Location of purchaser	Aug. 1, 1936	Aug. 1, 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill	$2.94	$3.04	$2.29	$2.09
Danville, Ill	2.94	3.17	2.43	2.20
Louisville, Ky	3.26	3.34	2.63	2.43
Chattanooga, Tenn	3.34	3.42	2.71	2.51
Nashville, Tenn	(1)	3.40	2.69	2.49
Memphis, Tenn	(1)	(1)	(1)	2.49
Fort Worth, Tex	(1)	(1)	(1)	2.89
St. Louis, Mo	3.11	3.20	2.47	2.27
St. Joseph, Mo	3.32	3.40	2.69	2.49
Kansas City, Mo	(1)	3.40	2.69	2.49

[1] No sales.

The differentials shown above as existing between the foregoing prices on August 1, 1936, and on August 1, 1937, were substantially the same during the entire period from June 19, 1936, until after August 1, 1937, and the differentials shown above as existing between the foregoing prices on August 1, 1938, and on August 1, 1939, were substantially the same during the entire period from August 1, 1937, until the present time.

PAR. 7. By selling such sirup at said different prices, as found in paragraphs 5 and 6, the differences between which prices not having been justified by respondent, it has discriminated in prices between such purchasers who have paid the different prices for such sirup.

PAR. 8. The result of said discriminations has been to place the unfavored purchasers paying the higher prices for such sirup under a competitive disadvantage.

Such sirup is used as an ingredient to some extent in the manufacture of most kinds of candy and is one of the major raw materials used in the production of many varieties of candy.

Not only is the quantity of such sirup used significant, but the price paid therefor by such purchasers is a substantial part of the cost of the raw materials used in particular candies having a relatively high sirup content, as well as of the total cost of manufacturing an extensive line of candies having a wide range of sirup contents. Said costs of the unfavored of such purchasers increase over said costs of such favored purchasers directly as the amount of the discrimination between them increases, and as the sirup content of the candy increases.

Many candies containing a substantial quantity of such sirup are priced at but a few cents per pound. As to products so priced and bearing no differentiating name or brand, sellers have attracted customers by selling at only a small fraction of a cent per pound lower than a competitor. This has been especially true in selling such candies to chain stores and other purchasers of large quantities to whom such a small difference in price is determinative in placing their business.

Under such circumstances an unfavored purchaser's higher raw material costs are difficult if not impossible to recover by increasing the price of the candy manufactured if such unfavored purchaser hopes to maintain volume sales. The effect on such unfavored purchaser of the higher cost of such sirup is to decrease profit to the extent necessary to absorb the higher direct per unit cost imposed by the higher sirup cost as long as such unfavored purchaser attempts to sell his candy at a competitive price.

Where such absorption causes an impairment of profit to any material degree, it results in such unfavored purchaser making only selective sales at noncompetitive prices to customers on the basis of service or some other nonprice basis and directly causes reduced volume of sales resulting in unused capacity and increased overhead unit costs on particular as well as on all products; the consequence again being impairment of profits.

Such impairment of profits tends to weaken financially existing unfavored candy manufacturers; may bring about the elimination of such unfavored candy manufacturers from the industry and may prove an effective deterrent to the establishment of new candy manufacturing enterprises in those areas in which respondents discriminate as found above.

In the Matter of *American Maize-Products Company*, 32 FTC 901 (March 15, 1941). The facts were as there stated:

PAR. 3. For many years respondent has been and is now manufacturing such glucose or corn sirup unmixed at said plant and has sold and shipped and does now sell and ship such glucose or corn sirup unmixed, in commerce between and among the various States of the United States from Roby, Ind., to purchasers thereof located in other States, and in competition with other corporations engaged in similar lines of commerce.

PAR. 4. Most of such purchasers so located purchase such sirup which is of like grade and quality for use in the manufacture of candy, and such purchasers are competitively engaged in the sale of such candy to various customers including chain stores, wholesalers, and retailers, all located in the several States of the United States and in the District of Columbia.

PAR. 5. Respondent, since June 19, 1936, and while engaged in commerce as aforesaid after increasing the price of such sirup, has sold the same to some purchasers thereof at the former and lower price while concurrently selling such sirup of like grade and quality to other purchasers at the new and higher price. The differences between the former and lower prices and the new and higher prices referred to have varied from 5 to 55 cents per hundredweight.

PAR. 6. At all times since June 19, 1936, and while engaged in commerce as aforesaid, respondent has also sold and delivered such sirup of like grade and quality to purchasers in several types and sizes of containers at prices per hundredweight which increase over the tank car price per hundredweight according to the size and type of container as follows:

Container	Price per hundredweight over tank-car price per hundredweight
Tank wagons	$0.10.
Returnable drums	.13 Where there is no return freight on empty drums.
Do	.18 Where the return freight on empty drums is between 50 and 75 cents per hundredweight.
Do	.23 Where the return freight on empty drums is between 76 and 90 cents per hundredweight.
Do	.28 Where the return freight on empty drums is between 91 cents and $1.
Do	.33 Where the return freight on empty drums is more than $1.
Barrels	.33.
Half barrels	.58.
10-gallon kegs	.98.
5-gallon kegs	1.08.

PAR. 7. By selling such sirup at said different prices as found in paragraphs 5 and 6 above respondent has discriminated in price between such purchasers who have paid the various different prices. Respondent has not justified such differences nor shown that any of such prices were made in good faith to meet the equally low price of a competititor.

PAR. 8. Such sirup is one of the major raw materials used in the production of many kinds of candy manufactured by each of such candy manufacturers, accounting for as much as 90 percent or more of the weight of some varieties and for a substantial part of the total cost of manufacturing such candies; and said discriminations in the price of such sirup increase the cost of the unfavored purchaser over the costs of the favored purchasers directly as to the amount of the discrimination between them and as the sirup content of the candy increases. By reason of such higher costs, the profits of the unfavored purchasers would be substantially lower than they would be if it were not for the discriminations.

Such effect on profits would result where unfavored purchasers sold candy manufactured by them at prices competitive with the prices of candy manufactured by the favored purchasers. Under such circumstances the volume of sales by the unfavored purchasers would not be affected, but, due to their absorption of the higher sirup costs, their respective margins of profit, as well as total profits, would be reduced below what they would be if it were not for the discriminations.

Similarly, where, in an effort to recover such higher sirup costs, unfavored purchasers sold such candy at prices higher than those charged by favored purchasers, their respective volume of sales would undoubtedly decline commensurate in some degree to the amount by which prices were increased. With such decline in volume of sales would come unused plant capacity and increased per-unit overhead costs; and the price of the candy would have to be increased sufficiently, therefore, to cover both the higher sirup costs and higher overhead costs, if the margin of profit available in the absence of discriminations was to be preserved. Even though such margin of profit was not impaired it would not be realized on the lost sales, and total profit would be diminished to the extent that volume of sales was reduced.

The loss of profits either by absorption of the higher sirup costs or from loss of sales resulting from increasing prices to recover such higher sirup costs would generally diminish the ability of those candy manufacturers paying the higher prices for such sirup to compete in the sale of their products with candy manufacturers paying the lower prices for such sirup.

In the Matter of *The Hubinger Company*, 32 FTC 1116 (April 3, 1941). The following facts were as there stated:

PAR. 4. Such syrup has been sold and delivered by respondent in several types and sizes of containers, at prices per hundredweight which increase over the tank car price per hundredweight according to the size and type of container, as follows:

Container	Price per cwt. over tank-car price per cwt.
Tank wagons	$0.10
Returnable drums	[1].13
Barrels	.33
Half barrels	.58
10-gal. kegs	.98
5-gal. kegs	1.08

[1] Where there is no return freight on empty drums.

Where there is some return freight on returnable drums, which freight is paid by respondent, the basic differential for corn syrup shipped in returnable steel drums of $0.13 per hundredweight over the tank car price per hundredweight, as shown above is increased but only sufficiently per hundredweight to approximately equal the amount of the return freight paid by respondent on the empty drum, so that the basic differential of $0.13 per hundredweight is not in any instance accounted for by any return freight on the empty drum paid by respondent.

PAR. 5. Between June 19, 1936, and July 25, 1937, respondent sold such syrup at higher delivered prices per hundredweight to purchasers located in certain cities other than Chicago and Zion, Ill., than it sold such syrup in containers of like size and type to purchasers located in said cities of Chicago and Zion, Ill.; and between July 25, 1937, and the present time, respondent sold such syrup to purchasers located in certain cities other than Chicago, Ill., at higher delivered prices per hundredweight than it sold such syrup in containers of like size and type to purchasers located in Chicago, Ill., and such higher prices were not uniformly higher but varied with the geographical location of the cities in which the purchasers paying the higher prices were located.

Thus, on the following dates respondent sold such syrup to such purchasers located respectively in each of the following cities at the delivered prices per 100 pounds which are shown opposite said cities for such syrup (43° Baumé), in tank cars, or in other containers, in which latter case, for the purposes of comparison, no differential has been added for the containers:

TABLE I

Location of purchaser	Aug. 1, 1936	Aug. 1, 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill	$2.94	$3.04	$2.29	$2.09
Zion, Ill	2.94	3.17	2.39	2.17
Keokuk, Iowa	3.11	3.20	2.47	2.27
St. Louis, Mo	3.10	3.20	2.47	2.27
Kansas City, Mo	3.32	3.40	2.69	2.49
St. Joseph, Mo	3.32	3.40	2.69	2.49
Muskogee, Okla	3.58	3.64	2.94	2.74
Oklahoma City, Okla	3.62	3.68	2.99	2.79
Fort Worth, Tex	3.72	3.77	3.09	2.89

Table II, which follows, shows the differentials which exist between the delivered prices set forth in table I, the differentials in each case being the amount per hundredweight, which purchasers in the several cities were charged over the price charged in Chicago, Ill.:

TABLE II

Location of purchaser	Aug. 1, 1936	Aug. 1, 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill	$0.00	$0.00	$0.00	$0.00
Zion, Ill	.00	.13	.10	.08
Keokuk, Iowa	.17	.16	.18	.18
St. Louis, Mo	.16	.16	.18	.18
Kansas City, Mo	.38	.36	.40	.40
St. Joseph, Mo	.38	.36	.40	.40
Muskogee, Okla	.64	.60	.65	.65
Oklahoma City, Okla	.68	.64	.70	.70
Fort Worth, Tex	.78	.73	.80	.80

The following table III shows the railroad freight rates per hundredweight on corn syrup from respondent's plant at Keokuk, Iowa, to each of the cities enumerated in table I which were in effect on the dates for which the prices and differentials have been shown:

TABLE III

Location of purchaser	Aug. 1, 1936	Aug. 1, 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill	$0.171	$0.16	$0.175	$0.175
Zion, Ill	----	.205	.225	.225
Keokuk, Iowa	.000	.000	.000	.000
St. Louis, Mo	.139	.13	.145	.145
Kansas City, Mo	.299	.28	.31	.31
St. Joseph, Mo	.299	.28	.31	.31
Muskogee, Okla	.535	.50	.55	.55
Oklahoma City, Okla	.588	.55	.61	.61
Fort Worth, Tex	.684	.64	.71	.71

Table IV, which follows, shows the differentials which exist between the railroad freight rates per hundredweight set forth in Table III, the differential in each case being the amount per hundredweight by which the freight rate from Keokuk, Iowa, to Chicago, Ill., is exceeded by the freight rate from Keokuk, Iowa, to the other cities enumerated except where the figure is preceded by a minus sign, in which case the reverse is true:

TABLE IV

Location of purchaser	Aug. 1, 1936	Aug. 1, 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill	$0.00	$0.00	$0.00	$0.00
Zion, Ill	----	.045	.05	.05
Keokuk, Iowa	−.171	−.16	−.175	−.175
St. Louis, Mo	−.032	−.03	−.03	−.03
Kansas City, Mo	.128	.12	.135	.135
St. Joseph, Mo	.128	.12	.135	.135
Muskogee, Okla	.364	.34	.375	.375
Oklahoma City, Okla	.417	.39	.435	.435
Forth Worth, Tex	.513	.48	.535	.535

The extent to which the price differentials (shown in the table II) make more than due allowance for differences in the cost of delivery (shown in table IV) is set forth below in table V, the figure in each case being the amount per hundredweight by which the price difference in table II exceeds the difference in freight rates in table IV:

TABLE V

Location of purchaser	Aug. 1, 1936	Aug. 1, 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill.	$0.00	$0.00	$0.00	$0.00
Zion, Ill.	----------	.085	.05	.03
Keokuk, Iowa	.341	.32	.355	.355
St. Louis, Mo.	.192	.19	.21	.21
Kansas City, Mo.	.252	.24	.265	.265
St. Joseph, Mo.	.252	.24	.265	.265
Muskogee, Okla.	.276	.26	.275	.275
Oklahoma City, Okla.	.263	.25	.265	.265
Fort Worth, Tex.	.267	.25	.265	.265

PAR. 8. Respondent, since June 19, 1936, after increasing the price of such syrup to the trade generally, has sold the same to some purchasers thereof, most of whom buy in large quantities and are located in Chicago, Ill., at the former and lower price while concurrently selling such syrup of like grade and quality to other purchasers at the new and higher price.

PAR. 9. Since January 1, 1939, and continuing up to the present time, respondent has sold its gluten feed to nine particular purchasers at prices which were 50 cents per ton less than the prices at which it concurrently sold such feed of like grade and quality to all other purchasers.

Such sales were made to said nine purchasers pursuant to the terms of a written contract entered into by respondent with each of them. Each contract provided that in consideration of the purchase of 100 tons per month for 12 months, respondent would pay and grant to the purchaser at the end of the contract period an allowance of 50 cents per ton.

PAR. 10. By selling such syrup at said different prices as found in paragraphs 4, 5, 6, 7, and 8, and by selling such gluten feed at said different prices as found in paragraph 9, the differences between any of which prices respondent has not shown to make only due allowance for differences, if any, in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities, if any, in which said commodities were sold or delivered to such purchasers, respondent has discriminated in price between such purchasers who have paid the various different prices for said commodities.

* * * * * * *

PAR. 12. Most of such syrup, all of which is of like grade and quality, is purchased for use in the manufacture of candy; and most of such purchasers are competitively engaged in the sale of candy in which said syrup is used as an ingredient to various customers, including chain stores, wholesalers and retailers.

Such syrup is used as an ingredient to some extent in the manufacture of most kinds of candy, and is one of the major raw materials used in the production of many varieties of candy. Not only is the quantity of such syrup used significant, but the price paid therefor by such purchasers is a substantial part of the cost of the raw materials used in particular candies having a high syrup content, as well as of the total cost of manufacturing an extensive line

of candies having a wide range of syrup contents. Said costs of the unfavored of such purchasers increase over said costs of such favored purchasers directly as the amount of the discrimination between them and as the syrup content of the candy increases.

