respondents' price discriminations were not made to meet a "lower" price and consequently were not in good faith, is amply supported by the record, and we think the Court of Appeals erred in setting aside this portion of the Commission's order to cease and desist.

* * * * *

In appraising the evidence, the Commission recognized that the statute does not place an impossible burden upon sellers, but it emphasized the good faith requirement of the statute, which places the burden [246] of proving good faith on the seller, who has made the discriminatory prices. * * *

* * * We agree with the Commission that the statute at least requires the seller, who has knowingly discriminated in price, to show the existence of facts which would lead a reasonable and prudent person to believe that the granting of a lower price would in fact meet the equally low price of [248] a competitor. Nor was the Commission wrong in holding that respondents failed to meet this burden (324 U. S. at 758, 759-760).

See also, *Federal Trade Comm'n v. Cement Institute*, 333 U. S. 683, 721-726 [44 F. T. C. 1460; 4 S. & D. 676] *Federal Trade Comm'n v. Morton Salt Co.*, 334 U. S. 37, 43 [44 F. T. C. 1499; 4 S. & D. 716], and *United States v. United States Gypsum Co.*, 340 U. S. 76, 92. All that petitioner asks in the instant case is that its evidence be considered and that findings be made by the Commission as to the sufficiency of that evidence to support petitioner's defense under section 2 (b).

In addition, there has been widespread understanding that, under the Robinson-Patman Act, it is a complete defense to a charge of price discrimination for the seller to show that its price differential has been made in good faith to meet a lawful and equally low price of a competitor. This understanding is reflected in actions and state-

basis for the conclusion that the seller's price was made in good faith to meet an equally low price of a competitor. *Id.*, at 227-231. His colleague held squarely that the seller's defense of meeting competition in good faith under § 2 (b) had been established. *Id.*, at 221-225. The third judge found against the seller both under § 2 (a) and (b). *Id.*, at 225-227. The important point for us is that the Court of Appeals, as well as this Court, unanimously recognized in that case the materiality of the seller's evidence in support of its defense under § 2 (b), even though the "discriminations have resulted, and do result, in substantial injury to competition among purchasers * * *." *Id.*, at 222.

ments of members and counsel of the Federal Trade Commission.¹² Representatives of the Department of [247] Justice have testified to the effectiveness and value of the defense under the Robinson-Patman Act.¹³ We see no reason to depart now from that interpretation.¹⁴ [248] [249]

¹² In cease and desist orders, issued both before and after the order in the instant case, the Commission has inserted saving clauses which recognize the propriety of a seller making a price reduction in good faith to meet an equally low price of a competitor, even though the seller's discrimination may have the effect of injuring competition at a lower level. (See *In re Ferro-Enamel Corp.*, 42 F. T. C. 36; *In re Anheuser-Busch, Inc.*, 31 F. T. C. 986; *In re Bausch & Lomb Optical Co.*, 28 F. T. C. 186.)

See also, the statement filed by Walter B. Wooden, Assistant Chief Counsel, and by Hugh E. White, Examiner for the Commission, with the Temporary National Economic Committee in 1941:

"The amended Act now safeguards the right of a seller to discriminate in price in good faith to meet an equally low price of a competitor, but he has the burden of proof on that question. This right is guaranteed by statute and could not be curtailed by any mandate or order of the Commission * * *. The right of self-defense against competitive price attacks is as vital in a competitive economy as the right of self-defense against personal attack." The Basing Point Problem 139 (TNEC Monograph 42, 1941).

In regard to the Commission's position on § 2 (b), urged in the instant case, Allen C. Phelps, Assistant Chief Trial Counsel and Chief of the Export Trade Division of the Commission, testified before the Subcommittee on Trade Policies of the Senate Committee on Interstate and Foreign Commerce in June, 1949, that "This position, if upheld in the courts, in my judgment will effectively and completely erase section 2 (b) from the Robinson-Patman Act." Hearings before a Subcommittee of the Senate Committee on Interstate and Foreign Commerce on S. 236, 81st Cong., 1st Sess. 66. (See also, pp. 274-275.)

¹³ Herbert A. Bergson, then Assistant Attorney General, testifying for the Department, January 25, 1949, said: "The section [2 (b)] presently permits sellers to justify otherwise forbidden price discriminations on the ground that the lower prices to one set of buyers were made in good faith to meet the equally low prices of a competitor." Hearings before a Subcommittee of the Senate Committee on Interstate and Foreign Commerce on S. 236, 81st Cong., 1st Sess. 77. See also, report on S. 236 by Peyton Ford, Assistant to the Attorney General, to the Senate Committee on Interstate and Foreign Commerce. *Id.*, at 320. Mr. Bergson added the following in June 1949: "While we recognize the competitive problem which arises when one purchaser obtains advantages denied to other purchasers, we do not believe the solution to this problem lies in denying to sellers the opportunity to make sales in good faith competition with other sellers." Hearings before Subcommittee No. 1 of the House Committee on the Judiciary on S. 1008, 81st Cong., 1st Sess. 12.

¹⁴ Attention has been directed again to the legislative history of the proviso. This was considered in the *Corn Products* and *Staley* cases. See especially, 324 U. S. at 752-753. We find that the legislative history, at best, is inconclusive. It indicates that it was the purpose of Congress to limit, but not to abolish, the essence of the defense recognized as absolute in § 2 of the original Clayton Act, 38 Stat. 730, where a seller's reduction in price had been made "in good faith to meet competition * * *." For example, the legislative history recognizes that the Robinson-Patman Act limits that defense to price differentials that do not undercut the competitor's price, and the amendments fail to protect differentials between prices in different communities where those prices are not actually competitive. There is also a suggestion in the debates, as well as in the remarks of this Court in the *Staley* case, *supra*, that a competitor's lower price, which may be met by a seller under the protection of § 2 (b), must be a lawful price. And see, S. Res. 224, 70th Cong., 1st Sess., directing the Federal Trade Commission to investigate and report to it on chain-store operators and F. T. C. Final Report on the Chain-Store Investigation, S. Doc. No. 4, 74th Cong., 1st Sess.

In the report of the Judiciary Committee of the House of Representatives, which drafted the clause which became § 2 (b), there appears the following explanation of it:

"This proviso represents a contraction of an exemption now contained in section 2 of the Clayton Act which permits discriminations without limit where made in good faith to meet competition. It should be noted that while the seller is permitted to meet local competition, it does not permit him to cut local prices until his competitor has first offered lower prices, and then he can go no further than to meet those prices. If he goes further,