Under such circumstances, one result of said discriminations has been to place the unfavored purchaser paying the greater prices for such syrup under a competitive disadvantage.

Many candies containing a substantial quantity of such syrup are priced at but a few cents per pound. As to products so priced and bearing no differentiating name or brand, sellers have attracted customers by selling at only a small fraction of a cent per pound lower than a competitor. This has been especially true in selling such candies to chain stores and to other purchasers of large quantities to whom such a small difference in price is determinative in placing their business.

Such being the fact, an unfavored purchaser's higher raw material costs are difficult, if not impossible, to recover by increasing the price of the candy manufactured, if such unfavored purchaser hopes to maintain his sales volume. The effect on such unfavored purchaser of the higher cost of such syrup is to decrease profit to the extent necessary to absorb the higher direct per unit cost imposed by the higher syrup cost as long as such unfavored purchaser attempts to sell his candy at a competitive price.

Where such an absorption causes an impairment of profit to any material degree, it results in such unfavored purchaser making only selective sales at noncompetitive prices to customers on the basis of service or on some other nonprice basis, and directly causes reduced volume of sales, resulting in unused capacity and increase overhead unit cost on particular as well as on all products; the consequence again being impairment of profit.

Such impairment of profits tends to weaken financially existing unfavored candy manufacturers; may bring about the elimination of such unfavored candy manufacturers from the industry, and does prove an effective deterrent to the establishment of new candy manufacturing enterprises in those areas in which respondent discriminates as found above.

A further result of said discriminations has been to confer upon the favored purchasers monetary benefits which have given them a substantial competitive advantage, enabling them to reduce the selling prices of their candy, lower costs, increase volume and increase profits. Such benefits can well lead to a domination by them of the candy industry.

In the Matter of *A. E. Staley Manufacturing Company* and the *Staley Sales Corporation*, 34 FTC 1362 (June 10, 1942). The following facts were as there stated:

PAR. 3. Glucose or corn sirup unmixed is widely used in the manufacture of candy and in the mixing of table sirups. Among the purchasers of such glucose from respondents are customers located in Chicago, Decatur, and Centralia, Ill.; St. Joseph, St. Louis, and Kansas City, Mo.; Dallas and Farmersville, Tex.; Shreveport and Alexandria, La.; Little Rock, Ark.; Davenport, Ottumwa, and Sioux City, Iowa.

Respondents sell glucose or corn sirup unmixed strictly upon a delivered price basis. Their lowest price, or base price, for such glucose is f. o. b. Chicago in railroad tank car lots, and their prices to all other purchasers in such quantities,

wherever located, are equivalent or approximately equivalent to their prices to purchasers in Chicago plus freight from Chicago to the purchaser's location.

As among customers located in the cities named, and on the dates shown in the following tabulation, respondents' prices per hundredweight for 43° glucose in tank car lots were as follows:

Location of Purchaser	Aug. 1, 1936	Aug. 1, 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill.	$2.94	$3.04	$2.29	$2.09
Decatur, Ill.	3.11	3.20	2.47	2.27
Centralia, Ill.	3.11	3.20	2.47	2.27
St. Louis, Mo.	3.11	3.20	2.47	2.27
Davenport, Iowa	3.11	3.20	2.46	2.27
St. Joseph, Mo.	3.32	3.40	2.69	2.49
Kansas City, Mo.	3.32	3.40	2.69	2.49
Little Rock, Ark.	3.52	3.59	2.89	2.69
Alexandria, La.	3.54	3.60	2.90	2.70
Shreveport, La.	3.63	3.69	3.00	2.80
Farmersville, Tex.	3.68	3.74	3.06	2.86
Dallas, Tex.	3.72	3.77	3.09	2.89

At all times since June 19, 1936, substantially the same differentials in price as those shown above have existed between and among respondents' customers located in the cities named.

As heretofore stated respondents' prices on glucose or corn sirup unmixed vary as between purchasers in different cities according to the Chicago price plus the amount of the railroad freight rate on such glucose from Chicago to the purchaser's location. However, all sales of glucose made by respondents are fulfilled with glucose produced in and shipped from their plant in Decatur, Ill., and, consequently, the price differences as among purchasers which result from respondents' pricing plan as set forth herein do not merely reflect differing transportation costs. This is illustrated in the following tabulation in which sales by respondents to purchasers in various cities are compared with substantially concurrent sales to purchasers in Chicago. In this tabulation the prices per hundredweight charged purchasers and the price differences between such purchasers are shown, together with the freight rates from Decatur, Ill., to the location of each purchaser and the differences between such freight rates.

Location of purchaser	Delivered prices per hundredweight	Price difference per hundredweight	Freight rates per hundredweight from Decatur	Freight rate difference per hundredweight
St. Louis, Mo.	$3.20	$0.16	$0.10	−$0.04
Chicago, Ill.	3.04		.14	
St. Louis, Mo.	2.15	.06	.11	−.045
Chicago, Ill.	2.09		.155	
St. Louis, Mo.	2.16	.07	.11	−.045
Chicago, Ill.	2.09		.155	
Davenport, Iowa	3.20	.16	.134	−.006
Chicago, Ill.	3.04		.14	
Davenport, Iowa	2.27	.18	.14	−.015
Chicago, Ill.	2.09		.155	
Ottumwa, Iowa	2.73	.29	.27	.12
Chicago, Ill.	2.44		.15	
Ottumwa, Iowa	2.39	.30	.27	.115
Chicago, Ill.	2.09		.155	

Location of purchaser	Delivered prices per hundredweight	Price difference per hundredweight	Freight rates per hundredweight from Decatur	Freight rate difference per hundredweight
Ottumwa, Iowa	$2.39	$0.30	$0.27	$0.115
Chicago, Ill.	2.09		.155	
Sioux City, Iowa	3.50	.46	.36	.22
Chicago, Ill.	3.04		.14	
St. Joseph, Mo.	3.42	.38	.35	.20
Chicago, Ill.	3.04		.15	
St. Joseph, Mo.	3.40	.36	.35	.21
Chicago, Ill.	3.04		.14	
St. Joseph, Mo.	2.49	.40	.36	.205
Chicago, Ill.	2.09		.155	
Kansas City, Mo.	3.50	.46	.335	.185
Chicago, Ill.	3.04		.14	
Kansas City, Mo.	2.49	.40	.36	.205
Chicago, Ill.	2.09		.155	
Kansas City, Mo.	2.49	.40	.36	.205
Chicago, Ill.	2.09		.155	
Little Rock, Ark.	3.63	.59	.535	.385
Chicago, Ill.	3.04		.15	
Little Rock, Ark.	3.59	.55	.50	.36
Chicago, Ill.	3.04		.14	
Shreveport, La.	3.69	.65	.61	.47
Chicago, Ill.	3.04		.14	
Shreveport, La.	2.74	.60	.67	.515
Chicago, Ill.	2.14		.155	
Shreveport, La.	2.80	.61	.67	.515
Chicago, Ill.	2.19		.155	
Dallas, Tex.	3.77	.73	.73	.59
Chicago, Ill.	3.04		.14	
Dallas, Tex.	3.77	.73	.68	.54
Chicago, Ill.	3.04		.14	
Dallas, Tex.	2.89	.80	.75	.595
Chicago, Ill.	2.09		.155	
Dallas, Tex.	2.89	.80	.75	.595
Chicago, Ill.	2.09		.155	
Dallas, Tex.	2.94	.85	.75	.595
Chicago, Ill.	2.09		.155	
Farmersville, Tex.	3.01	.77	.72	.565
Chicago, Ill.	2.24		.155	
Farmersville, Tex.	2.96	.77	.72	.565
Chicago, Ill.	2.19		.155	

A comparison between the price differences per hundredweight and the freight rate differences per hundredweight illustrates the lack of justification for said price differences by reason of transportation costs incurred by respondents.

Respondents began the manufacture of glucose or corn sirup unmixed in 1920, at which time two of their present competitors were producing similar glucose at plants located in the Chicago railroad switching district and were selling glucose at delivered prices based upon the Chicago price plus freight from Chicago to point of delivery. When respondents became established as sellers of glucose comparable to that of their competitors, respondents adopted the practice of selling at the same delivered prices as their competitors. Respondents have been, and now are, unable to secure higher prices for their glucose than competitors charge for similar glucose. Respondents have consistently followed the prices for glucose announced by their competitors according to the pricing formula stated; that is, Chicago base plus freight to destination, except in certain instances where respondents have been the first to announce a change in the price of glucose, and in such instances they have announced prices in accord with the pricing formula theretofore in use by their competitors and themselves.

* * * * * * *

PAR. 5. Glucose or corn sirup unmixed is used to some extent in the manufacture of most kinds of candy and is one of the major raw materials used in the production of many varieties. In candy in which it is used, glucose constitutes from 5 to 90 percent of the finished weight of such candy. The price paid for glucose represents a substantial part of the total raw material cost and the total manufacturing cost of many candies having a wide range of glucose content, and constitutes a major portion of the raw material and total manufacturing costs of candies having a relatively high glucose content.

Some of those who purchase glucose of like grade and quality from respondents, including purchasers located in the cities heretofore enumerated, are candy manufacturers who purchase such glucose for use in the manufacture of candy and who are competitively engaged in the sale of candy so produced to wholesalers, chain stores, retailers, and others located in the several States of the United States and competitively engaged in the resale thereof. The higher prices paid for glucose by candy manufacturers located as aforesaid other than in the city of Chicago, Ill., contribute in a greater or lesser degree to their having higher raw material costs than those candy manufacturers located in Chicago, the degree in each instance depending upon the difference in the price paid for glucose and the proportion of glucose used in the candies manufactured. Generally, glucose is used in greater proportion in candies which are sold by the manufacturers at but a few cents per pound and at narrow margins of profit. In the case of such low-priced candies bearing no differentiating name or brand, manufacturers thereof may attract customers by selling at as little as one-eighth of a cent per pound lower than competitors, and this is especially true in selling such candies to chain stores and other purchasers buying in large quantities and to whom a small difference in price is determinative in the placing of their business.

Under these circumstances, candy manufacturers who are obliged to pay higher prices for glucose than some of their competitors may sell candies at competitive prices only by absorbing the higher glucose costs or by attempting to recover such higher glucose costs by increasing the price of their candies and selling them upon a non-price basis. The result is to reduce the profit of such candy manufacturers, either directly through the absorption of higher glucose costs or indirectly through selling at higher than competitive prices, which results in a reduced volume of sale of high glucose-content candies because volume purchasers will not buy such candies at higher than competitive prices. The lower profits of candy manufacturers who are obliged to pay higher prices for glucose diminish their incentive or desire to compete with candy manufacturers paying lower prices for glucose and may deter potential candy manufacturers from entering the industry in cities where they would be obliged to pay higher prices for glucose.

PAR. 6. Glucose or corn sirup unmixed is used in the production of sirups for table use. Among those who purchase glucose from respondents, including purchasers located in the cities heretofore enumerated, are customers engaged in the preparation of table sirups containing glucose for sale to wholesalers, chain stores, and other food product distributors. Such mixed table sirups contain approximately 85 percent of glucose or corn sirup and are usually sold packed in cases which contain six 10-pound cans, or 60 pounds net of mixed table sirup, of which approximately 50 pounds is glucose.

The higher prices paid for glucose or corn sirup unmixed by purchasers engaged in the production of table sirups and located as aforesaid other than in Chicago, Ill., contribute in a greater or lesser degree to higher raw material costs and total costs than the corresponding costs of table sirup mixers located in Chicago, Ill., the degree in such instance depending upon the price paid for glucose. Producers of table sirup may attract customers by selling such sirup at prices as little as 5 cents per case lower than the prices of competitors. The savings in the cost of such sirup resulting from lower glucose prices to some producers, when utilized by those producers to reduce the price of table sirup, substantially diminishes the sale of table sirup by producers thereof paying higher prices for glucose; or, in the alternative, the producers paying higher prices for glucose meet the table sirup prices of their competitors who purchase glucose at lower prices. In either case the profits of producers of table sirups paying higher prices for glucose are reduced, and the reduction of profit diminishes the incentive of sirup mixers paying higher glucose prices to compete with producers of table sirups paying lower glucose prices and may deter potential sirup mixers from entering the industry in cities where they would be obliged to pay higher prices for glucose.

PAR. 7. The record does not show that the aforesaid price differences of respondents, as among their customers purchasing glucose of like grade and quality, are such differences as 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.

In the Matter of *Clinton Company* and *Clinton Sales Company*, 34 FTC 879 (March 17, 1942). The following facts were as there stated:

PAR. 4. (*a*) Respondents sell glucose or corn syrup largely to manufacturers of candy and mixers of table syrups on a delivered price basis, the price in each instance depending upon the location of the purchaser freightwise to Chicago, Ill. Respondents' railroad tank car price in Chicago is the base from which its prices to purchasers at all other locations are determined, and such other prices are arrived at by adding to the Chicago tank car price the amount of the railroad tariff from Chicago to the purchaser's location. This pricing plan has been followed by respondents since the establishment of their plant at Clinton, Iowa, in 1906, and similar pricing plans have been, and are being, used by respondents' competitors. These competitors and the plant locations of each are: Corn Products Refining Co., with plants at Chicago, Ill., and Kansas City, Mo.; A. E. Staley Manufacturing Co., Decatur, Ill.; Penick & Ford, Ltd., Inc., Cedar Rapids, Iowa; Anheuser-Busch, Inc., St. Louis, Mo.; Union Starch and Refining Co., Granite City, Ill.; American Maize-Products Co., Roby, Ind.; and Hubinger Co., Keokuk, Iowa.

(*b*) In order to illustrate respondents' pricing system to customers in various cities of the United States, their prices per hundred pounds for 43° glucose in railroad tank car lots to customers in the few of such cities on particular dates were:

Location of Purchaser	Aug. 1, 1936	Aug. 1, 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill.	$2.94	$3.04	$2.29	$2.09
Clinton, Iowa	3.11	3.20	2.47	2.27
Dubuque, Iowa	3.11	3.20	2.47	2.27
Marshalltown, Iowa	3.23	3.31	2.59	2.39
Sioux City, Iowa	3.32	3.40	2.69	2.49
Sioux Falls, S. Dak.	3.33	3.41	2.70	2.50
Fort Worth, Tex.	3.72	3.77	3.09	2.89
Dallas, Tex.	3.72	3.77	3.09	2.89
Kansas City, Mo.	3.32	3.40	2.69	2.49
St. Louis, Mo.	3.11	3.20	2.47	2.27
Salt Lake City, Utah	3.79	3.74	3.06	2.86
Ogden, Utah	3.79	3.74	3.06	2.86
Lincoln, Nebr.	3.37	3.45	2.74	2.54
Oklahoma City, Okla.	3.62	3.68	2.99	2.79

At all times between the dates set forth substantially the same differences in and relationships between and among said prices illustrated above existed as to purchasers so located.