The heart of our national economic policy long has been faith in the value of competition. In the Sherman and Clayton Acts, as well as in the Robinson-Patman Act, [249] "Congress was dealing with competition, which it sought to protect, and monopoly, which it sought to prevent." *Staley Mfg. Co. v. Federal Trade Comm'n*, 135 F. 2d 453, 455 [36 F. T. C. 1126, 3 S. & D. 556.] We need not now reconcile, in its entirety, the economic theory which underlies the Robinson-Patman Act with that of the Sherman and Clayton Acts.¹⁵ It is enough to say that Congress did not seek by the Robinson-Patman Act either to abolish competition or so radically to curtail it that a seller would have no substantial right of self-defense against a price raid by a competitor. For example, if a large customer requests his seller to meet a temptingly lower price offered to him by one of his seller's competitors, the seller may well find it essential, as a matter of business survival, to meet that price rather than to lose the customer. It might be that this customer is the seller's only [250] available market for the major portion of the seller's product, and that the loss of this customer would result in forcing a much higher unit cost and higher sales price upon the seller's other custom[250]ers. There is nothing to show a congressional purpose, in such a situation, to compel the seller to choose only between ruinously cutting its prices to all its customers to match the price offered to one, or refusing to meet the competition and then ruinously raising its prices to its remaining customers to cover increased unit costs. There is, on the other hand, plain language and established practice which permits a seller, through § 2 (b), to retain a customer by realistically meeting in good faith the price offered to that customer, without necessarily changing the seller's price to its other customers.

he must do so likewise with all his other customers, or make himself liable to all of the penalties of the act, including treble damages. In other words, the proviso permits the seller to meet the price actually previously offered by a local competitor. It permits him to go no further." H. R. Rep. No. 2287, 74th Cong., 2d Sess. 16.

See also, 80 Cong. Rec. 6426, 6431-6436, 8229, 8235.

Somewhat changing this emphasis, there was a statement made by the managers on the part of the House of Representatives, accompanying the conference report, which said that the new clause was a "provision relating to the question of meeting competition, intended to operate only as a rule of evidence in a proceeding before the Federal Trade Commission * * *." H. R. Rep. No. 2951, 74th Cong., 2d Sess. 7. The Chairman of the House Conferees also received permission to print in the Record an explanation of the proviso. 80 Cong. Rec. 9418. This explanation emphasizes the same interpretation as that put on the proviso in the *Staley* case to the effect that the lower price which lawfully may be met by a seller must be a lawful price. That statement, however, neither justifies disregarding the proviso nor failing to make findings of fact where evidence is offered that the prices met by the seller are lawful prices and that the meeting of them is in good faith.

¹⁵ It has been suggested that, in theory, the Robinson-Patman Act as a whole is inconsistent with the Sherman and Clayton Acts. See Adelman, *Effective Competition and the Antitrust Laws*, 61 Harv. L. Rev. 1289, 1327-1350; Burns, *The Anti-Trust Laws and the Regulation of Price Competition*, 4 Law & Contemp. Prob. 301; Learned & Isaacs, *The Robinson-Patman Law: Some Assumptions and Expectations*, 15 Harv. Bus. Rev. 137; McAllister, *Price Control by Law in the United States: A Survey*, 4 Law & Contemp. Prob. 273.

In a case where a seller sustains the burden of proof placed upon it to establish its defense under § 2 (b), we find no reason to destroy that defense indirectly, merely because it also appears that the beneficiaries of the seller's price reductions may derive a competitive advantage from them or may, in a natural course of events, reduce their own resale prices to their customers. It must have been obvious to Congress that any price reduction to any dealer may always affect competition at that dealer's level as well as at the dealer's resale level, whether or not the reduction to the dealer is discriminatory. Likewise, it must have been obvious to Congress that any price reductions initiated by a seller's competitor would, if not met by the seller, affect competition at the beneficiary's level or among the beneficiary's customers just as much as if those reductions had been met by the seller. The proviso in § 2 (b), as interpreted by the Commission, would not be available when there was or might be an injury to competition at a resale level. So interpreted, the proviso would have such little, if any, applicability as to be practically meaningless. We may, therefore, conclude that Congress meant to permit the natural consequences to follow the seller's action in meeting in good faith a lawful and equally low price of its competitor. [251]

In its argument here, the Commission suggests that there may be some situations in which it might recognize the proviso in § 2 (b) as a complete defense, even though the seller's differential in price did injure competition. In support of this, the Commission indicates that in each case it must weigh the potentially injurious effect of a seller's price reduction upon competition at all lower levels against its beneficial effect in permitting the seller to meet competition at its own level. In the absence of more explicit requirements and more specific standards of comparison than we have here, it is difficult to see how an injury to competition at a level below that of the seller can thus be balanced fairly against a justification for meeting the competition at the seller's level. We hesitate to accept § 2 (b) as establishing such a dubious defense. On the other hand, the proviso is readily understandable as simply continuing in effect a defense which is equally absolute, but more limited in scope than that which existed under § 2 of the original Clayton Act.

The judgment of the Court of Appeals, accordingly, is reversed and the case is remanded to that court with instructions to remand it to the Federal Trade Commission to make findings in conformity with this opinion.

It is so ordered.

MR. JUSTICE MINTON took no part in the consideration or decision of this case.

MR. JUSTICE REED, dissenting.

The Federal Trade Commission investigated practices of the Standard Oil Co. of Indiana in selling its gasoline in the Detroit area at different prices to competing local distributors, in alleged violation of the Robinson-Patman (antiprice discrimination) Act. Standard's defense is not a denial of that discriminatory practice [251] but a complete justification, said to be allowed by the [252] Robinson-Patman Act, on the ground of trade necessity in order to meet an equally low price in Detroit of other gasoline refiners. On concluding the practice violated federal prohibitions against discriminatory sale prices, the Commission entered a cease and desist order against Standard's sale system. The order was enforced by the Court of Appeals after a minor modification (43 F. T. C. 56; 173 F. (2d) 210).

The need to allow sellers to meet competition in price from other sellers while protecting the competitors of the buyers against the buyers' advantages gained from the price discrimination was a major cause of the enactment of the 1936 Robinson-Patman Act. The Clayton Act of 1914 had failed to solve the problem. The impossibility of drafting fixed words of a statute so as to allow sufficient flexibility to meet the myriad situations of national commerce, we think, led Congress in the Robinson-Patman Act to put authority in the Federal Trade Commission to determine when a seller's discriminatory sales price violated the prohibitions of the antimonopoly statute, § 2 (a), 49 Stat. 1526, and when it was justified by a competitor's legal price.¹ The disadvantage to business of this choice was that the seller could not be positive before the Commission acted as to precisely how far he might go in price discrimination to meet and beat his competition. The Commission acted on its interpretation of the act.² Believing it important to support the purpose of Congress and the Commission's interpretation of the act, with which we agree, we state our reasons. [253]

The court first condemns the Commission's position that meeting in good faith a competitor's price merely rebuts the prima facie establishment of discrimination based on forbidden differences in sales price, so as to require an affirmative finding by the Commission that nevertheless there may be enjoined injury under the Robinson-Patman Act to the favored buyer's competitors. The court then de-

¹ The difficulties of any other approach are illustrated by the attempt of Congress to clarify the Robinson-Patman Act. See President's veto message on S. 1008, Cong. Rec. June 16, 1950, p. 8844, and conference reports, House of Reps., 81st Cong., 1st Sess., No. 1422, October 13, 1949, and 2d Sess., No. 1730, March 3, 1950.

² Hearings before Subcommittee No. 1 of the House Committee on the Judiciary on S. 1008, 81st Cong., 1st Sess., June 8 and 14, 1949, p. 61.

cides that good faith in meeting competition was an absolute defense for price discrimination, saying:

On the other hand, the proviso is readily understandable as simply continuing in effect an equally absolute, but more limited, defense than that which existed under § 2 of the original Clayton Act.

Such a conclusion seems erroneous. What follows in this dissent demonstrates, we think, that Congress intended so to amend the Clayton Act that the avenue of escape given price discriminators by its meeting competition clause should be narrowed. The court's interpretation leaves what the seller can do almost as wide open as before. (See p. 12 *et seq.*, *infra*.) It seems clear to us that the interpretation put upon the clause of the Robinson-Patman Act by the Court means that no real change has been brought about by the amendment.

The public policy of the United States fosters the free-enterprise system of unfettered competition among producers and distributors of goods as the accepted method to put those goods into the hands of all consumers at the least expense.³ There are, however, statutory exceptions to such unlimited competition.⁴ Nondiscriminatory [254] pricing tends to weaken competition in that a seller, while otherwise maintaining his prices, cannot meet his antagonist's price to get a single order or customer. But Congress obviously concluded that the greater advantage would accrue by fostering equal access to supplies by competing merchants or other purchasers in the course of business.⁵

The first enactment to put limits on discriminatory selling prices was the Clayton Act in 1914, 38 Stat. 730, § 2. Section 11 enabled the Commission to use its investigatory and regulatory authority to handle price discrimination. Section 2 provided for the maintenance of competition by protecting the ability of business rivals to obtain commodities on equal terms. The Robinson-Patman Act moved further toward this objective. In the margin appears the applicable words of the Clayton Act followed by those of the Robinson-Patman Act. Phrased summarily for this case, it may be said that the italicized words in the Clayton Act were the source of the difficulties in enforcement that Congress undertook to avoid by the italicized words of the Robinson-Patman Act.⁶ [255]

³ *Associated Press v. United States*, 326 U. S. 1, 13; *United States v. Line Material Co.*, 333 U. S. 287, 309.

⁴ *E. g.*, Interstate Commerce Act, § 5, 49 U. S. C. § 5; Communications Act of 1934, § 221, Miller-Tydings Act, 15 U. S. C. § 1. And see Mason, *The Current Status of the Monopoly Problem in the United States*, 62 Harv. L. Rev. 1265.

⁵ For a discussion of the merits of the legislation, see Adelman, *Effective Competition and the Antitrust Laws*, 61 Harv. L. Rev. 1289.

⁶ Clayton Act:

"SEC. 2. That it shall be unlawful for any person engaged in commerce * * * to discriminate in price between different purchasers of commodities, * * * where the effect of such discrimination may be to substantially lessen competition, or tend to create a monopoly in any line of commerce: Provided, That nothing herein contained shall

It will be noted that unless the effect is given the Robinson-Patman amendment contended for by the Federal Trade Commission, there is little done to overcome the difficulties arising from the meeting competition clause of the Clayton Act. Formerly "discrimination in price in the same or different communities made in good faith to meet competition" was allowed as a complete defense. Now it is "made in good faith to meet an equally low price of a competitor." The Court says:

It thus eliminates certain difficulties which arose under the original Clayton Act. For example, it omits reference to discriminations in price "in the same or different communities * * *" and it thus restricts the proviso to price differentials occurring in actual competition. It also excludes reductions which undercut the "lower price" of a competitor. None of these changes, however, cut into the actual core of the defense. That still consists of the provision that wherever a [253] lawful lower price of a competitor threatens to deprive a seller of a customer, the seller, to retain that customer, may in good faith meet that lower price.

We see little difference. The seller may still, under the Court's interpretation, discriminate in sales of goods of [256] like quantity and quality between buyers on opposite corners, so long as one gets a lower delivered price offer from another seller, no matter where located. The "actual core of the defense" remains intact.

I

Legislative History.—Upon the interpretation of the words and purpose of this last addition by the Robinson-Patman Act to curbs on discrimination in trade, the narrow statutory issues in this case turn. Though narrow, they are important if trade is to have the benefit of careful investigation before regulation, attainable under the Federal Trade Commission Act but so difficult when attempted by prosecutions in courts with the limitations of judicial procedure. As an aid to the interpretation of § 2 (b), we set out applicable parts of its legislative history.

prevent * * * discrimination in price in the same or different communities made in good faith to meet competition: * * *

Robinson-Patman Act:

"SEC. 2. (a) That is shall be unlawful for any person engaged in commerce, * * * to discriminate in price between different purchasers of commodities * * * where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them; * * *

"SEC. 2. (b) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the *prima facie* case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: Provided, however, That nothing herein contained shall prevent a seller rebutting the *prima facie* case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor."

The Clayton Act created a broad exception from control for prices made in good faith to meet competition. This raised problems of which Congress was aware. In reporting on a redrafted version of S. 3154, the Senate's companion bill to the House bill that became the Robinson-Patman Act, the Senate Committee on the Judiciary, February 3, 1936, pointed out the weakness of § 2 of the Clayton Act in permitting discrimination to meet competition, and suggested a harsh remedy, the elimination of its italicized proviso in note 6 *supra*, without the mollifying words of § 2 (b) of the Robinson-Patman Act.⁷ In [257] March, the House Committee on the Judiciary made its report on the bill that became the act. Section 2 (b) was then in substantially its present form. The report pointed out the draftsmen's purpose to strengthen the laws against price discrimination, directly or indirectly through brokerage or other allowances, services or absorptions of costs.⁸ It commented that the subsection that became [254]

⁷ S. Rep. No. 1502, 74th Cong., 2d Sess., p. 4:

"The weakness of present section 2 lies principally in the fact that: (1) It places no limit upon differentials permissible on account of differences in quantity; and (2) it permits discriminations to meet competition, and thus tends to substitute the remedies of retaliation for those of law, with destructive consequences to the central object of the bill. Liberty to meet competition which can be met only by price cuts at the expense of customers elsewhere, is in its unmasked effect the liberty to destroy competition by selling locally below cost, a weapon progressively the more destructive in the hands of the more powerful, and most deadly to the competitor of limited resources, whatever his merit and efficiency. While the bill as now reported closes these dangerous loopholes, it leaves the fields of competition free and open to the most efficient, and thus in fact protects them the more securely against inundations of mere power and size.

"Specific phrases of section 2 (a), as now reported, may be noted as follows:

"One: * * * where either or any of the purchases involved in such discrimination are in commerce * * *"

"Section 2 (a) attaches to competitive relations between a given seller and his several customers, and this clause is designed to extend its scope to discriminations between interstate and intrastate customers, as well as between those purely interstate. Discriminations in excess of sound economic differences involve generally an element of loss, whether only of the necessary minimum of profits or of actual costs, that must be recouped from the business of customers not granted them. When granted by a given seller to his customers in other States, and denied to those within the State, they involve the use of that interstate commerce to the burden and injury of the latter. When granted to those within the State and denied to those beyond, they involve conversely a directly resulting burden upon interstate commerce with the latter. Both are within the proper and well-recognized power of Congress to suppress."

⁸ H. R. Rep. 2287, 74th Cong., 2d Sess., p. 3:

"The purpose of this proposed legislation is to restore, so far as possible, equality of opportunity in business by strengthening antitrust laws and by protecting trade and commerce against unfair trade practices and unlawful price discrimination, and also against restraint, and monopoly for the better protection of consumers, workers, and independent producers, manufacturers, merchants, and other businessmen.