(*c*) The railroad tariff stated in cents per hundred pounds of glucose from Chicago, Ill., for each of the cities shown in the table above for the periods shown was:

Cities	June 19, 1936, through Dec. 31, 1936	Jan. 1, 1937, through Apr. 19, 1937	Apr. 20, 1937, through Dec. 19, 1937	Dec. 20, 1937, through Mar. 27, 1938	Mar. 28, 1938, through Aug. 14, 1938	Aug. 15, 1938, through
Clinton, Iowa	17	16	16	17½	17½	18
Dubuque, Iowa	17	16	16	17½	17½	18
Marshalltown, Iowa	29½	27½	27½	30½	30	30
Sioux City, Iowa	38	36	36	39	40	40
Sioux Falls, S. Dak.	39	37	37	40	41	41
Fort Worth, Tex.	78	73	73	80	80	80
Dallas, Tex.	78	73	73	80	80	80
Kansas City, Mo.	38	36	36	39	40	40
St. Louis, Mo.	17	16	16	17½	17½	18
Lincoln, Nebr.	43	41	41	45	45	45
Oklahoma City, Okla.	68	64	64	70	70	70
Salt Lake City, Utah	85	80	70	77	77	77
Ogden, Utah	85	80	70	77	77	77

(*d*) All sales of glucose made by respondents are fulfilled by shipments made from their plant at Clinton, Iowa, and the railroad tariff stated in cents per hundred pounds applicable to such shipments from Clinton, Iowa, to the above-named cities were as follows for the periods shown:

Cities	June 19, 1936, through Dec. 31, 1936	Jan. 1, 1937, through Apr. 19, 1937	Apr. 20, 1937, through Dec. 19, 1937	Dec. 20, 1937, through Aug. 14, 1938	Aug. 15, 1938, through
Chicago, Ill	17	16	16	17½	18
Dubuque, Iowa	12	11	11	12	12
Marshalltown, Iowa	19½	17½	17½	19½	19½
Sioux City, Iowa	31	28	28	31	31
Sioux Falls, S. Dak	32½	29½	29½	32½	32½
Fort Worth, Tex	73	70	70	77	77
Dallas, Tex	73	70	70	77	77
Kansas City, Mo	31	28	28	31	31
St. Louis, Mo	17½	16	16	17½	18
Lincoln, Nebr	36	33	33	36	36
Oklahoma City, Okla	64	61	61	67	67
Salt Lake City, Utah	85	80	65½	68½	72
Ogden, Utah	85	80	65½	68½	72

From a comparison of the price differences as among customers in different cities with the applicable railroad rates it is evident that the price differences created by respondents' pricing system do not reflect actual differences in delivery costs to respondents. Milling in transit and other rate adjustments would not operate to cause respondents' actual delivery costs to coincide with such price differences.

* * * * * * *

PAR. 6. In addition to the price differences among their customers created by respondents through the method of basing all delivered prices upon the Chicago price, and price differences created by reason of preferential treatment given some customers in the operation of the order booking system used, respondents create further price differences among their customers by means of "container differentials." Respondents sell corn syrup or glucose in railroad tank car lots, in tank truck or tank wagon quantities, in steel drums, barrels, half barrels, 10-gallon cans, and 5-gallon cans. Respondents' base price for glucose is in tank car quantities, and in the event a purchaser takes delivery in a smaller quantity or smaller containers the price to him is increased above the tank car price as shown in the following table:

Type of container:	*Additional price per hundredweight over tank car price*	
Barrels	$0.33.	
Half barrels	$0.58.	
10-gallon cans	$0.98.	
5-gallon cans	$1.08.	
Returnable steel drums	$0.13.	where there is no return freight paid on empty drums.
Returnable steel drums	$0.18.	where the return freight on the empty drum is 75 cents or less per hundredweight.
Returnable steel drums	$0.23.	where the return freight on the empty drum is between 76 and 90 cents per hundredweight.
Returnable steel drums	$0.28.	where the return freight on the empty drum is between 91 cents and $1 per hundredweight.

Type of container—Continued	*Additional price per hundredweight over tank car price*—Continued
Returnable steel drums	$0.33. where the return freight on the empty drum is more than $1 per hundredweight.
Tank trucks	$0.10. where delivered by respondents' equipment.

PAR. 7. (*a*) Some of the customers who purchase glucose of like grade and quality from respondents are candy manufacturers located in the cities heretofore named. These manufacturers use the glucose so purchased in the manufacture of candy which is sold in competition with candy manufactured by others to various customers such as wholesalers, retailers, and chain stores, who purchase for resale. Glucose is used to some extent in the manufacture of most kinds of candy and is one of the major raw materials used in the production of many varieties, constituting from 5 to 90 percent of the finished weight thereof. The cost of glucose is a substantial part of the raw material cost and of the total cost of manufacturing many candies and is a major portion of the raw material and total cost of manufacturing candies which have a high glucose content. The higher prices paid for glucose by candy manufacturers located in cities other than Chicago, Ill., such as those previously enumerated, contribute to a greater or lesser degree to their having higher raw material and total costs than those manufacturers located in Chicago, Ill., the degree in each instance depending upon the difference in price and the proportion of glucose used in the candy manufactured. Generally, glucose is used in greater proportion in candies which are sold at but a few cents per pound and at a narrow margin of profit. As to low-priced candies which have no differentiating name or brand, candy manufacturers may, and do, attract customers by selling such candies at as little as one-eighth cent per pound lower than competitors, and this is especially true in selling candies to chain stores and other large quantity purchasers to whom such a small difference in price is determinative in the placing of their business. Under such circumstances, candy manufacturers paying higher prices for glucose can only sell candies at competitive prices by absorbing the higher glucose costs or by increasing the price of such candies and selling them on a nonprice basis. The result in either case is to reduce the manufacturer's profit either directly through such absorption or indirectly through reduced sales volume of high glucose content candies at higher than competitive prices, and in the latter alternative reduced sales volume usually results in increased overhead unit costs. The lower profits or any of the other results stated above to candy manufacturers paying higher prices for glucose diminishes their incentive and ability to compete with those candy manufacturers paying lower prices for glucose and deters some who otherwise would enter the manufacture of candy in those cities where respondents' glucose prices are higher.

(*b*) Some customers who purchase glucose from respondents are located in the cities previously named and are engaged in the business of mixing or preparing sirup for table use for sale to wholesalers and other food product distributors. Such table sirups contain approximately 85 percent of glucose or corn sirup. A typical and usual method of packaging and selling such mixed table sirup is in cases containing six 10-pound cans or twelve 5-pound cans, or 60 pounds net of table sirup, of which approximately 50 pounds is glucose or corn sirup sold by respondents. The higher prices paid for such glucose by table sirup mixers located in cities other than Chicago, Ill., contributes in greater or lesser degree to their having higher raw material and total costs than the

comparable costs of table sirup mixers located in Chicago, Ill., the degree in each case depending upon the difference in price paid for glucose. Table sirup mixers may, and do, attract customers by selling table sirup at but a few cents per case lower than the price at which a competitor is selling. The lower cost of glucose to table sirup mixers located in Chicago, Ill., when reflected in the selling price of such table sirup, substantially diminishes or prevents sales of such table sirup by mixers located in cities other than Chicago, Ill., to customers in areas where, and to the extent that, transportation costs on such mixed table sirup from Chicago, Ill., to such areas is less than the amount of the difference in price or cost of glucose to such mixers, or is less than such price difference plus transportation costs from such other cities to such areas. If the table sirup mixers paying the higher prices for glucose were paying lower prices they could, and would, sell table sirup mixed by them to customers located in areas where they cannot now sell to the extent and degree that they would be able to reduce their delivered prices because of lower glucose prices. Under such circumstances the sales and profits of table sirup mixers paying the higher prices for glucose have been less than they would have been, or would be, if the price of such glucose were lower; and such lessening or lowering of sales and profits has diminished their incentive to compete with table sirup mixers paying lower prices for glucose, and has deterred potential new mixers of table sirup from entering the industry in those cities where respondents sell their corn sirup at such higher prices.

PAR. 8. Respondents have introduced no evidence to show that the aforesaid price differentials, or any of them, as among their customers, made only due allowance for differences in the cost of manufacture, sale, or delivery, if any, resulting from differing methods or quantities, if any, in which glucose was to such purchasers sold or delivered.

At a more recent date each of those respondents selling Corn Syrup-Unmixed changed their policy to and utilized a multiple basing point system. Under this multiple basing point system, the f. o. b. plant prices of each on goods of like grade and quality varied between competing purchasers differently located by virtue of the use of this system, as shown by the following tabulation for carlots in tank cars and in barrels:

Comparison of equivalent carload prices and freight rates covering January 1942 sales by respondents of 43° Baumé corn syrup unmixed in tank cars to buyers located at selected destinations

Company	Plant location	Atlanta	Baltimore	Charlotte	Chicago	Indianapolis	Minneapolis	Nashville	Pittsburgh	Rochester	San Francisco
Equivalent carload prices per cwt. derived from company data											
American Maize	Roby, Ind.		$3.22		$2.79						
Anheuser-Busch	St. Louis, Mo.		3.22		2.79			$3.09			
Clinton Industries	Clinton, Iowa	(1)									
Corn Prod. Ref. Co.	Argo, Ill		3.22		2.79		$3.08	3.09	$3.13		
Do.	Pekin, Ill.										
Do.	Kansas City, Mo.										
Hubinger Co.	Keokuk, Iowa		3.22		2.79						
Penick & Ford	Cedar Rapids, Ia.		3.22		2.79					$3.17	$3.67
A. E. Staley Mfg. Co.	Decatur, Ill.		3.22		2.79	$3.01					
Union Starch Co.	Granite City, Ill.	$3.16		$3.34	2.79				3.13		
Equivalent carload cost per cwt. to buyers at destination as shown by Corn Refiners Statistical Bureau											
American Maize	Roby, Ind.		$3.22		$2.79						$3.67
Anheuser-Busch	St. Louis, Mo.		3.22		2.79						
Clinton Industries	Clinton, Iowa				2.79			$3.09			
Corn Prod. Ref. Co.	Argo, Ill., Pekin, Ill., Kansas City, Mo.		3.22		2.79			3.09	$3.13		
Hubinger Co.	Keokuk, Iowa				2.79						
Penick & Ford	Cedar Rapids, Ia.		3.22		2.79					$3.17	3.67
A. E. Staley Mfg. Co.	Decatur, Ill.		3.22			$3.01					
Union Starch Co.	Granite City, Ill.	$3.16		$3.34	2.79						

[1] Data not available.

Comparison of equivalent carload prices and freight rates covering January 1942 sales by respondents of 43° Baumé corn syrup unmixed in tank cars to buyers located at selected destinations—Continued

Company	Plant location	Atlanta	Baltimore	Charlotte	Chicago	Indianapolis	Minneapolis	Nashville	Pittsburgh	Rochester	San Francisco
Minimum carload freight rates per cwt. from producing plants to destinations—per Central Traffic Service Dept. of U. S. Treasury											
American Maize	Roby, Ind		$0.43		$0.04						$0.88
Anheuser-Busch	St. Louis, Mo		.51		.18			$0.30			
Clinton, Industries	Clinton, Iowa				.18			.36			
Corn Prod. Ref. Co	Argo, Ill		.43		.04		$0.29		$0.34		
Do	Pekin, Ill							.33			
Do	Kansas City, Mo										
Hubinger	Keokuk, Iowa		.51		.18						
Penick & Ford	Cedar Rapids, Iowa		.57		.29					$0.51	.88
A. E. Staley	Decatur, Ill		.48		.16	$0.20					
Union Starch	Granite City, Ill	$0.37		$0.55	.18				.41		
Corresponding freight applicator, per cwt., uniformly included in computing quotations by all respondents.		$0.37	$0.43	$0.55		$0.22	$0.29	$0.30	$0.34	$0.38	$0.88
Freight applicator basing points (producing plant nearest freightwise to destination).		(2)	(3)	(4)	(5)	(6)	(7)	(8)			

[2] Granite City, St. Louis.
[3] Argo, Roby.
[4] Argo, Roby, St. Louis, Granite City.
[5] Decatur.
[6] Argo, Roby, Decatur, Pekin, Cedar Rapids, Clinton, Keokuk.
[7] St. Louis, Granite City.
[8] All plants.

NOTE.—Argo and Roby take Chicago freight rate, and Granite City takes St. Louis rate.

Comparison of equivalent carload prices and freight rates covering January 1942 sales [1] by respondents of 43° Baumé corn syrup unmixed in barrels, to buyers located at selected destinations

Company	Plant location	Atlant	Baltimore	Charlotte	Chicago	Columbia	Dallas	Denver	Detroit	Houston	Indianapolis	Jacksonville	Kansas City	Little Rock	Louisville
Equivalent carload prices per cwt. derived from company data															
American Maize	Roby, Ind	$3.51	$3.58	$3.57	$3.12								$3.12		$3.39
Anheuser-Busch	St. Louis, Mo		3.58		3.12		$3.74								
Clinton Ind	Clinton, Iowa														
Corn Prod. Rfg	Argo, Ill		3.58		3.12				$3.39	$3.84					3.39
Do	Pekin, Ill	3.51		3.57		$3.51						$3.69			
Do	Kansas City, Mo												3.12		
The Hubinger Co	Keokuk, Iowa				3.12				3.39	3.84	$3.35				
Penick & Ford	Ced. Rapids, Iowa	3.51		3.57	3.12	3.51		$3.72		3.84		3.69	3.12	$3.60	3.39
Staley Mfg. Co	Decatur, Ill	3.51		3.57	3.12		3.74						3.12		
Union Starch	Granite City, Ill	3.51											3.12		
Equivalent carload cost per cwt. to buyer at destination as shown by Corn Refiners Statistical Bureau															
American Maize	Roby, Ind	$3.51													
Anheuser-Busch	St. Louis, Mo	3.51	$3.58		$3.12			$3.72	$3.39		$3.35		$3.12		
Clinton Ind	Clinton, Iowa	3.51	3.58	$3.57	3.12		$3.74		3.39				3.12		
Corn Prod. Refg	Argo, Pekin, Ill., Kans. City, Mo.	3.51	3.58	3.57	3.12					$3.69		$3.69	3.12		$3.39
Hubinger Co	Keokuk, Iowa	3.51			3.12				3.39	3.84	3.35				
Penick & Ford	Ced. Rapids, Iowa	3.51		3.57	3.12		3.74	3.72				3.69	3.12		3.39
Staley Mfg. Co	Decatur, Ill			3.57	3.12		3.74					3.69	3.12		
Union Starch	Granite City, Ill	3.51													

[1] Exclusive of sales by Corn Products Refining Company at new prices effective Jan. 23rd.