"To accomplish its purpose, the bill amends and strengthens the Clayton Act by prohibiting discriminations in price between purchasers where such discriminations cannot be shown to be justified by differences in the cost of manufacture, sale, or delivery resulting from different methods or quantities in which such commodities are to such purchasers sold and delivered. It also prohibits brokerage allowances except for services actually rendered, and advertising and other service allowances unless such allowances or services are made available to all purchasers on proportionally equal terms. It strikes at the basing-point method of sale, which lessens competition and tends to create a monopoly."

§ 2 (b) let a seller "meet the price actually pre-[258]viously offered by a local competitor."⁹ The language used in regard to competition in the bills and in the Act seems to have been based on a recommendation of the Federal Trade Commission.¹⁰ The Commission had been [259] unable to restore the desired competition under the Clayton Act, and Congress evidently sought to open the way for effective action.¹¹

Events in the course of the proposed legislation in the Senate and House have pertinence. The Senate inserted the original ineffective language of the Clayton Act in its exact form in the Senate bill. In the same draft it adopted an amendment sim-[255]ilar to the proviso ultimately enacted. 80 Cong. Rec. 6426, 6435. In the House, Representative Patman explained his view of the dangers in the original pro-

⁹ *Id.*, p. 16:

"This proviso represents a contraction of an exemption now contained in section 2 of the Clayton Act which permits discriminations without limit where made in good faith to meet competition. It should be noted that while the seller is permitted to meet local competition, it does not permit him to cut local prices until his competitor has first offered lower prices, and then he can go no further than to meet those prices. If he goes further, he must do so likewise with all his other customers, or make himself liable to all of the penalties of the act, including treble damages. In other words, the proviso permits the seller to meet the price actually previously offered by a local competitor. It permits him to go no further."

¹⁰ Final Report on the Chain-Store Investigation, S. Doc. No. 4, 74th Cong., 1st Sess., p. 96: "A simple solution for the uncertainties and difficulties of enforcement would be to prohibit unfair and unjust discrimination in price and leave it to the enforcement agency, subject to review by the courts, to apply that principle to particular cases and situations. The soundness of and extent to which the present provisos would constitute valid defenses would thus become a judicial and not a legislative matter."

"The Commission therefore recommends that section 2 of the Clayton Act be amended to read as follows:

"It shall be unlawful for any person engaged in commerce, in any transaction in or affecting such commerce, either directly or indirectly to discriminate unfairly or unjustly in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States."

This report was utilized by the House Committee dealing with the proposed Robinson-Patman legislation. H. R. Rep. No. 2287, 74th Cong., 2d Sess., pp. 3, 7.

¹¹ *Id.*, p. 64: "If the discrimination is 'on account of differences in the grade, quality, or quantity of the commodity sold,' or makes 'only due allowance for difference in the cost of selling or transportation,' or is 'made in good faith to meet competition,' it is not unlawful even though the effect 'may be to substantially lessen competition or tend to create a monopoly in any line of commerce.' Discriminatory price concessions given to prevent the loss of a chain-store's business to a competing manufacturer, to prevent it manufacturing its own goods, or to prevent it from discouraging in its stores the sale of a given manufacturer's goods, may be strongly urged by the manufacturer as 'made in good faith to meet competition.'" See p. 90, *id.*

Attention was called to this need. H. R. Rep. No. 2287, 74th Cong., 2d Sess., p. 7: "Some of the difficulties of enforcement of this section as it stands are pointed out in the [Final Report] of the Federal Trade Commission above referred to, at pp. 63 and following."

viso.¹² It was taken out in Confer-[260]ence.¹³ The Chairman of the House managers, Mr. Utterback, before the Conference Report was agreed to by the House, received permission to print an explanation [261] of his understanding of the proviso. He explained that the proviso "does not set up the meeting of competition as an absolute bar to a charge of discrimination under the bill. It merely permits it to be shown in evidence. * * * It leaves it a question of fact to be determined in each case, whether the competition to be met was such as to justify the discrimination given, * * *." The pertinent parts of the statement appear in the margin.¹⁴ [256]

¹² 80 Cong. Rec. 8235:

"Mr. Chairman, I would like to ask a question of the gentleman from Texas [Mr. Patman]. A great many of the industries in Ohio were very much in favor of the proviso in the Senate bill, appearing on page 4, and reading as follows:

"*And provided further*, That nothing herein contained shall prevent discrimination in price in the same or different commodities made in good faith to meet competition."

"I find that on page 9 of the Patman bill, beginning in line 14, there appear these words:

"*Provided, however*, That nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor."

"Will the gentleman explain the difference between these two proposals?

"Mr. PATMAN. If the Senate amendment should be adopted it would really destroy the bill. It would permit the corporate chains to go into a local market, cut the price down so low that it would destroy local competitors and make up for their losses in other places where they had already destroyed their competitors. One of the objects of the bill is to get around that phrase and prevent the large corporate chains from selling below cost in certain localities, thus destroying the independent merchants, and making it up at other places where their competitors have already been destroyed. I hope the gentleman will not insist on the Senate amendment, because it would be very destructive of the bill. The phrase 'equally low price' means the corporate chain will have the right to compete with the local merchants. They may meet competition, which is all right, but they cannot cut down the price below cost for the purpose of destroying the local man.

"Mr. COOPER of Ohio. What does the gentleman's proviso mean?

"Mr. PATMAN. It means they may meet competition, but not cut down the price below cost. It means an equally low price but not below that. It permits competition, but it does not permit them to cut the price below cost in order to destroy their competitors. I hope the gentleman will not insist on the Senate amendment."

But see pp. 15 and 16, *infra*.

¹³ H. R. Rep. No. 2951, 74th Cong., 2d Sess., pp. 6-7:

"The Senate bill contained a further proviso—

"That nothing herein contained shall prevent discrimination in price in the same or different communities made in good faith to meet competition."

"This language is found in existing law, and in the opinion of the conferees is one of the obstacles to enforcement of the present Clayton Act. The Senate receded, and the language is stricken. A provision relating to the question of meeting competition, intended to operate only as a rule of evidence in a proceeding before the Federal Trade Commission, is included in subsection (b) in the conference text as follows:

"*Provided, however*, That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of service or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor."