Comparison of equivalent carload prices and freight rates covering January 1942 sales [1] by respondents of 43° Baumé corn syrup unmixed in barrels, to buyers located at selected destinations—Continued

Company	Plant location	Atlanta	Baltimore	Charlotte	Chicago	Columbia	Dallas	Denver	Detroit	Houston	Indianapolis	Jacksonville	Kansas City	Little Rock	Louisville
Minimum carload freight rates per cwt. from producing plants to destinations—per Central Traffic Service Dept., U. S. Treasury															
American Maize	Roby, Ind	$0.45	$0.46	$0.59	$0.04								$0.43		$0.28
Anheuser-Busch	St. Louis, Mo	.40	.55		.19		$0.69	$0.66	$0.36		$0.26		.33		
Clinton Ind	Clinton, Iowa	.45	.55	.64	.19		.79		.33				.33		
Corn Prod. Rfg	Argo, Ill		.46		.04				.27	$0.78					.28
Do	Pekin, Ill	.45		.59		$0.45						$0.63			
Do	Kans. City, Mo												.03		
Hubinger Co	Keokuk, Iowa	.45			.19				.37	.78	.29				
Penick & Ford	Ced. Rapids, Iowa	.50		.70	.31	.50	.78	66		.79		.68	.34	$0.66	.37
Staley Mfg. Co	Decatur, Ill	.45		.62	.17		.77					.63	.39		
Union Starch	Granite City, Ill	.40											.33		
Corresponding freight applicator per cwt. uniformly included in computing quotations by all respondents.		$0.39	$0.46	$0.59		$0.39	$0.62	$0.60	$0.27	$0.72	$0.23	$0.57		$0.48	$0.27
Freight applicator basing points (producing plant nearest freightwise to destination).		(2)	(3)	(4)	(5)	(2)	(6)	(6)	(5)	(2)	(7)	(2)	(6)	(2)	(8)

Company	Plant location	Minneapolis	Montgomery	Nashville	New Orleans	Pittsburgh	Providence	Richmond	Rochester	Salt Lake City	San Francisco	St. Louis	Wheeling	Worcester	Youngstown
Equivalent carload prices per cwt. derived from company data															
American Maize	Roby, Ind					$3.48			$3.53	$3.84	$3.98				
Anheuser-Busch	St. Louis, Mo											3.12			
Clinton Ind	Clinton, Iowa														
Corn Prod. Rfg	Argo, Ill	$3.43			$3.56	3.48	$3.63	$3.58	3.53					$3.63	$3.44
Do	Pekin, Ill		$3.51	$3.44								3.12			
Do	Kansas City, Mo									3.84					
The Hubinger Co	Keokuk, Iowa					3.48	3.63				3.98			3.63	
Penick & Ford	Ced. Rapids, Iowa				3.56	3.48		3.58		3.84					
Staley Mfg. Co	Decatur, Ill			3.44	3.56	3.48	3.63	3.58	3.53						
Union Starch	Granite City, Ill					3.48				3.84			$3.48		

Equivalent carload cost per cwt. to buyer at destination as shown by Corn Refiners Statistical Bureau															
American Maize	Roby, Ind				$3.46				$3.53	$3.84					
Anheuser-Busch	St. Louis, Mo	$3.43	$3.51	$3.44	3.56		$3.63	$3.58	3.53			$3.12	$3.48		
Clinton Ind	Clinton, Iowa	3.43		3.44		$3.48	3.63		3.53	3.84	$3.98				
Corn Prod. Refg	Argo, Pekin, Ill., Kans. City, Mo.	3.43	3.51	3.44		3.48	3.63	3.58	3.53			3.12	3.48	$3.63	$3.44
Hubinger Co	Keokuk, Iowa					3.48	3.63					3.12		3.63	
Penick & Ford	Ced. Rapids, Iowa	3.43	3.51		3.56	3.48	3.63				3.98				
Staley Mfg. Co	Decatur, Ill		3.51	3.44		3.48	3.63		3.53						
Union Starch	Granite City, Ill			3.44		3.48				3.84					
*Minimum carload freight rates per cwt. from producing plants to destinations—per Central Traffic Service Dept., U. S. Treasury															
American Maize	Roby, Ind				$0.50	$0.37			$0.41	$0.83	$0.96				
Anheuser-Busch	St. Louis, Mo	$0.33	$0.40	$0.32	.44		$0.60	$0.55	.49				$0.44		
Clinton Ind	Clinton, Iowa	.31		.39		.49	.60		.49	.78	.95				
Corn Prod. Rfg	Argo, Ill	.31			.50	.37	.52	.46	.41				.37	$0.52	$0.32
Do	Pekin, Ill		.45	.36								$0.12			
Do	Kans. City, Mo									.72					
Hubinger Co	Keokuk, Iowa					.49	.60				.96	.16		.60	
Penick & Ford	Ced. Rapids, Iowa	.31	.50		.51	.55	.67	.60		.78	.95				
Staley Mfg. Co	Decatur, Ill		.45	.33	.50	.42	.57	.51	.45						
Union Starch	Granite City, Ill			.32		.44				.78			.44		
Corresponding freight applicator per cwt. uniformly included in computing quotations by all respondents.		$0.31	$0.39	$0.32	$0.44	$0.36	$0.51	$0.46	$0.41	$0.72	$0.96		$0.36	$0.51	$0.32
Freight applicator basing points (producing plant nearest freightwise to destination).		(9)	(2)	(2)	(2)	(5)	(5)	(5)	(5)	(6)	(10)	(11)	(5)	(5)	(5)

[2] St. Louis & Granite City.
[3] Roby, Argo.
[4] Argo, Roby, St. Louis, Granite City.
[5] Argo, Roby.
[6] Kansas City.
[7] Decatur.
[8] Decatur & St. Louis, Granite City.
[9] All except K. C., St. Louis & Granite City.
[10] All plants.
[11] St. Louis.
*Including 8% tare.

NOTE.—Argo & Roby take Chicago freight rate, & Granite City takes St. Louis rate.

Respondents which sold gloss starch utilized a zone system, and their prices on goods of like grade and quality varied between competing purchasers located in different zones. An example appears from the following tabulation:

Comparison of gross delivered prices f. o. b. destination, and freight incurred covering January 1942 sales of gloss starch in cases of 12 3-lb. packages

Company	Producing plant	Territory No. 1											
		Cedar Rapids	Chicago	Decatur	Detroit	Indianapolis	Kansas City	Lincoln	Louisville	Minneapolis	Pittsburgh	St. Louis	Wheeling	Youngstown
Gross delivered prices for sales made at delivered prices including freight to selected destinations in territories 1–23 as indicated														
Corn Products Ref. Co.	Argo, Ill.	$2.04	$2.04	$2.04	$2.04	$2.04	$2.04	$2.04	$2.04	$2.04	$2.04	$2.04	$2.04	$2.04
A. E. Staley Mfg. Co.	Decatur, Ill.		1.79	1.79			1.79							
Minimum carload freight rates per case applicable to destinations in territories 1–23 computed from freight rates furnished by Central Traffic Service Dept., U. S. Treasury														
Corn Products Refining Co.		$0.09	$0.02	$0.07	$0.07	$0.07	$0.12	$0.14	$0.09	$0.10	$0.11	$0.07	$0.11	$0.10
A. E. Staley Mfg. Co.			.05				.10							

Company	Producing plant	Terr. No. 2	Territory No. 4		Terr. No. 12	Terr. No. 18B	Territory No. 18C		Terr. No. 19	Terr. No. 20	Terr. No. 22	Terr. No. 23	Terr. No. 3
		Keokuk	Denver	San Francisco	Worcester	New Orleans	Memphis	Nashville	Little Rock	Tulsa	Dallas	Houston	Wichita
Gross delivered prices for sales made at delivered prices including freight to selected destinations in territories 1–23 as indicated													
Corn Products Ref. Co.	Argo, Ill.		$2.30	$2.30	$2.11	$2.17	$2.17	$2.22	$2.17	$2.52	$2.31	$2.14	$2.16
A. E. Staley Mfg. Co.	Decatur, Ill.					1.80							

Minimum carload freight rates per case applicable to destinations in territories 1-23 computed from freight rates furnished by Central Traffic Service Dept., U. S. Treasury											
Corn Products Refining Co		$0.26	$0.37	$0.14	$0.12	$0.15	$0.14	$0.18	$0.20	$0.25	$0.27	$0.19
A. E. Staley Mfg. Co					.12							

NOTE.—Territorial designations as shown here were taken from Corn Products Refining Co.

Respondents which sold golden corn syrup utilized a single basing point system f. o. b. Chicago for certain areas nearer Chicago, and in other more distant areas utilized a zone system. Accordingly their prices on goods of like grade and quality varied between competing customers differently located, as shown by the following tabulation:

Comparison of base prices f. o. b. Chicago, gross delivered prices f. o. b. destination and net realization f. o. b. plant covering January 1942 sales of golden corn syrup (corn syrup mixed) in cases of 6 10-lb. tins

GROSS DELIVERED PRICES FOR SALES MADE AT CHICAGO, BASE PRICES PLUS FREIGHT FROM CHICAGO TO SELECTED DESTINATIONS IN TERRITORIES 1, 2, AND 3.

Company	Producing plant	Base price f. o. b. Chicago applicable to Territory No. 1	Territory No. 1										
			Cedar Rapids	Chicago	Clinton	Decatur	Denver	Indianapolis	Kansas City	Keokuk	Lincoln	Little Rock	Louisville
Corn Pr. Rfg. Co	Argo & Kansas City, Mo.	$2.80	$3.01	$2.80	$2.92		$3.27	$2.95	$3.08		$3.13	$3.21	$2.98
A. E. Staley Co	Decatur, Ill	[1] 2.80		2.80			3.27						
American Maize	Roby, Ind	2.58		2.08									
Anheuser-Busch	St. Louis, Mo	2.58										3.01	
Hubinger	Keokuk, Iowa	2.58							2.86	$2.70			
Penick & Ford	Cedar Rapids, Iowa	2.58	2.76	2.58			3.05	2.73				2.99	2.76
A. E. Staley Co	Decatur, Ill	[1] 2.58				$2.69			2.86				
Union Starch	Granite City, Ill	2.58						2.73	2.86				2.76

[1] Presumably reflect 2 different brands or grades of product.

Comparison of base prices f. o. b. Chicago, gross delivered prices f. o. b destination and net realization f. o. b. plant covering January 1942 sales of golden corn syrup (corn syrup mixed) in cases of 6 10-lb. tins—Continued

GROSS DELIVERED PRICES FOR SALES MADE AT CHICAGO, BASE PRICES PLUS FREIGHT FROM CHICAGO TO SELECTED DESTINATIONS IN TERRITORIES 1, 2, AND 3—Continued

Company	Producing plant	Territory No. 1—Continued						Territory No. 2		Territory No. 3			Base prices f. o. b. Chicago applicable to Territories 2 and 3
		Memphis	Minneapolis	Nashville	St. Louis	Tulsa	Wichita	Dallas	Houston	Jackson	Montgomery	New Orleans	
Corn Pr. Rfg. Co	Argo & Kansas City, Mo.	$3.10	$3.01	$3.11	$2.92	$3.24	$3.23	$3.40	$3.45	$3.28	$3.28	$3.32	$2.81
A. E. Staley Co	Decatur, Ill	3.14	3.02	[2] 3.06				3.37					2.81
American Maize	Roby, Ind		2.79										
Anheuser-Busch	St. Louis, Mo												
Hubinger	Keokuk, Iowa				2.65				3.24				2.59
Penick & Ford	Cedar Rapids, Iowa	2.91	2.79		2.70				3.23				2.59
A. E. Staley Co	Decatur, Ill	2.92	2.79		2.70				3.21				2.59
Union Starch	Granite City, Ill												

[2] According to territorial segregation by A. E. Staley Mfg. Co., Nashville was located in Territory 1A and corresponding base price was $2.75.

CORRESPONDING NET REALIZATION F. O. B. PLANT FOR SALES MADE AT RESPECTIVE DESTINATIONS IN TERRITORIES 1, 2, AND 3

Company	Territory No. 1										
	Cedar Rapids	Chicago	Clinton	Decatur	Denver	Indianapolis	Kansas City	Keokuk	Lincoln	Little Rock	Louisville
Corn Products Refining Co	$2.72	$2.69	$2.71		$2.79	$2.71	$2.97		$2.93	$2.76	$2.71
A. E. Staley Mfg. Co		2.61			2.64						
American Maize-Products Co		2.02									
Anheuser Busch, Inc										2.59	
The Hubinger Co							2.56	$2.70			
Penick & Ford, Ltd., Inc	2.68	2.38			2.63	2.50				2.48	2.44
A. E. Staley Mfg. Co				$2.61			2.52				
Union Starch & Ref. Co						2.49	2.56				2.52

Company	Territory No. 1						Territory No. 2		Territory No. 3		
	Memphis	Minneapolis	Nashville	St. Louis	Tulsa	Wichita	Dallas	Houston	Jackson	Montgomery	New Orleans
Corn Products Refining Co	$2.71	$2.72	$2.74	$2.71	$2.88	$2.90	$2.88	$2.81	$2.84	$2.84	$2.83
A. E. Staley Mfg. Co	2.67	2.73	2.62				2.68				
American Maize-Products Co		2.51									
Anheuser Busch, Inc								2.88			
The Hubinger Co				2.47							
Penick & Ford, Ltd., Ind	2.48	2.51		2.42				2.50			
A. E. Staley Mfg. Co	2.55	2.51		2.54				2.56			
Union Starch & Ref. Co											

GROSS DELIVERED PRICES FOR SALES MADE AT DELIVERED PRICES INCLUDING FREIGHT TO SELECTED DESTINATIONS LOCATED IN TERRITORIES 4-19 AS INDICATED

Company	Producing plant	Territory No. 4		Territory No. 6		Territory No. 10	Territory No. 12	Territory No. 14	Territory No. 15	Territory No. 16	Territory No. 17	Territory No. 18	Territory No. 19
		Detroit	Youngstown	Pittsburgh	Wheeling	Providence	Rochester	Baltimore	Richmond	Charlotte	Atlanta	Salt Lake City	San Francisco
Corn Products Refining Co		$3.27	$3.27	$3.35	$3.35	$3.93	$3.78	$3.60	$3.70	$3.70	$3.60	$3.56	$3.70
A. E. Staley Mfg. Co											3.45		
American Maize-Products Co				3.03									
Union Starch & Ref. Co												3.12	3.43
	CORRESPONDING NET REALIZATION F. O. B. PLANT FOR SALES MADE AT RESPECTIVE DESTINATIONS IN TERRITORIES 4-19												
Corn Products Refining Co		$3.00	$2.97	$2.97	$3.09	$3.53	$3.47	$3.23	$3.22	$3.09	$3.00	$3.00	$3.00
A. E. Staley Mfg. Co											2.98		
American Maize-Products Co				2.75									
Union Starch & Ref. Co												2.63	2.76

(*d*) In many instances, prices at which respondents made sales of gloss starch and golden corn syrup as above set out were those prices which it had quoted on a delivered basis, utilizing the geographical pricing systems there shown. In some other instances, other corn derivatives were so sold. Because of the use of such systems, delivered prices of each respondent on such sales necessarily differed as between buyers at some destinations and other buyers at other destinations, and for the same reason, for each respondent such differences could not be accounted for by differences in cost in practically all instances.