¹⁴ 80 Cong. Rec. 9418:

"In connection with the above rule as to burden of proof, it is also provided that a seller may show that his lower price was made in good faith to meet an equally low price of a competitor, or that his furnishing of services or facilities was made in good faith to meet those furnished by a competitor. It is to be noted, however, that this does not set up the meeting of competition as an absolute bar to a charge of discrimination under the bill. It merely permits it to be shown in evidence. This provision is entirely procedural. It does not determine substantive rights, liabilities, and duties. They are fixed in the other provisions of the bill. It leaves it a question of fact to be determined in each case, whether the competition to be met was such as to justify the discrimination given, as one lying

II

Statutory Interpretation.—This résumé of the origin and purpose of the original § 2 of the Clayton Act and [262] the amendments of the Robinson-Patman Act gives a basis for determining the effect of this section in a hearing before the Commission where the charge, as here, that a seller during the same period of time has sold the same commodities to various purchasers at different prices, is admitted and the defense, the elements of which are likewise admitted, is that the discrimination was made in good faith to meet an equally low price of a competitor. Does meeting in good faith a competitor's price constitute a complete defense under the proviso to § 2 (b)? Or does the fact of good faith reduction in price to a purchaser to meet a competitor's price merely rebut the prima facie establishment of discrimination, arising under the statute from proof of forbidden differences in price,¹⁵ so as to require under § 2 (a) affirmative finding by the Commis-[263] sion that there may be injury to competition? Petitioner asserts that good faith meeting of a competitor's price is a complete defense. The Commission and the Court of Appeals take the opposite position, with which we concur.

This is our reason. The statutory development and the information before Congress concerning the need for strengthening the competitive price provision of the Clayton Act, make clear that the evil dealt with by the proviso of § 2 (b) was the easy avoidance of the prohibition against price discrimination. The control of that evil was an important objective of the Robinson-Patman Act. The debates, the Commission's report and recommendation and statutory changes show this. The Conference Report and the explanation by one of the managers, Mr. Utterback, are quite definitive upon the point. Because of experience under the Clayton Act, Congress refused to continue its competitive price proviso. Yet adoption of petitioner's position would permit a seller of nationally distributed

within the limitations laid down by the bill, and whether the way in which the competition was met lies within the latitude allowed by those limitations.

"This procedural provision cannot be construed as a *carte blanche* exemption to violate the bill so long as a competitor can be shown to have violated it first, nor so long as that competition cannot be met without the use of oppressive discriminations in violation of the obvious intent of the bill.

* * * * *

"If this proviso were construed to permit the showing of a competing offer as an absolute bar to liability for discrimination, then it would nullify the act entirely at the very inception of its enforcement, for in nearly every case mass buyers receive similar discriminations from competing sellers of the same product. One violation of law cannot be permitted to justify another. As in any case of self-defense, while the attack against which the defense is claimed may be shown in evidence, its competency as a bar depends also upon whether it was a legal or illegal attack. A discrimination in violation of this bill is in practical effect a commercial bribe to lure the business of the favored customer away from the competitor, and if one bribe were permitted to justify another the bill would be futile to achieve its plainly intended purposes."

¹⁵ See note 6, *supra*.

goods to discriminate in favor of large chain retailers, for the seller could give to the large retailer a price lower than that charged to small retailers, and could then completely justify its discrimination by showing that the large retailer had first obtained the same low price from a local low-cost producer of competitive goods. This is the very type of competition that Congress sought to remedy. To permit this would not seem consonant with the other provisions of the Robinson-Patman Act, strengthening regulatory powers of the Commission in "quantity" sales, special allowances and changing economic conditions.

[257] The structure and wording of the Robinson-Patman Amendment to the Clayton Act also conduce to our conclusion. In the original Clayton Act, § 2 was not divided into subsections. In that statute § 2 stated the body of the substantive offense, and then listed, in a series of provisos, various circumstances under which discrimi-[264] nations in price were permissible. Thus the statute provided that discriminations were not illegal if made on account of differences in the grade of the commodity sold, or differences in selling or transportation costs. Listed among these absolute justifications of the Clayton Act appeared the provision that "nothing herein contained shall prevent discrimination in price * * * made in good faith to meet competition." The Robinson-Patman Act, however, made two changes in respect of the "meeting competition" provision, one as to its location, the other in the phrasing. Unlike the original statute, § 2 of the Robinson-Patman Act is divided into two subsections. The first, § 2 (a), retained the statement of substantive offense and the series of provisos treated by the Commission as affording full justifications for price discrimination; § 2 (b) was created to deal with procedural problems in Federal Trade Commission proceedings, specifically to treat the question of burden of proof. In the process of this division, the "meeting competition" provision was separated from the other provisos, set off from the substantive provisions of § 2 (a), and relegated to the position of a proviso to the procedural subsection, § 2 (b). Unless it is believed that this change of position was fortuitous, it can be inferred that Congress meant to curtail the defense of meeting competition when it banished this proviso from the substantive division to the procedural. In the same way, the language changes made by § 2 (b) of the Robinson-Patman Act reflect an intent to diminish the effectiveness of the sweeping defense offered by the Clayton Act's "meeting of competition" proviso. The original provisos in the Clayton Act, and the provisos now appearing in § 2 (a), are worded to make it clear that nothing shall prevent certain price practices, such as "price differentials * * * [making] * * * due allowance for differences in the cost of manufacture * * *," or "price changes * * * in response to chang-[265]ing conditions affecting the market for * * * the goods concerned * * *."

But in contrast to these provisions, the proviso to § 2 (b) does not provide that nothing "shall prevent" a certain price practice; it provides only that "nothing shall prevent a seller rebutting * * * [a] * * * prima facie case by showing" a certain price practice—meeting a competitive price. The language thus shifts the focus of the proviso from a matter of substantive defense to a matter of proof. Consistent with each other, these modifications made by the Robinson-Patman Act are also consistent with the intent of Congress expressed in the legislative history.

The court suggests that former Federal Trade Commission cases decided here have treated the meeting-competition clause of the Robinson-Patman Act as being an absolute defense, not merely a rebuttal of the discrimination charge requiring further finding by the Commission. Reference is made to *Corn Products Refining Co. v. Federal Trade Comm'n*, 324 U. S. 726 [40 F. T. C. 892; 4 S. & D. 331] and *Federal Trade Comm'n v. Staley Mfg. Co.*, 324 U. S. 746. [40 F. T. C. 906; 4 S. & D. 346] In the *Corn Products* case, dealing with a basing point scheme for delivered prices, this Court merely said at p. 741:

The only evidence said to rebut the prima facie case made by proof of the price discriminations was given by witnesses who had no personal knowledge of the transactions, and was limited to statements of each witness's assumption or conclusion that the price discriminations were justified by competition.

And then went on to use the language quoted at p. 12 of the court's opinion. There was no occasion to consider the effect of a successful [254]ful rebuttal. As authority for its statement, we there cited the *Staley* case at 324 U. S. 746.

That citation included these words at pp. 752-753:

Prior to the Robinson-Patman amendments, § 2 of the Clayton Act provided that nothing contained in [266] it "shall prevent" discriminations in price "made in good faith to meet competition." The change in language of this exception was for the purpose of making the defense a matter of evidence in each case, raising a question of fact as to whether the competition justified the discrimination. See the Conference Report, H. Rep. No. 2951, 74th Cong., 2d Sess., pp. 6-7; see also the statement of Representative Utterback, the Chairman of the House Conference Committee, 80 Cong. Rec. 9418.

After that statement, which it should be noted relies upon Mr. Utterback's interpretation quoted at note 14 of this opinion, the court in the *Staley* case goes on to say that there was no evidence to show that Staley adopted a lower price to meet an equally low price of a competitor. Again there was no occasion for this Court to meet the present issue. We think our citation in *Staley*, quoted above, shows the then position of this Court.¹⁶

¹⁶ The court's opinion in this case refers, p. 12, notes 12 and 13 [p. 1776]; notes 10 and 11, to the opinions of the Court of Appeals for the Seventh Circuit in *Staley* and *Corn Products*, 144 F. (2d) 211 and 221. But that court reversed its position in the opinion below, 173 F. (2d) 210, 216. It is fair to assume that reversal was because of our opinions in *Corn Products* and *Staley*.

There are arguments available to support the contrary position. No definite statement appears in the committee reports that "meeting competition" is henceforth to be only a rebuttal of a prima facie case and not a full justification for discrimination in price. The proviso of § 2 (b) can be read as having the same substantive effect as the provisos of § 2 (a). The earlier provisos are treated by the Commission as complete defenses. Perhaps there is an implication favorable to the petitioner's position in Representative Patman's omission to state the Federal Trade Commission interpretation of the floor. (See note 12, *supra*.)

[267] The underlying congressional purpose to curtail methods of avoiding limitations on price discriminations, however, considered with the more specific matters discussed herein, satisfies us that we should adopt the conclusion of the Commission and the Court of Appeals.¹⁷ We believe that good faith meeting of a competitor's price only rebuts the prima facie case of violation established by showing the price discrimination. Whether the proven price discrimination is of a character that violates § 2 (a) then becomes a matter for the determination of the Commission on a showing that there may be injury to competition.

III

Conclusion.—In view of the court's ruling, we will not enlarge this dissent by discussing other problems raised by the case. We have said enough to show that we would affirm the decree below in principle, even though we should conclude some amendment might be required in the wording of the order.

THE CHIEF JUSTICE and MR. JUSTICE BLACK join in this dissent.

CARTER PRODUCTS, INC., ET AL. v. FEDERAL TRADE COMMISSION¹

No. 10008—F. T. C. Docket 4960

(Court of Appeals, Seventh Circuit. Feb. 2, 1951)

METHODS, ACTS, AND PRACTICES—MISREPRESENTATION—INITIAL CONTACTS—IF MISREPRESENTATION THEREAFTER CORRECTED

The Federal Trade Commission Act is violated if first contact or interview

¹⁷ It is hardly necessary to note that the wisdom of the enactment is not for the Commission nor the courts in enforcing the act. The Commission recently has advised Congress that while "on balance it would be preferable to make the good faith meeting of competition a complete defense," it "does not strongly urge either view upon the Congress." Hearings before Subcommittee No. 1 of the House Committee on the Judiciary on S. 1008, 81st Cong., 1st Sess., June 8 and 14, 1949, p. 61. Compare *Standard Oil Co. v. United States*, 337 U. S. 293, 311. This statement confirmed the Commission's position taken in this case. There were other officials of the Commission who have taken the view adopted by the court.

¹ Reported in 186 F. (2d) 821. For case before Commission see 46 F. T. C. 64.

is secured by deception, even though true facts are made known to buyer before he enters into contract of purchase.

CEASE AND DESIST ORDERS—METHODS, ACTS, AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—QUALITIES OR PROPERTIES OF PRODUCT—DEODORANT

Evidence required that cease and desist order of Federal Trade Commission requiring manufacturer of deodorant cosmetic preparation cease and desist from disseminating in commerce any advertisement representing that application of the preparation stops under-arm perspiration, or that it will be more than temporarily effective in reducing flow of perspiration, by eliminating phrase that preparation will [822] be more than temporarily effective in reducing flow of perspiration, and by adding provision that nothing shall prevent manufacturer from representing that preparation will prevent appearance of perspiration when used daily or as frequently as necessary.

PROCEEDINGS BEFORE COMMISSION—COMPLAINTS—LATITUDE UNDER—TERMINOLOGY—ADVERTISING FALSELY OR MISLEADINGLY—QUALITIES OR PROPERTIES OF PRODUCT—"DEODORANT COSMETIC" CLAIMS AS DISTINGUISHED FROM PERSPIRATION STOPPER

Fact that complaint of Federal Trade Commission in proceeding under Federal Trade Commission Act alleged that preparation was a "deodorant cosmetic preparation," did not prevent Commission from considering and passing on question whether advertising claims of manufacturer as a deodorant, as distinguished from stopper of perspiration, were deceptive, false, or misleading.

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—APPELLATE POWER—MODIFICATION

Power of Court of Appeals under Federal Trade Commission Act to modify orders of the Federal Trade Commission extends to the remedy.

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—APPELLATE POWER—LIMITATION ON REVIEW

Judicial review by a Court of Appeals of an order of the Federal Trade Commission under the Federal Trade Commission Act is limited and extends no further than to ascertain whether the Commission has made an allowable judgment in its choice of remedy.

CEASE AND DESIST ORDERS—SCOPE AND PROPRIETY—ADVERTISING—FALSELY OR MISLEADINGLY—QUALITIES OR PROPERTIES OF PRODUCT—DEODORANT

Where medical experts experienced in dermatology, testified that cosmetic deodorant would remain effective as a deodorant from 3 to 6 hours, 10 to 12 and maybe 14 hours, 4 to 10 hours, 4 to 24 hours, and 15 to 20 hours, cease and desist order of Federal Trade Commission requiring manufacturer to use the word "temporary" in referring to length of time that deodorant was effective as a deodorant, would be modified to permit omission of the word "temporary" and order would be modified to permit manufacturer to advertise that deodorant was effective where used daily or as frequently as found necessary.

CEASE AND DESIST ORDERS—METHODS, ACTS, AND PRACTICES—ADVERTISING FALSELY OR MISLEADING—QUALITIES OR PROPERTIES OF PRODUCT—SAFETY

Evidence justified portion of cease and desist order of Federal Trade Commission under the Federal Trade Commission Act requiring manufacturer of deodorant cosmetic preparation to cease and desist from advertising that the preparation would not harm the skin.

(The syllabus with substituted captions, is taken from 186 F. (2d) 821)

On petition to review order of Commission, order modified and, as modified, affirmed and enforced.

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Before MAJOR, *Chief Judge*; DUFFY and LINDLEY, *Circuit Judges*.

DUFFY, *Circuit Judge*:

Petitioners ask us to review and set aside a cease and desist order entered by the Federal Trade Commission against petitioners, charging them with engaging in unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act, 15 U. S. C. 45.

Petitioner Carter Products, Inc., sells and distributes in interstate commerce a deodorant, cosmetic preparation called Arrid. The other petitioner is Carter's advertising agency. By means of various types of advertising, petitioners have represented that Arrid "safely stops under-arm perspiration * * * instantly stops perspiration one to three days * * * remember, it stops perspiration and keeps it stopped * * * for one to three days," [823] and also, "If you want complete under-arm protection, you must keep the armpits dry as well as odorless. Arrid cream will do both for you, and do it safely." Petitioners also advertised that Arrid is harmless and will not irritate the skin even if used after shaving, and that by stopping the flow of under-arm perspiration altogether, the collection of odor-creating body secretions in the armpits is prevented. The Commission found that the foregoing statements and representations are grossly exaggerated, false, deceptive, and misleading. The Commission also found that certain of said advertisements meant that the application of Arrid to the area of skin under the arms will terminate and bring to an end the flow of perspiration in that area for 1 to 3 days.