(*e*) For any corn derivative, all respondents selling that corn derivative contemporaneously used the same geographical pricing system. Under such circumstances, the use of the system by any seller would enable that seller to match exactly the other sellers' quoted prices to all intending purchasers where each seller used identical practices in dealing with and computing the many variables involved, including the price at any basing point, the zone areas, the delivered cost to the buyer in any zone, the refusal to sell f. o. b. production point, the diversion of shipments from one destination to another, allowances for return of container and the applicable freight rates and charges.

(*f*) As more specifically set forth in paragraphs 7 through 17, respondents selling corn derivatives utilized the four associations there described as media or central agencies for exchanging information as to the many variables involved in the four geographical pricing systems, upon which agreement was reached. With these variables assured of uniform treatment by all respondents selling corn derivatives, such respondents were able to and did generally quote identical prices at destination and were able to and did make sales involving the same cost at destination to any intending purchaser at a given destination.

(*g*) An exhaustive survey has been made by the Commission of sales of five large-volume corn derivatives in 1938, 1939, and from 1941 through January 1947. Throughout most of this period each respondent has generally quoted the same delivered cost to a buyer at a given destination as the other respondents. For example, in January 1942, two or more respondents made sales of corn syrup-unmixed at 31 specified destinations as to which prices can be compared in 86 instances. In 77 of these 86 comparisons every one of the respondents quoted the same price, adjusted for differentials for differing containers, for the same product at the respective destinations, and in the 9 remaining instances at least two or more respondents quoted the same price. An example of uniformity on another corn derivative is given for golden corn syrup in the following tabulation:

Delivered price quotations on the basis of which sales of golden corn syrup at identical prices were made by more than one respondent during January 1942

	24 1¼-lb.	12 5-lb.	6 10-lb.
Chicago:			
Corn Prod. Ref. Co	$2.40	$3.03	$2.80
A. E. Staley Mfg. Co	2.40	3.03	2.80
Denver:			
Corn Prod. Ref. Co	2.68	3.50	3.27
A. E. Staley Mfg. Co	2.68	3.50	3.27
Indianapolis:			
Penick & Ford, Ltd			2.73
Union Starch & Ref. Co			2.73
Kansas City:			
Hubinger Co	2.29	3.09	2.86
Penick & Ford, Ltd	2.29	3.09	
A. E. Staley Mfg. Co		3.09	2.86
Union Starch & Ref. Co	2.29	3.09	2.86
Little Rock:			
Corn Prod. Ref. Co	2.64	3.44	
A. E. Staley Mfg. Co	2.64	3.44	
Louisville:			
Penick & Ford, Ltd		2.99	2.76
Union Starch & Ref. Co		2.99	2.76
Minneapolis:			
American Maize-Prod. Co	2.24	3.02	2.79
Hubinger Co	2.24		
Penick & Ford, Ltd		3.02	2.79
A. E. Staley Mfg. Co		3.02	2.79
Detroit:			
Corn Prod. Ref. Co	2.63	3.41	
A. E. Staley Mfg. Co	2.63	3.41	
St. Louis:			
Penick & Ford, Ltd		2.93	2.70
A. E. Staley Mfg. Co		2.93	2.70

(*h*) The differences in price quoted by the respondents selling corn derivatives and used by them in making sales were an essential part of the agreement among such respondents on prices. Differences in price having such an origin necessarily injured, destroyed, and prevented competition among the respondents selling corn derivatives.

(*i*) Respondents have offered no evidence that such differences in price in fact resulted from lower prices made in good faith to meet the equally low price of a competitor, nor could they, for lower prices which arise from or out of any planned common course of action respecting prices, as they did here, could not have been made in good faith.

(*j*) The said differences in price of each of the respondents selling corn derivatives constituted discriminations in price in violation of section 2 (a) of the Clayton Act, as amended.

PAR. 19. (*a*) It is inferred, concluded, and found that when the respondents selling corn derivatives filed as they did their current and future prices, the prices which each would quote thereafter to intending purchasers and other information explaining, modifying, or affecting the same with said Oscar L. Moore, as a common agent, for distribution by him among their respective competitors, filed

and jointly considered the intimate details, including prices, of their respective past and future sales transactions, for similar dissemination by the said Oscar L. Moore or at said meetings of the four said associations, and utilized the said price-inquiry system for the purpose and with the effect of making cooperative comparison between the past, current, and future prices of such respondents, whether prices received in actual sales transactions or contained in price announcements or explanations and modifications of the same filed and distributed through said Oscar L. Moore as their common agent or jointly considered at meetings of the said four associations, there existed under such circumstances an agreement, understanding, or meeting of the minds of the respondents selling corn derivatives that they would and should make and adhere to the prices, terms, and conditions of sale agreed upon as aforesaid. This the respondents did.

(*b*) It is further inferred, concluded, and found that when each of the respondents selling corn derivatives indulged as aforesaid in the making of prices and in effectuating sales based thereon pursuant to and in accordance with the policies, plans, methods, and activities discussed between and among themselves and with the said Oscar L. Moore as aforesaid, there existed under such circumstances an agreement, understanding, or meeting of the minds of said respondents that they would and should make and adhere to said policies, plans, methods, acts and practices, which they did as hereinbefore shown.

PAR. 20. It is concluded from the evidence of record and therefore found that the capacity, tendency, and effect of the agreement maintained by the respondents herein in the manner aforesaid and the acts and practices performed thereunder and in connection therewith by said respondents, as set out herein, has been to hinder, lessen, restrain, and suppress competition in the sale and distribution of corn derivatives in, among, and between the several States of the United States; to deprive purchasers of corn derivatives of the benefits of competition in price; to systematically maintain artificial and monopolistic methods and prices in the sale and distribution of corn derivatives, including common rate factors used and useful in the pricing of corn derivatives; to require that purchases of corn derivatives be made on a delivered-price basis, and to prevent and defeat efforts of purchasers to avoid this requirement; to maintain uniform terms and conditions of sale; and otherwise to promote and maintain their geographical price systems and to obstruct and defeat any form of competition which threatened or tended to threaten the continued

use and maintenance of said systems and the uniformity of prices created and maintained by their use.

CONCLUSION

The aforesaid agreement and combination and acts and practices of the respondents pursuant thereto and in connection therewith, as hereinabove found, under the conditions and circumstances set forth, constituted unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act; and the discriminations in price by each of the respondents, as hereinabove set out, constituted violations of subsection (a) of section 2 of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by act approved June 19, 1936 (the Robinson-Patman Act).

ORDER TO CEASE AND DESIST

The words "corn derivatives" as used throughout this order shall mean and include the products corn syrup unmixed, pearl starch, gloss starch, powdered starch, thin boiling starch, moulding starch, refined, grits, dextrin, corn sugar, refined corn oil, crude corn oil, soap-stock and mixed corn syrup, but shall not include dextrose (refined corn sugar), Amioca (starch made from waxy maize) or adhesives produced from corn derivatives through the further process of cooking or gelatinizing, or any product of a different character resulting from the further processing of any of the foregoing products defined as "corn derivatives."

I. *It is ordered*, Under the authority vested in the Federal Trade Commission by the Federal Trade Commission Act, that the respondents, Corn Products Refining Co., a corporation; Corn Products Sales Co., a corporation; Corn Products Sales Co., a Massachusetts trust; A. E. Staley Manufacturing Co., a corporation; Staley Sales Corp., a corporation; Clinton Foods Inc., a corporation (formerly known as Clinton Industries, Inc.); Bliss Syrup & Preserving Co., a corporation; D. B. Scully Syrup Co., Inc., a corporation; Penick & Ford, Ltd., Inc., a corporation; American Maize-Products Co., a corporation; Anheuser-Busch, Inc., a corporation; Southern Syrup Co., Inc., a corporation; The Hubinger Co., a corporation; National Starch Products, Inc., a corporation; Union Starch & Refining Co., a corporation; and Union Sales Corp., a corporation, in or in connection with the offering for sale, sale and distribution of corn derivatives in commerce

between and among the several States of the United States and in the District of Columbia, do forthwith cease and desist from entering into, continuing, cooperating in or carrying out any planned common course of action, agreement, understanding, combination or conspiracy between or among any two or more of said respondents or between any one or more of said respondents and others not parties hereto engage in any of the following acts or practices:

1. Establishing, fixing or maintaining prices, terms or conditions of sale;

2. Establishing or maintaining any plan for the purpose or with the effect of informing or advising any of the respondents or any other manufacturer of corn derivatives as to prices, terms or conditions of sale at or upon which any manufacturing respondent or other seller of corn derivatives expects to sell corn derivatives;

3. Exchanging, distributing or relaying among the respondents or any of them directly or through any institute or central agency or private individual or corporation or through any other medium or central agency information as to current prices for the purpose or with the effect of fixing or maintaining prices, terms or conditions of sale for corn derivatives;

4. Exchanging, distributing, or relaying among the respondents or any of them or through any other medium or central agency information, or authorizing or permitting the examination of the books or records of the manufacturing respondents by any agent or representative, concerning prices charged particular customers or information concerning sales or shipments of corn derivatives when the identity of the manufacturer, seller or purchaser can be determined or disclosed through such information and which has the capacity or tendency of aiding in securing compliance with the prices, terms or conditions of sale as announced by any one or more of the manufacturing respondents;

5. Collectively investigating, reviewing, considering or acting upon, either directly or through any medium or central agency, the act of any seller of corn derivatives in making a sale, at prices or on terms or conditions of sale different from those announced, exchanged or relayed by such seller to other respondents directly through an institute, medium, or central agency or otherwise;

6. Taking any action having the purpose, capacity, or tendency to aid in securing on the part of any seller of corn derivatives compliance with its announced prices, terms, or conditions of sale;

7. Formulating, establishing, putting into operation or using in any way any price reporting plan which has the tendency or the effect

of depriving the public of any benefit of competition in price between or among the manufacturing respondents or between any of them and any other manufacturer or seller of corn derivatives;

8. Selecting, determining, or establishing a method of quoting or charging prices for corn derivatives, to wit:

a. Establishing or maintaining a zone system of quoting or charging prices;

b. Dividing the country into a number of geographical territories and establishing or fixing the same delivered price to all consumers of the same class within each territory;

c. Establishing or maintaining a basing point system or pattern of pricing;

d. Establishing, maintaining, or using any method, practice, policy, or system of quoting or charging prices;

9. Failing to quote or sell and deliver corn derivatives f. o. b. each production point;

10. Fixing or maintaining allowances for return of containers or unused corn derivatives; differentials for warehouse, tank car, or other means of delivery to customers; charges for installation of pumping and other service facilities and for performing service functions for customers; terms and conditions for guarantee against price declines on orders of corn derivatives; terms and conditions governing the booking of orders for future delivery of corn derivatives and the lengths of time and prices at which such orders may be booked.

II. *It is further ordered*, Under the authority vested in the Federal Trade Commission by the Federal Trade Commission Act, that each of the manufacturing respondents, Corn Products Refining Co., a corporation; A. E. Staley Manufacturing Co., a corporation; Clinton Foods, Inc., a corporation (formerly known as Clinton Industries, Inc.); Penick & Ford, Ltd., Inc., a corporation; American Maize-Products Co., a corporation; Anheuser-Busch, Inc., a corporation; The Hubinger Co., a corporation; National Starch Products, Inc., a corporation; and Union Starch & Refining Co., a corporation, directly or indirectly, in or in connection with the offering for sale, sale or distribution in commerce of corn derivatives between and among the several States of the United States and in the District of Columbia, do forthwith cease and desist from acting, individually or otherwise, so as to knowingly contribute to the maintenance or operation of any planned common course of action, agreement, understanding, combination or conspiracy between or among any two or more of the said respondents or between any one or more of said respondents and others not parties hereto through the commission of any of the acts,

practices, or things prohibited in the preceding parts of this order.

III. *It is further ordered*, Under the authority vested in the Federal Trade Commission by section 2 (a) and section 11 of the Clayton Act, as amended, that each of the respondents, Corn Products Refining Co., a corporation; Corn Products Sales Co., a corporation; Corn Products Sales Co., a Massachusetts trust; A. E. Staley Manufacturing Co., a corporation; Staley Sales Corp., a corporation; Clinton Foods, Inc., a corporation (formerly known as Clinton Industries, Inc.); Bliss Syrup & Preserving Co., a corporation; D. B. Scully Syrup Co., Inc., a corporation; Penick & Ford, Ltd., Inc., a corporation; American Maize-Products Co., a corporation; Anheuser-Busch, Inc., a corporation; Southern Syrup Co., Inc., a corporation; The Hubinger Co., a corporation; National Starch Products, Inc., a corporation; Union Starch & Refining Co., a corporation; and Union Sales Corp., a corporation, and their respective officers, representatives, agents and employees, directly or indirectly, in or in connection with the offering for sale, sale or distribution of corn derivatives in commerce between and among the several States of the United States and in the District of Columbia, do forthwith cease and desist from discriminating in price as between purchasers of corn derivatives of like grade and quality where the effect may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which respondents or customers of respondents are engaged, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination; *provided*, That nothing herein contained shall prevent any respondent from showing that any differentials alleged to be in violation of this provision of this order are differentials which make only due allowance for differences in 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 when differentials are thus shown by any respondent to be justified they are not to be construed as in violation of this order; and *provided further*, That nothing herein contained shall prevent any seller from rebutting a *prima facie* case based upon discriminations which may be practiced subsequent to the date of this order 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; and *provided further*, That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as

but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned,

Provided that, Nothing contained in any of the foregoing provisions of paragraphs I through III, inclusive, of this Order shall be construed as prohibiting any of the respondents from entering into such contracts or agreements relating to the maintenance of resale prices as are made lawful by the provisions of the Miller-Tydings Act; or from taking such action relating to its export sales as would be lawful under the provisions of the Webb-Pomerene Act, or, when not for the purpose nor with the tendency of lessening competition or restraining trade, from the establishment or maintenance of any lawful *bona fide* agreements, discussions, or other action solely between any respondent and its directors, officers and employees, or between the officers, directors, or employees of any respondent relating solely to the carrying on of that corporation's sole and separate business, or between any respondent and any of its wholly owned subsidiaries.

It is further ordered, That for the reasons appearing in the findings as to the facts in this proceeding the complaint be, and the same hereby is, dismissed as to respondents A. A. Busch & Co., Inc., A. A. Busch & Co., of Massachusetts, and Clinton Sales Co.