Although often used interchangeably, the terms "sweat" and "perspiration" are not identical, and do not define or describe the same thing. Located beneath the surface of the skin are glands known as sweat glands, each having an opening or duct at the surface of the

skin, referred to as the mouth of the sweat gland. "Sweat" is the substance which is formed in the sweat glands before it appears on the surface of the skin. In a general sense, "perspiration" means any secretion which passes through the skin, which would include a secretion which passed through at a place where no sweat glands were located. In a more restricted sense, and as the term generally is used, "perspiration" refers to the secretion of the sweat glands after it passes through the skin and appears on the surface thereof, plus accumulated dirt or debris which has collected on the skin from various sources, and when both are left on the surface of the skin, the combination generates an odor characterized as the odor of sweat. Perspiration is either sensible (which can be seen or felt) or insensible (which can neither be seen nor felt).

The principal active ingredient of Arrid is aluminum sulphate, an astringent. When applied to the skin it tends to cause a swelling which contracts or closes the mouths of the sweat glands, and thus reduces the flow of such glands. Later the swelling gradually decreases, permitting sweat to flow again from the glands.

The Commission found that the extent of the reduction of the flow of sweat depends upon the temperature, the humidity, the physical activity of the individual, and the degree of tendency to perspire peculiar to the particular individual. The Commission further specifically found, "The use of 'Arrid' will not terminate or bring to an end the flow of underarm perspiration. Its use will not absorb perspiration to the extent of keeping the armpits dry. It will not keep the armpits dry or free from the odor of perspiration for one to three days. This preparation is not harmless, and its use will cause skin irritations, and dermatitis in some people. If used after shaving 'Arrid' is not safe and harmless, but is capable of irritating the skin, and of aggravating irritation."

Petitioners were ordered to cease and desist from disseminating in commerce any advertisement which represented "(a) that the application of said preparation stops underarm perspiration, or that it will be more than temporarily effective in reducing the flow of perspiration; (b) that said preparation will be more than temporarily effective in keeping the armpits dry or odorless; (c) that the use of said preparation immediately after shaving will not irritate the skin; ¹ (d) that the said preparation will be more than temporarily effective in preventing the accumulation of odor-creating body secretions or excretions in the armpits; (e) that said preparation is safe or harmless to use, without disclosing it may cause irritation of sensitive skin."

As a product having antiperspirant properties, Arrid does have some merit. All witnesses who testified on the subject agreed that

¹ No question is raised on this appeal as to the propriety of clause (c).

Arrid did stop the appearance of perspiration on the surface of the skin of most people for certain periods. Two doctors testified the use of Arrid would have this effect for 3 to 6 hours; another stated it had such effect for a minimum of 3 to 4 hours; one [824] doctor testified that such effect would continue 6 to 14 hours, and another doctor from 4 to 24 hours.

Sweat glands function most of the time in at least some small degree in all human beings, but much of the time the secretion produced is so small in amount that it dries off too quickly for a person to see or feel any of the secretion. However, we are not here concerned with whether it is possible to stop entirely the functioning of the underarm sweat glands, which would seem theoretically impossible. Petitioners did not use the word "sweat" in their advertising. The reasonable interpretation of the average person reading their advertisement that Arrid would stop perspiration was that they were representing that Arrid would stop the appearance and odor of "moisture" on the underarm skin. Their use of the word "stop" was ambiguous, however. If we say a person is dead because he has "stopped breathing," there is a connotation of performance about the word "stopped"; but if when driving an automobile a person "stopped for a traffic light," the connotation of "stopped" would be of a temporary nature. Dictionary definitions of "stop" include "to cause to cease; to suppress; check; hold back; to arrest the progress or action of."

As stated heretofore, the evidence discloses that the use of Arrid will reduce the appearance of perspiration on the skin for a number of hours, to a point where it cannot be seen or felt. Of course the length of time that this situation prevails differs with each person and the existing circumstances. But the statement in the advertisements that Arrid will stop perspiration from 1 to 3 days was unjustified, as well as that its use would stop the flow of underarm perspiration "altogether."

Petitioners insist that they have never claimed that Arrid produced a permanent antiperspirant effect. Arrid is marketed in jars containing slightly more than 1 ounce of the product. Directions for use have appeared on packages and labels of Arrid, as follows (since 1939):

"Cover arm pit. Rub gently until cream vanishes. Wipe off excess. Use daily if necessary." Also, "Use frequently as you find necessary." And (since 1946), "Use daily for constant protection."

Petitioners argue that they made no greater claim than that the product, when used as directed, would stop the appearance of perspiration on the surface of the skin for a reasonable length of time. However, this contention of petitioners cannot be sustained. Petitioners did a considerable amount of advertising over the radio. At the first contact between buyer and seller, the buyer had no means of

knowing that the directions printed on cartons and jars containing Arrid called for "daily" use or "as frequently as * * * necessary." The same would hold true as to newspaper or magazine advertising. The law is violated if the first contact or interview is secured by deception (*Federal Trade Comm. v. Standard Education Society, et al.*, 302 U. S. 112, 115 [25 F. T. C. 1715, 2 S. & D. 429]), even though the true facts are made known to the buyer before he enters into the contract of purchase (*Progress Tailoring Co., et al. v. Federal Trade Comm.*, 7 Cir. 153 F. (2d) 103, 104, 105 [42 F. T. C. 882, 4 S. & D. 455]). See also *Aronberg, et al. v. Federal Trade Comm.*, 7 Cir., 132 F. (2d) 165, 169 [29 F. T. C. 1634, 3 S. & D. 528].

Thus we are here confronted with a situation where the distributors of Arrid, a product of some merit, made claims in their advertising which were too sweeping and too broad in their scope. Further, petitioners' use of the word "stop" was ambiguous. The approach of the Commission is to interpret "stop" as connoting permanency. The Commission has previously held that certain words connote permanency. In *International Parts Corp. v. Federal Trade Comm.*, 7 Cir., 133 F. (2d) 883 [36 F. T. C. 1102, 3 S. & D. 535], the advertisement for an automobile muffler stated, "Finest Quality Metallic Finish Prevents Rust and Corrosion." The Commission made a finding that the word "prevents" implies permanency, and therefore its use in that advertisement was misleading to the public. This court vacated the Commission's cease and desist order, and held that the idea of permanency was improperly interpolated by the Commission, and that without such interpolation there was no misrepresentation. Also in *D. D. D. Corp. v. Federal Trade Comm.*, 7 Cir. [825], 125 F. (2d) 679 [34 F. T. C. 1821, 3 S. & D. 455], the Commission construed the claim of relief from itching as promising a permanent effect, for it ordered the manufacturers of D. D. D. to discontinue representing that the product would have more than a temporary effect in relieving itching. But this court, on appeal, ruled (p. 682):

We are also of the view that the word "temporary" as used in paragraphs 1 (a), (b), (c), (e), and (g) of the Commission's order should be eliminated. We see no reason why petitioner should not be permitted to represent its product as a relief for itching. It does not cure the itch or its cause, but it does afford relief. One of the definitions given by Webster for the word "relief" is "lessens evil, pain, etc." The words "relief from itching" could, in our minds, carry no implication to the public that the product was a permanent cure either for the symptom or the disease. The word "temporary" carries an uncertain meaning. As the Commission's doctor stated: "It might mean a few minutes, or an hour or so." To require its use would serve no purpose in the protection of the public, but might limit the petitioner in truthfully representing its product.

There is some indication that the attitude of the Commission as to the connotation to be given to the word "stop" in advertising may

have changed since the date of the decision in the case at bar. In the five antihistamine cases,² the Commission on July 5, 1950, approved stipulations prohibiting each manufacturer from representing that its product would cure, prevent, stop, or shorten the duration of the common cold, which stipulations included the following permission: "*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, or nasal congestion, simple throat coughs, watering eyes, or watery or mucuous discharge from the nose. * * **" [Emphasis added.] Petitioners herein claim that all they want to do is claim that Arrid stops the appearance of perspiration, which is the manifestation of the operation of the sweat glands.

Paragraph 1. (a) of the cease and desist order will be modified by the elimination of the clause, "or that it will be more than temporarily effective in reducing the flow of perspiration," and by adding at the end of the undeleted portion of such subsection the following underscored words, so that the subsection will read: "(a) That the application of said preparation stops underarm perspiration: *Provided, however, That nothing herein shall prevent the respondent from representing that the use of Arrid will prevent the appearance of perspiration when used as directed, namely, 'daily' or 'as frequently as you find necessary.'*"

Paragraph 1. (b) of the Commission's order requires petitioners to refrain from representing that Arrid will be more than temporarily effective in keeping the armpits dry or odorless, and paragraph 1 (d) from representing that Arrid will be more than temporarily effective in preventing the accumulation of odor-creating body secretions or excretions in the armpits. Petitioners strongly urge that there was no justification for the Commission to pass upon the deodorant qualities of Arrid, because such deodorant qualities were not in issue. Petitioners point out that in the Commission's complaint Arrid was referred to as "a deodorant cosmetic preparation," and that respondents admitted this allegation of the complaint in their answer. Petitioners quote dictionary definitions defining "deodorant" as a substance which destroys offensive odors. Petitioners argue that the Commission cannot controvert issues of its complaint which are admitted by the answer, citing *Hill, et al. v. Federal Trade Comm.*, 124 F. (2d) 104, 106 [34 F. T. C. 1800, 3 S. & D. 436], and *National Candy Co. v. Federal Trade Comm.*, 7 Cir., 104 F. (2d) 999, 1003 [29 F. T. C. 1557, 3 S. & D. 116]. They point out that the deodorant properties of Arrid are entirely different from its antiperspirant

² 47 F. T. C. 1441, et seq.

properties, that many deodorant substances do not have any anti-perspirant properties at all, and that no deodorant has a permanent effect and that petitioners made no such claim as to Arrid. In sum, petitioners assert that as the Commission alleged and thus admitted Arrid was a deodorant and that everyone knows that a temporary effect is characteristic of a deodorant, the public could not possibly be defrauded or deceived, and that the Commission has gone out of its way to destroy a legitimate advertising claim.

We think it was permissible for the Commission to consider and pass upon whether the advertising claims of Arrid as a deodorant were deceptive, false or misleading. It is the perspiration remaining on the skin of a human being which causes an unpleasant odor, and since stopping the odor of perspiration is so dependent on reducing the perspiration itself, that is, when the deodorant is of the type of Arrid, the Commission could not very well have treated each as distinct and unrelated matters, and investigated one and passed over the other. The testimony of the medical experts who were experienced in dermatology, as to the length of time that Arrid would remain effective as a deodorant, varied, to wit, "3 to 6 hours," "10 to 12, and maybe 14 hours," "4 to 10 hours," "4 to 24 hours," and "15 to 20 hours."

The statute gives this court power not only to affirm or to reverse, but also to modify the orders of the Commission. *15 U. S. C. 45 (c) and (d)*. This power to modify extends to the remedy. *Federal Trade Comm. v. Royal Milling Co., et al.*, 288 U. S. 212 [17 F. T. C. 664, 2 S. & D. 217]. However, the Supreme Court has pointed out that judicial review by a Court of Appeals is limited, and extends no further than to ascertain whether the Commission has made "an allowable judgment in its choice of the remedy." *Jacob Siegel Co. v. Federal Trade Comm.*, 327 U. S. 608, 612 [42 F. T. C. 902, 4 S. & D. 476].

As stated heretofore, this court in *D. D. D. Corp. v. Federal Trade Comm.*, *supra*, disapproved of the use of word "temporary" because of its very uncertain meaning. We pointed out that it might mean only a few minutes, yet experts testifying before the Commission in this case admitted that Arrid's deodorant properties are effective at least 3 to 6 hours. We think in the case at bar, as we did in the *D. D. D.* case, that protection of the public does not require petitioners to use the word "temporary" or "temporarily," and that to require its use would be unfair to the petitioners in representing the truth as to Arrid.

Paragraph 1 (b) of the Commission's cease and desist order will

be deleted, and in lieu thereof the following shall be inserted: "(b) That said preparation will keep the armpits dry or odorless, provided that nothing herein shall prevent respondents from representing that the use of Arrid will keep the armpits dry or odorless when used as directed, namely, 'daily' or 'as frequently as you find necessary.'"

And paragraph 1 (d) will be deleted also, and in lieu thereof the following shall be inserted in the Commission's order: "(d) That said preparation will prevent the accumulation of odor-creating body secretions or excretions in the armpits, provided that nothing herein shall prevent respondents from representing that the use of Arrid will prevent the accumulation of odor-creating body secretions or excretions in the armpits when used as directed, namely, 'daily' or 'as frequently as you find necessary.'"

Paragraph 1 (e) of the Commission's order requires that petitioners cease and desist from representing that "said preparation is safe or harmless to use, without disclosing that it may cause irritation of sensitive skin." Petitioners presented evidence showing that the experiment of 1 doctor, involving a daily application of Arrid on 27 women for a 2-week period, revealed none had any sign of skin irritation; and that another doctor experimented with such applications on 186 women, and that again the skin of none of them showed any sign of irritation. Petitioners contend that the evidence clearly shows that the use of Arrid will not produce harmful effects upon normal skin, and that they should have the right to say so in their advertisements; [827] and they requested the Commission to permit them to so advertise. In our opinion the Commission might well have granted petitioners' request; but since it did not, we feel that we cannot overrule the Commission's order in this respect, because we are convinced that the Commission made "an allowable judgment in its choice of the remedy." *Jacob Siegel Co. v. Federal Trade Comm., supra*. The evidence proved that Arrid had caused and may cause injury to a number of people, and that such injury is not confined to persons having allergies or idiosyncracies. One medical expert testified that during the course of 10 years he had treated 50 cases of dermatitis proved to have been caused by Arrid. There was, therefore, substantial evidence sustaining the finding, "This preparation is not harmless, and its use will cause skin irritations, and dermatitis in some people." It follows that paragraph 1 (e) of the Commission's cease and desist order should stand, and be enforced.

The cease and desist order is affirmed, as modified herein, and the enforcement of the order as modified is ordered.