IN THE MATTER OF

HEATADE APPLIANCES, INC. ET AL.

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

Docket 5798. Complaint, July 13, 1950—Decision, Nov. 30, 1950

Where a corporation and its four officers and office manager, who were responsible for its advertising, engaged in the interstate sale and distribution of their "Heatade" device; in circulars, leaflets, pamphlets and other advertising literature, directly and by implication—

(*a*) Falsely represented that use of "Heatade" device constituted a competent and effective treatment for inflammation of the prostate gland and its symptoms, such as frequent urination, pains in back, crotch and rectum, and a burning sensation when urine is passed;

(*b*) Falsely represented that intrarectal application of heat is a procedure frequently used by doctors in the treatment of prostate gland trouble; and

(*c*) Falsely represented that use of their device would increase the blood circulation in an inflamed prostate gland, alleviate inflammation and reduce congestion therein;

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

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

Before *Mr. Earl J. Kolb*, trial examiner.
Mr. Roland L. Banks, Jr. for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Heatade Appliances, Inc., Harry J. Reed, Lucille E. McFarland, Bessie E. Anderson, and Mary W. Reed, individually and as officers of Heatade Appliances, Inc., and Charles H. McFarland, an individual, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Heatade Appliances, Inc., is a corporation, chartered and existing under the laws of the State of Ohio, having

its office and principal place of business at Market Street and Langley Avenue, Steubenville, Ohio.

The respondents Harry J. Reed, Lucille E. McFarland, Bessie E. Anderson, and Mary W. Reed are individuals and officers of Heatade Appliances, Inc. Respondent Charles H. McFarland is an individual and is the office manager of the corporate respondent, Heatade Appliances, Inc. The respective officers above-named and the said Charles H. McFarland as office manager are together responsible for and have control of and formulate the advertising policies and practices of said corporate respondent, including the acts and practices hereinafter described. The address of each individual respondent hereinabove named is the same as that shown for the corporate respondent.

PAR. 2. The respondents are now and have been for several years last past, engaged in the business of offering for sale and selling a device, as "device" is defined in the Federal Trade Commission Act, designated as "Heatade." Respondents have caused said device when sold to be transported from their place of business in the State of Ohio to purchasers thereof located in various other States of the United States. At all times mentioned herein respondents have maintained a course of trade in said device in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business, the respondents disseminated, and caused the dissemination of, advertisements concerning their said device by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said device; and respondents also disseminated, and caused the dissemination of, advertisements concerning their said device, by various means, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their said device in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in the said advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by means of circulars, leaflets, pamphlets, and other advertising literature, are the following:

Within the next few days we want to send you an appliance for alleviation of pains and discomforts arising from Prostate Gland inflammation.

If you are one who, because of inflammation of the Prostate Gland finds it's necessary to arise several times at night to void urine—to go more often during the day—bothered with pains in the perineum—(Crotch) lower back or pelvic area, you should be interested in what Heatade has to offer.

The theory on which Heatade works is not new. It functions on a plan of applied heat for alleviation of inflammation—Doctors use it in its various forms. . . . The stagnant blood in the inflamed and congested prostate gland is stimulated. With increased circulation the congestion may be relieved. When the congestion is relieved an improvement or alleviation from pains and resulting discomforts may be expected.

PAR. 4. Through the use of the advertisements containing the statements and representations hereinabove set forth and others similar thereto, not specifically set out herein, all of which purport to be descriptive of the remedial, curative, and therapeutic properties of respondent's said device, respondents represented, directly and by implication, that the use of said device "Heatade" constitutes a competent and effective treatment for inflammation of the prostate gland and the symptoms thereof, such as frequency of urination, pains in back, crotch and rectum and a burning sensation when urine is passed; that the intrarectal application of heat is a procedure frequently used by doctors in the treatment of or for the relief of prostate gland troubles and that the use of respondents' device will increase the blood circulation in an inflamed prostate gland, alleviate inflammation and reduce congestion therein.

PAR. 5. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the use of the said device has no therapeutic value in the treatment of inflammation of the prostate gland or any of the symptoms thereof. The intrarectal application of heat is not a well-recognized therapy used by doctors in the treatment of or for the relief of prostate gland troubles. The use of the respondents' device will not increase the blood circulation in an inflamed prostate gland, nor alleviate inflammation or reduce congestion therein.

PAR. 6. The use by respondents of the foregoing statements and representations disseminated as aforesaid had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief, that all of such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said device.

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

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated November 30, 1950, the initial decision in the instant matter of trial examiner Earl J. Kolb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EARL J. KOLB, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 13, 1950, issued, and subsequently served, its complaint in this proceeding upon respondents Heatade Appliances, Inc., and Harry J. Reed, Lucille E. McFarland, Bessie E. Anderson, and Mary W. Reed, individually and as officers of Heatade Appliances, Inc., and Charles H. McFarland, an individual, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After respondents filed their answer to this proceeding, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and Daniel J. Murphy, Chief of Division of Litigation for the Federal Trade Commission, may be taken as the facts in this proceeding and in lieu of evidence in support of and in opposition to the charges stated in the complaint, and that the said statement of facts may serve as the basis for findings as to the facts and conclusion based thereon and order disposing of the proceeding without presentation of proposed findings and conclusions or oral argument. Said stipulation as to the facts expressly provides that upon appeal to or review by the Commission said stipulation may be set aside by the Commission and this matter remanded for further proceeding under the complaint. Thereafter this proceeding regularly came on for final consideration by said trial examiner upon the complaint, answer, and stipulation. Said stipulation having been approved by the trial examiner, who after duly considering the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Heatade Appliances, Inc., is a corporation, chartered and existing under the laws of the State of Ohio, having its office and principal place of business at Market Street and Langley Avenue, Steubenville, Ohio.

The respondents Harry J. Reed, Lucille E. McFarland, Bessie E. Anderson, and Mary W. Reed are individuals and officers of Heatade Appliances, Inc. Respondent Charles H. McFarland is an individual and is the office manager of the corporate respondent, Heatade Appliances, Inc. The respective officers above-named and the said Charles H. McFarland as office manager are together responsible for and have control of and formulate the advertising policies and practices of said corporate respondent, including the acts and practices hereinafter described. The address of each individual respondent hereinabove named is the same as that shown for the corporate respondent.

PAR. 2. The respondents are now and have been for several years last past, engaged in the business of offering for sale and selling a device, as "device" is defined in the Federal Trade Commission Act, designated as "Heatade." Respondents have caused said device when sold to be transported from their place of business in the State of Ohio to purchasers thereof located in various other States of the United States. At all times mentioned herein respondents have maintained a course of trade in said device in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business, the respondents disseminated, and caused the dissemination of, advertisements concerning their said device by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said device; and respondents also disseminated, and caused the dissemination of, advertisements concerning their said device, by various means, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their said device in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in the said advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by means of circulars, leaflets, pamphlets, and other advertising literature, are the following:

Within the next few days we want to send you an appliance for alleviation of pains and discomforts arising from Prostate Gland inflammation.

If you are one who, because of inflammation of the Prostate Gland finds it's necessary to arise several times at night to void urine—to go more often during the day—bothered with pains in the perineum—(Crotch) lower back or pelvic area, you should be interested in what Heatade has to offer.

The theory on which Heatade works is not new. It functions on a plan of

applied heat for alleviation of the inflammation—Doctors use it in its various forms.

. . . The stagnant blood in the inflamed and congested prostate gland is stimulated. With increased circulation the congestion may be relieved. When the congestion is relieved an improvement or alleviation from pains and resulting discomforts may be expected.

PAR. 4. Through the use of the advertisements containing the statements and representations hereinabove set forth and others similar thereto, not specifically set out herein, all of which purport to be descriptive of the remedial, curative and therapeutic properties of respondents' said device, respondents represented, directly and by implication, that the use of said device "Heatade" constitutes a competent and effective treatment for inflammation of the prostate gland and the symptoms thereof, such as frequency of urination, pains in back, crotch and rectum and a burning sensation when urine is passed; that the intrarectal application of heat is a procedure frequently used by doctors in the treatment of or for the relief of prostate gland troubles and that the use of respondents' device will increase the blood circulation in an inflamed prostate gland, alleviate inflammation and reduce congestion therein.

PAR. 5. The advertisements hereinabove described are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the use of said device has no therapeutic value in the treatment of inflammation of the prostate gland or any of the symptoms thereof. The intrarectal application of heat is not a well recognized therapy used by doctors in the treatment of or for the relief of prostate gland troubles. The use of the respondents' device will not increase the blood circulation in an inflamed prostate gland, nor alleviate inflammation or reduce congestion therein.

PAR. 6. The use by the respondents of the foregoing statements and representations disseminated as aforesaid has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said device.

CONCLUSION

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

ORDER

It is ordered, That the respondents Heatade Appliances, Inc., a corporation, and its officers, and Harry J. Reed, Lucille E. McFarland, Bessie E. Anderson, and Mary W. Reed, individually and as officers of the Heatade Appliances, Inc., and Charles H. McFarland, an individual, and their respective representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of their device known as "Heatade" or any other device of substantially similar construction or possessing substantially similar properties whether sold under the same name or under any other name do forthwith cease and desist from directly or indirectly:

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

(*a*) that the use of the respondents' device has any therapeutic value in the treatment of inflammation of the prostate gland or of any of the symptoms thereof;

(*b*) that the intrarectal application of heat such as that supplied by respondents' device is a well-recognized therapy used by doctors in the treatment of or for the relief of prostate gland troubles;

(*c*) that the use of respondents' device will increase the blood circulation in an inflamed prostate gland or alleviate inflammation or reduce congestion therein.

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 respondents' device which advertisement contains any of the representations prohibited in paragraph one of this order.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the corporate respondent, Heatade Appliances, Inc., and the individual respondents, Harry J. Reed, Lucille E. McFarland, Bessie E. Anderson, Mary W. Reed, and Charles H. McFarland, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of November 30, 1950].

IN THE MATTER OF

PAN AMERICAN FOOD COMPANY, INC., ET AL.[1]

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

Docket 5658. Complaint, May 20, 1949—Decision, Dec. 4, 1950

Where a New York corporation, two California subsidiaries, and three individuals who were officers or directors in two or more, engaged in the interstate purchase, sale, and distribution of dried fruits and dehydrated vegetables and other food products—

(*a*) Received and accepted directly or indirectly in connection with purchase for their own accounts for resale of a substantial portion of their requirements of food products from numerous sellers located in other states, commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof; and

(*b*) Granted and paid, directly or indirectly, in connection with their sale of food products in interstate commerce, to buyers for their own account for resale in interstate commerce, similar commissions, etc.:

Held, That such acts and practices on the part of said corporations and individuals, in receiving and accepting commissions, etc., on such purchases for their own accounts for resale, and in paying or granting such commissions, on sales to buyers for their own accounts for resale, were in violation of subsection (c) of section 2 of the Clayton Act as amended.

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

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

Mr. Alexander P. Blanck, of New York City, and *Ginsburg & Leventhal*, of Washington, D. C., for Pan American Food Co., Inc., Sun Crown Food Corp., Victor Trubowitch and Jacob Trubowitch.

Brown, Lund & Fitzgerald, of Washington, D. C., for Jack Gomperts & Co., Inc., and Jacob Gomperts.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have vio-

[1] Findings and cease and desist order in the matter of Associated Fur Coat and Trimming Manufacturers, Inc., et al., docket 4308, which issued as of December 1, 1950, were subsequently vacated, and the complaint therein dismissed without prejudice. See *infra*, p. 1615.

lated and are violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C., title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Pan American Food Company, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 78 Reade Street, New York, N. Y. The respondent is engaged and has engaged, through wholly owned subsidiaries, or otherwise, directly or indirectly, in the business of purchasing, selling, distributing, exporting and importing dried fruits and dehydrated vegetables and other food products, all of which are hereinafter referred to as food products.

The respondent Pan American Food Co., Inc., for a substantial period of time since June 19, 1936, owned all the capital stock of respondent Jack Gomperts & Co., Inc., and respondent Sun Crown Food Corp., and through respondent Pan American Food Co., Inc.'s officers and directors formulate, control, and direct business policies and operations of said subsidiary corporations in connection with their purchase, sale, and distribution of food products. The respondent Pan American Food Co., Inc., in connection with such acts and practices in commerce, directly or indirectly receive and accept commissions or brokerage fees from interstate sellers of food products purchased by both of said respondent subsidiary corporations for their own account for resale.

The respondent Pan American Food Co., Inc., in connection with such acts and practices in commerce, directly or indirectly pays or grants commissions or brokerage fees to interstate buyers of food products purchased from both of said respondent subsidiary corporations for their own accounts for resale.

PAR. 2. Respondent Jack Gomperts & Co., Inc., is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 620 Marvin Building, 24 California Street, San Francisco, Calif. The respondent is engaged and has been engaged for a substantial period of time since June 19, 1936, directly or indirectly, in the business of purchasing, selling and distributing dried fruits and dehydrated vegetables and other food products, all of which are hereinafter designated as food products.

PAR. 3. The respondent Sun Crown Food Corp. is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 617 Marvin Building, San Francisco, Calif. Respondent corporation was originally

chartered as Escalon Packing Corp., but thereafter changed its corporate name by legal process to Sun Crown Food Corp. The respondent corporation, as was its predecessor, is a wholly owned subsidiary of respondent Pan American Food Co., Inc., of New York, N. Y.

The respondent Sun Crown Food Corp., as was its predecessor corporation, for a substantial period of time since June 19, 1936, has engaged, and is now engaged, in the purchase, sale and distribution of dried fruits, dehydrated vegetables, and other food products, all of which are hereinafter designated as food products.

PAR. 4. Respondent Victor Trubowitch (sometimes spelled Trubowitsch), an individual residing in the State of New York, is now and has for a considerable period of time since June 19, 1936, been president of respondent Pan American Food Co., Inc., and for a substantial period of time since June 19, 1936, was also an officer and director of respondent Jack Gomperts & Co., Inc. Respondent as president of Pan American Food Co., Inc., and as director of respondent Jack Gomperts & Co., Inc., has exercised and still exercises a substantial degree of authority and control over the business conducted by both of said respondent corporations, including the direction of their purchase, sale and distribution policies.

PAR. 5. Respondent Jacob Gomperts (generally known as Jack Gomperts) is an individual residing in California and for a substantial period of time since June 19, 1936, was and now is president of Jack Gomperts & Co., Inc. Respondent Jacob Gomperts, for a substantial period of time since June 19, 1936, was also vice president and director of respondent Pan American Food Co., Inc. Respondent Gomperts has been an officer of said corporations for a number of years since June 19, 1936. After becoming an officer of both of said respondent corporations, and at the present time as president of Jack Gomperts & Co., Inc., and vice president and director of Pan American Food Co., Inc., respondent Gomperts has exercised and still exercises a substantial degree of authority and control over the business conducted by both of respondent corporations, including the direction of their purchase, sale and distribution policies.

PAR. 6. Respondent Jacob Trubowitch (sometimes spelled Trubowitsch) is an individual residing in the State of California. He is now and has for a substantial period of time since June 19, 1936, been president of respondent Sun Crown Food Corp. and director of Pan American Food Co. and also a director of respondent Jack Gomperts & Co., Inc. After becoming an officer and director of said respondent corporations since some time after June 19, 1936, respondent Jacob Trubowitch has exercised and at the present time still exercises a substantial degree of authority and control over the

business conducted by said respondent corporations, including the direction of their purchase, sale and distribution policies.

PAR. 7. Respondent corporations and each of them, as aforesaid, are now and have been, for a substantial period of time since June 19, 1936, engaged in the purchase, sale and distribution of food products, and each of said individual respondents, through said corporate respondents, have likewise been engaged in said business. In the course and conduct of their said business, each of the respondents, corporate and individual, have directly or indirectly purchased and sold a substantial quantity of food products in commerce from sellers and sold such food products to buyers, and both sellers and buyers are located in States other than the States and in territories, insular possessions, and other places under the jurisdiction of the United States, in which the respondents are located and pursuant to which purchases and sales said commodities are shipped, or caused to be shipped, and transported by the respective sellers thereof across State lines to the respondents and to the customers of respondents, and there has been for a substantial period since June 19, 1936, a constant current of trade and commerce conducted by said respondents in such products between the various States of the United States and in territories, insular possessions, and other places under the jurisdiction of the United States.

PAR. 8. The respondents, corporate and individual, and each of them since June 19, 1936, in connection with their purchase for their own account for resale of a substantial portion of their requirements of food products in interstate commerce from numerous sellers located in States other than the States where respondents are located, as aforesaid, have received and accepted, and are now receiving and accepting, directly or indirectly, commissions, brokerage or other compensation or allowances, or discounts in lieu thereof.

The respondents, corporate and individual, and each of them since June 19, 1936, in connection with their sale of food products in interstate commerce to buyers for their own account for resale in interstate commerce as aforesaid, have granted and paid and now grant and pay, directly or indirectly, commissions, brokerage, or other compensation or allowances or discounts in lieu thereof.

PAR. 9. The acts and practices of the respondents, corporate and individual, and each of them, since June 19, 1936, in directly or indirectly receiving and accepting commissions or brokerage fees from interstate sellers of food products purchased by each of said respondents for their own account for resale, and the acts and practices of respondents, corporate and individual, and each of them, in directly or indirectly paying or granting commissions or brokerage fees to

interstate buyers of food products for their own account for resale as set forth above, are in violation of subsection (c) of section 2 of the Clayton Act as amended.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act) as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13), the Federal Trade Commission on May 20, 1949, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violation of subsection (c) of section 2 of said act as amended. After the issuance of said complaint and the filing of the respondents' answers thereto, a hearing was held before a trial examiner of the Commission, theretofore duly designated by it, at which hearing all of the respondents filed substitute answers in which they admitted the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to such facts. With the filing of the substitute answers a stipulation was entered into, and made a part of the record, by counsel for respondents Pan American Food Co., Inc., Sun Crown Food Corp., Victor and Jacob Trubowitch and counsel in support of the complaint, whereby it was agreed that said respondents would not contest findings of the accuracy of the charges in the complaint as to the acts committed by them nor an order requiring them to cease and desist from continuance thereof and that counsel in support of the complaint would not present any further evidence in said cause or request any order other than one requiring respondents to cease and desist from continuance of the acts charged in the complaint. Said stipulation expressly provides that upon appeal to, or review by, the Commission, the stipulation may be set aside by the Commission and this matter remanded for further proceedings under the complaint. On July 21, 1950, the trial examiner filed his initial decision.

The Commission, having reason to believe that the initial decision did not constitute an adequate disposition of this proceeding, subsequently placed this case on its own docket for review, and on September 5, 1950, it issued and thereafter served upon the parties its order affording the respondents an opportunity to show cause why said initial decision should not be altered in the manner and to the extent shown in a tentative decision of the Commission attached to said order. Respondents not having appeared in response to the

leave to show cause, this proceeding regularly came on for final consideration by the Commission upon the record herein on review, and the Commission, having duly considered the matter and being now fully advised in the premises, makes the following findings as to the facts, conclusion drawn therefrom, and order, the same to be in lieu of the initial decision of the trial examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Pan American Food Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 78 Reade Street, New York, N. Y. The respondent is engaged and has engaged, through wholly owned subsidiaries or otherwise, directly or indirectly, in the business of purchasing, selling, distributing, exporting, and importing dried fruits and dehydrated vegetables and other food products, all of which are hereinafter referred to as food products.

Said respondent Pan American Food Co., Inc., for a substantial period of time since June 19, 1936, owned all the capital stock of respondent Jack Gomperts & Co., Inc., and respondent Sun Crown Food Corp., and through its officers and directors has formulated, controlled and directed business policies and operations of such subsidiary corporations in connection with their purchase sale, and distribution of food products. The respondent Pan American Food Co., Inc., in connection with such acts and practices in commerce, has directly or indirectly received and accepted commissions or brokerage fees from interstate sellers of food products purchased by both of said respondent subsidiary corporations for their own account for resale; and in connection therewith has directly or indirectly paid or granted commissions or brokerage fees to interstate buyers of food products purchased from both of said respondent subsidiary corporations for their own accounts for resale.

Respondent Jack Gomperts & Co., Inc., is a corporation organized and existing under the laws of the State of California, with its principal office and place of business now located at 110 Market Street, San Francisco, Calif. Said respondent is engaged and has been engaged for a substantial period of time since June 19, 1936, directly or indirectly, in the business of purchasing, selling, and distributing dried fruits and dehydrated vegetables and other food products, all of which are hereinafter designated as food products.

Respondent Sun Crown Food Corp. is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 617 Marvin Building,

San Francisco, Calif. Originally chartered as Excalon Packing Corp., its corporate name was thereafter changed by legal process to Sun Crown Food Corp. Such respondent corporation, as was its predecessor, is a wholly owned subsidiary of respondent Pan American Food Co., Inc., of New York, N. Y.

Said respondent Sun Crown Food Corp., as was its predecessor, for a substantial period of time since June 19, 1936, has been engaged, and is now engaged, in the purchase, sale, and distribution of dried fruits, dehydrated vegetables, and other food products, all of which are hereinafter designated as food products.

Respondent Victor Trubowitch (sometimes spelled Trubowitsch), an individual residing in the State of New York, is now and has for a considerable period of time since June 19, 1936, been president of respondent Pan American Food Co., Inc., and for a substantial period of time since June 19, 1936, was also an officer and director of respondent Jack Gomperts & Co., Inc. Such respondent, as president of Pan American Food Co., Inc., and as a former director of respondent Jack Gomperts & Co., Inc., exercises or has exercised a substantial degree of authority and control over the business conducted by both of said respondent corporations, including the direction of their purchase, sale, and distribution policies.

Respondent Jacob Gomperts (generally known as Jack Gomperts) is an individual residing in California and for a substantial period of time since June 19, 1936, has been and now is president of Jack Gomperts & Co., Inc., and for a substantial period of time since June 19, 1936, was also vice president and director of respondent Pan American Food Co., Inc. Since becoming an officer of both of said respondent corporations, and at the present time as president of Jack Gomperts & Co., Inc., and formerly as vice president and director of Pan American Food Co., Inc., respondent Gomperts exercises, or has exercised, a substantial degree of authority and control over the business conducted by both of respondent corporations, including the direction of their purchase, sale, and distribution policies.

Respondent Jacob Trubowitch (sometimes spelled Trubowitsch) is an individual residing in the State of California. He is now and has for a substantial period of time since June 19, 1936, been president of respondent Sun Crown Food Corp. and director of Pan American Food Co., and for a substantial period of time since June 19, 1936, was also a director of respondent Jack Gomperts & Co., Inc. Since becoming an officer and director of said respondent corporations sometime after June 19, 1936, respondent Jacob Trubowitch exercises, or has exercised, a substantial degree of authority and con-

trol over the business conducted by said respondent corporations, including the direction of their purchase, sale, and distribution policies.

PAR. 2. Respondent corporations and each of them, as aforesaid, are now and have been, for a substantial period of time since June 19, 1936, engaged in the purchase, sale, and distribution of food products, and each of said individual respondents, through said corporate respondents, has likewise been engaged in said business. In the course and conduct of their said business, each of the respondents, corporate and individual, has directly or indirectly purchased and sold a substantial quantity of food products in commerce from sellers and sold such food products to buyers; both sellers and buyers being located in States other than those in which said respondents are located and in territories, insular possessions, and other places under the jurisdiction of the United States; and pursuant to which purchases and sales, said commodities are shipped, or caused to be shipped, and transported by the respective sellers thereof across State lines to the respondents and to the customers of respondents; there having been for a substantial period since June 19, 1936, a constant current of trade and commerce conducted by said respondents in such products between the various States of the United States and in territories, insular possessions and other places under the jurisdiction of the United States.

PAR. 3. The respondents, corporate and individual, and each of them since June 19, 1936, in connection with their purchase for their own accounts for resale of a substantial portion of their requirements of food products in such interstate commerce from numerous sellers located in States other than those where respondents are thus located, have received and accepted, directly or indirectly, commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof.

The respondents, corporate and individual, and each of them since June 19, 1936, in connection with their sale of food products in interstate commerce to buyers for their own accounts for resale in interstate commerce as aforesaid, have granted and paid, directly or indirectly, commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof.

CONCLUSION

The aforesaid acts and practices of the respondents, corporate and individual, in receiving and accepting commissions, brokerage fees, or other compensation, or allowances or discounts in lieu thereof, on purchases in interstate commerce of food products by said respondents for their own accounts for resale, and in paying or granting commissions, brokerage fees, or other compensation, or allowances or discounts in lieu thereof, on sales in interstate commerce of food products to buyers

for their own accounts for resale as set forth above, are in violation of subsection (c) of section 2 of the Clayton Act as amended.

ORDER TO CEASE AND DESIST

It is ordered, That respondents Pan American Food Co., Inc., a corporation, Jack Gomperts & Co., Inc., a corporation, and Sun Crown Food Corp., a corporation, and their respective officers, representatives, agents, and employees, and respondents Victor Trubowitch, Jacob Gomperts, and Jacob Trubowitch, individually and as officers of said corporations, and their respective representatives, agents, and employees, directly or through any corporate or other device, in the purchase or sale of food products or other merchandise in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

(1) Receiving or accepting from any seller, directly or indirectly, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, on or in connection with purchases made for respondents' own accounts or while acting for or in behalf of a purchaser as an intermediate agent or subject to the direct or indirect control of such purchaser;

(2) Paying or granting anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, to any buyer upon purchases made for his own account or to any agent, representative, or other intermediary acting in fact for or in behalf or subject to the direct or indirect control of the purchaser to whom sale is made.

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

IN THE MATTER OF

INTERSTATE TRAINING SERVICE CORPORATION ET AL.

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

Docket 5764. Complaint, Apr. 17, 1950—Decision, Dec. 5, 1950

Where two partners engaged under the trade name "Interstate Training Service" in the interstate sale and distribution of courses of study and instruction in Diesel training and training in heavy equipment and heavy gasoline engines; through advertisements in newspapers and periodicals of general circulation and through pamphlets, circulars and direct mail advertising, including form letters sent to students after their enrollment—

(*a*) Represented falsely that students were selected and accepted on the basis of their mechanical aptitude and upon the recommendations of the school's representatives;

The facts being that students were enrolled by salesmen, whose purpose it was to enroll as many as possible, regardless of any special aptitude;

(*b*) Represented that the training in Diesel engine equipment might be completed in one year with one or two hours' study a day; that students who had completed it were qualified to operate, service, and repair any Diesel equipment regardless of size or kind, and were able to compile cost estimates; and that many students were placed in jobs even before they had completed the course;

The facts being that the operation, repair, and maintenance of Diesel equipment requires substantial practical training in addition to theoretical study, and a year of theoretical training in Diesel engines with one or two hours study per day, given to students without practical training or experience would not qualify the student to operate, service, and repair Diesel equipment and make cost estimates; and the demand for respondents' graduates was largely limited to men with practical experience;

(*c*) Represented that the school worked closely with manufacturers, contractors, and others in the Diesel engineering field, and had a competent faculty with years of experience which was constantly keeping in touch with developments in that industry;

The facts being that they did not work closely with manufacturers and others; and while the staff of the school consisting of two to four qualified instructors did endeavor to obtain information of new developments and changes in Diesel engines, such new developments were relatively unimportant in connection with the teaching of the fundamental principles of Diesel engines; and

(*d*) Falsely represented that their placement, consultation and revision services, and students supplies, were free; when in fact the cost thereof was included in the cost of the course; and

Where said partners, engaged as aforesaid, through their representatives—

(*e*) Represented and implied that the opportunities in the field of operating Diesel equipment were unusual and unlimited; that thousands of jobs were available; and that students were assured of or guaranteed employment upon the completion of said course, in well-paying positions;

The facts being that while there was a need for competent and experienced men in the Diesel field, respondents' graduates were not qualified for such positions, although they might find employment as mechanics' helpers or apprentices; and students were not assured of or guaranteed employment; and

(*f*) Represented that students received shop or on-the-job training and were especially selected after taking the written or oral tests given by said salesmen, who were designated "vocational advisers" and "field engineers":

The facts being that the course was confined to lessons by correspondence, and said representatives were simply salesmen; and

(*g*) Represented and implied through the use of the name "Western Adjustment Bureau", under which they sent out collection letters, that said "bureau" was an independent organization engaged in collecting delinquent accounts generally;

When in fact it was operated by them solely for the purpose of collecting their own delinquent accounts; and

Where said two individuals and a third, engaged as partners under the trade name "American Academy of Applied Science" in the interstate sale and distribution of a course of instruction in fingerprinting; through advertisements, circular letters, pamphlets, postal cards, and other advertising material, and through sales agents—

(*a*) Represented and implied that the opportunities for employment and advancement in the field of fingerprinting and crime detection were unusual and unlimited; that the demand for trained men was very great and the supply greatly inadequate; that many fingerprint bureaus were being enlarged and that many more were planned and still more needed; and that there was a great variety of positions in said field suitable for any personality;

The facts being that positions for fingerprinting experts in most enforcement agencies are filled through promotion of men already in their service who have had some practical training; new departments for fingerprinting are not established to the extent represented, since many police and sheriff departments prefer the F. B. I. for such identification; in order to become a qualified fingerprint expert, a substantial amount of practical training and experience is necessary; and not all persons are qualified to engage in such work, which requires patience, concentration and a capacity for detail;

(*b*) Represented falsely that salaries were considerably above the average and that the work was pleasant and filled with thrills, excitement and intrigue;

The facts being that remuneration was not considerably above the average for other comparable work and the large majority of persons engaged therein perform their work in a routine and uneventful manner and surroundings;

(*c*) Represented that students were selected by them on the basis of aptitude and personality and that the training was limited to those who could qualify by nature or disposition, that such training was given by a staff of experts and former Government employees and identification experts, and that their field representatives and division chiefs assisted the staff of experts in charge of the training;

The facts being they furnished leads to their salesmen and accepted all who enrolled, with no such selection or tests; the teaching staff never exceeded three persons, including the director, all of whom had held position as qualified identification experts with the Government; and their salesmen were not division chiefs and field representatives;

(*d*) Represented that the Government was in need of trained fingerprint experts;

The facts being that the graduates were not employed because of their training in said course, but after meeting Civil Service requirements, were trained in the Government's own school;

(*e*) Represented that the job placement service and aptitude tests and fingerprinting and photographic equipment were free, and that the students would receive resident and laboratory training at the school in addition to the lessons by correspondence;

The facts being that while said work was done mainly by correspondence, students were privileged to receive personal instruction at school headquarters without extra charge and frequently did so, though no such aptitude tests were given, and the price of the so-called free placement service and equipment were included in the cost of the course:

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

As regards the further charge in the complaint, that the use by respondents of the trade name "American Academy of Applied Science" tended to mislead members of the public into the belief that their business was a national nonprofit organization devoted to the investigation and consideration of scientific problems and the advancement of science generally, the stipulations of fact on the basis of which the case was disposed of did not substantiate the charge, and, it appearing further that the respondent who carried on such business had expressly agreed that henceforth he would not use it on advertising material, correspondence or courses of instruction unless there was printed or typed in bold type and in juxtaposition therewith the words "A Correspondence Course," or a substantial equivalent thereof clearly and fully indicating that the instruction given by him under said name was correspondence instruction: said charge of the complaint was dismissed.

Before *Mr. Frank Hier*, trial examiner.

Mr. William L. Pencke for the Commission.

Jacob William Spatz, of Los Angeles, Calif., for Interstate Training Service Corp., Conard E. Green and Leon A. Crouch.

Phelps, Burdick & McLaughlin, of Portland, Oreg., for Interstate Training Service Corp., Conard E. Green, Leon A. Crouch and Interstate Training Service.

Mr. John C. Stevenson, of Los Angeles, Calif., for Jacob W. Spatz.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Interstate Training Service Corp., a corporation, and Conard E. Green, Leon A. Crouch, and Jacob W. Spatz, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission

that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Interstate Training Service Corp., is a corporation organized, existing and doing business under the laws of the State of Oregon. Conard E. Green and Leon A. Crouch are president and vice president, respectively, of said corporation and as such officers determine and control all of its policies and business practices.

Respondents Conard E. Green and Leon A. Crouch also operate as a copartnership under the trade name and style of Interstate Training Service. The principal office and place of business of said corporate and individual respondents is at 4035 Northeast Sandy Boulevard, in the city of Portland and State of Oregon. Said respondents are now and have been for more than two years last past engaged in the sale and distribution in commerce of courses of study and instruction in Diesel training and fingerprint science, as hereinafter more fully shown.

On or about July 1, 1946, respondents Conard E. Green, Leon A. Crouch, and Jacob W. Spatz, formed a copartnership and traded under the firm name of American Academy of Applied Science, selling and distributing in commerce said course of instruction in fingerprint science at the place of business hereinabove described. On or about January 1, 1948, said partnership was dissolved, and respondents Green and Crouch continued to operate said American Academy of Applied Science as part of said Interstate Training Service, with respondent Spatz serving as director of said Academy until July 1, 1948, when he purchased all interests therein from respondents Green and Crouch; the latter, however, continuing to carry out the contracts of all students who had enrolled for said course in fingerprint science prior to July 1, 1948.

Respondent Jacob W. Spatz is presently operating under said trade name of American Academy of Applied Science, with his principal office and place of business located at 1707 North Alexandria Street, in the city of Los Angeles and State of California.

PAR. 2. Respondents cause said courses of study and instruction when sold to be shipped from their respective places of business at Portland, Oreg., and Los Angeles, Calif., to the purchasers thereof located in States other than the States of Oregon and California. Respondents maintain and at all times mentioned herein have maintained a course of trade in their said courses of study and instruction in commerce among and between the various States of the United States and such course of trade has been and is substantial.

PAR. 3. With respect to the course of study in the operation of Diesel engines, respondents Conard E. Green and Leon A. Crouch, in soliciting the purchase of and selling said course, made numerous statements and representations by means of the following methods: through advertisements in newspapers and magazines having a national circulation, through pamphlets, circulars and direct mail advertising and through their representatives and sales agents. Typical of such representations made in advertising matter are the following:

DIESEL TRACTOR AND HEAVY EQUIPMENT TRAINING THOUSANDS OF JOB OPPORTUNITIES!

Experts say thousands of new men will be needed to service, repair and operate this equipment. I. T. S. home training prepares you for these important jobs.

I was happy to have had a part in making an affirmative decision with regard to your recent application for enrollment submitted to our school. A personal recommendation forwarded to the school by our representative, together with the information given with the application were the chief factors which led to your acceptance.

You are evidently mechanically inclined and have a sincere desire to get ahead in this interesting and essential field of work.

This training can be completed in 1 year by the average man who devotes 1 or 2 hours a day to it. Your application has been carefully checked by our investigating committee and duly accepted.

Interstate Training Service works closely with manufacturers, contractors and others in the Diesel and heavy equipment field. On completion of the course you should be qualified to operate, service or repair any machine in use whether it be a small two-cylinder job or the largest marine Diesel.

It will qualify you to handle any piece of equipment from a two bottom plow to a combine logging arch or earth mover. You will learn how to figure costs and time service. Your training is prepared and supervised by practical instructors who have years of experience in the Diesel tractor and heavy equipment field. They are men of demonstrated ability and are in constant contact with the major technical industries.

I. T. S. Free Placement Service * * * This service is free. There is no charge. Even before you have finished the course we consider you eligible for many of the openings that are brought to our attention by leading employers.

Free consultation service * * * Free Revision Service * * * Plastic Binder Free.

PAR. 4. By means of the foregoing representations and many others similar thereto but not specifically set out herein, respondents represent and imply to the purchasing public that students are selected and accepted on the basis of their mechanical aptitude and upon the recommendation of the school's representatives; that the training in Diesel engine equipment may be completed in one year with one or two hours a day devoted to the study of said course; that the school works closely with manufacturers, contractors, and others in the Diesel engine field; that students upon having completed said course are qualified to

operate, service, and repair any Diesel equipment, regardless of size or kind, and are able to compile cost estimates; that many students are placed in jobs even before they have completed said course; that there is a competent faculty with years of experience in the Diesel field which is constantly keeping in touch with developments in that industry; that the placement service operated by respondents, as well as consultation and revision services and students' supplies are free.

Through statements made by sales representatives, respondents further represent and imply that the opportunities for employment, improvement and advancement in the field of Diesel equipment operation are unusual and unlimited; that thousands of jobs are available, and that students are assured or guaranteed employment upon completion of said course in well paying positions; that students receive resident shop, or on-the-job training, which representations are enhanced by illustrations in respondents' advertising pamphlet "Getting Ahead," showing "Interstate Students at Work" on various types of Diesel engines; that students are especially selected after taking written or oral tests, given by said salesmen, designated "vocational advisers" and "field engineers" which designations imply that said salesmen are qualified to determine the aptitude of prospects for mechanical pursuits.

PAR. 5. In truth and in fact, all of the representations and statements made in the manner aforesaid are exaggerated, false, and misleading. Students are not especially selected by the school because of mechanical aptitude but are enrolled by the salesmen and accepted by the school regardless of any specific aptitude; said agents are not vocational advisers or field engineers qualified to give aptitude tests but are simply salesmen whose purpose it is to enroll as many students as possible. Theoretical training in Diesel engines cannot be completed within one year during one or two hours of a student's spare time to the extent of qualifying him to operate, service and repair Diesel equipment and make cost estimates. The operation, repair and maintenance of Diesel equipment requires substantial practical training under the supervision of competent teachers or mechanics, in addition to theoretical study. Students are not assured or guaranteed employment, there is no demand for respondents' graduates, and while there may be a need for competent, experienced men in the Diesel field, respondents' graduates are not qualified for such positions and will not be employed in the industry, but at most may find employment as mechanics' helpers or apprentices. Respondents do not work closely with manufacturers, contractors, and others but merely endeavor to obtain information of new developments and changes in

Diesel engines, and said members of the industry do not in any sense participate or take an interest in the operation of respondents' school. Moreover, such new developments are of comparatively small importance in connection with the teaching of the fundamental principles of Diesel engines. Said school does not employ a staff of qualified instructors with many years of practical experience but has only one man in charge of the teaching work who can so qualify. Said placement, revision and consultation services, as well as the supplies furnished to students are not free but the price thereof is included in the cost of the course. Students do not receive resident shop or on-the-job training but the course is confined to lessons by correspondence.

PAR. 6. With respect to the course of study in fingerprinting and crime detection, respondents Conrad E. Green, Leon A. Crouch, and Jacob W. Spatz, under the trade name of American Academy of Science, as set forth in paragraph one hereof, by means of advertisements, circular letters, pamphlets, postal cards, and other advertising material and through sales agents, have made and are making numerous statements and representations of which the following are typical but not all inclusive:

Identification and Scientific Crime Detection Fields offer unlimited opportunities for TRAINED Men and Women * * * Investigate our FREE "1001" Job Placement Plan

A Scientific Vocational and Aptitude test is yours FREE

At the present time a large number of established fingerprint bureaus are being enlarged * * * and hundreds of NEW agencies are in process of formation, but EVEN MORE are needed.

Authorities complain that the supply of trained personnel is woefully inadequate to keep up with the demand.

There is a position to suit almost every preference, something that will appeal to each individual aptitude * * * People who enter this new profession now can face the future with a feeling of confidence, knowing that they have prepared themselves for almost unlimited opportunities.

Salaries are considerably above average * * * and it is among the very few uncrowded vocations.

The training program of the American Academy of Applied Science is SELECTIVE. Not everyone is eligible * * * Training will be limited to those men and women who by nature, intelligence and disposition show a marked aptitude for this particular profession.

Training will be under direct supervision of Mr. Jacob William Spatz * * * assisted by a corps of experienced and able field representatives and division chiefs.

The director with an able corps of assistants * * *

Our staff of former United States Government Intelligence and Identification men * * *

Thousands will find unusual opportunities in this field that is fascinating, pleasant and filled with possibilities of advancement.

Work is filled with excitement and intrigue. A profession packed with thrills, color, romance.

By means of the foregoing representations and others of similar tenor and effect, including statements made by salesmen, respondents represent and imply: that the opportunities for employment and advancement in the field of fingerprinting and crime detection are unusual and unlimited; that the demand for trained men is very great and the supply greatly inadequate; that many fingerprint bureaus are being enlarged, many more planned and still more needed; that there is a great variety of positions in said field, suitable for any personality; that salaries are considerably above the average; that the work is pleasant and filled with thrills, excitement and intrique; that students are selected by respondents on the basis of their aptitude and personality and the training limited to those applicants who can qualify by nature or disposition for said work; that the training is given by a staff of experts and former government employees and identification experts; that the job placement service and aptitude tests are free; that the United States Government is in need of trained fingerprint experts and that respondents' field representatives and division chiefs assist the staff of experts in charge of the training; that fingerprint and photographic dark room equipment is furnished free to the students, and that they will receive resident and laboratory training at the school in addition to the lessons by correspondence.

PAR. 7. In truth and in fact, said statements, representations and implications are exaggerated, false, and misleading. There are few opportunities for employment of respondents' graduates in the field of fingerprinting and crime detection. As a rule, positions for fingerprint experts in law enforcement agencies are filled through promotion of men already in the service of said agencies and who have had some practical training; and while some law enforcement agencies may establish new departments for fingerprinting, such additional or new bureaus are not established to the extent represented by respondents; in fact, many police and sheriff departments prefer to use the facilities of the Federal Bureau of Investigation for the identification of fingerprints. Neither respondents nor their sales agents select students on the basis of their aptitude or personality, nor are any scientific or vocational aptitude tests given to prospective purchasers of said course; in fact, respondents furnish leads to their salesmen and accept all persons who enroll. Remuneration in the field of fingerprinting and crime detection is not considerably above the average for comparable work in other vocations and trades. Not all persons are qualified to engage in the work of fingerprinting which requires patience, concentration, and a capacity for detail; and in order to become a qualified fingerprint expert, a substantial amount of practical training and experience is necessary. The large

majority of persons engaged in the work of fingerprint identification do not come in contact with the dramatic phases of crime detection as described in respondents' advertising literature but perform their work in a routine and uneventful manner and surroundings. The United States Government does not hire respondents' graduates because of the training received in said course; after having met Civil Service requirements they are trained in the Government's own training school. Neither the placement service nor the fingerprinting and photographic equipment are free but the price thereof is included in the cost of said course. Respondents' salesmen are not division chiefs and field representatives and the use of said terms in connection with the sale of a course in fingerprinting and crime detection tends to create the misleading impression that said salesmen hold some official position or have some professional standing or that respondents' school is a more substantial organization than it is in fact. Respondents do not maintain a large staff or corps of former Government experts to teach said subjects; the teaching staff has never exceeded three persons, including the director, and only the latter at one time held a position as a qualified identification expert in the United States Government. The work of the school is done entirely by correspondence, and no resident training or personal instruction is given.

PAR. 8. Respondents' trade name, American Academy of Applied Science implies the existence of a national, nonprofit scientific organization, with a membership of highly qualified experts and scientists, devoted to the investigation and consideration of scientific problems and the advancement of science generally. In truth and in fact, respondents are engaged in the business of selling correspondence courses for profit; it is a correspondence school and in no sense an academy of science, as said terms are understood in educational circles and by the purchasing public; and the use of said trade name, as aforesaid, tends to mislead members of the public into the belief that respondents' business is a scientific organization and to enroll for said course of instruction on account thereof.

PAR 9. Respondents, in collecting and attempting to collect delinquent accounts arising in connection with their business, send out collection letters in the name of Western Adjustment Bureau, thereby representing and implying that said Western Adjustment Bureau is an independent organization engaged in the business of collecting delinquent accounts generally. In truth and in fact said so-called Bureau is not an independent collection agency but is operated by respondents solely for the purpose of collecting their own delinquent accounts.

PAR. 10. The use by respondents of the aforesaid acts and practices in connection with the offering for sale, and sale of their said courses of study in commerce has the tendency and capacity to, and does, mislead and deceive members of the public and causes them erroneously to believe that said statements and representations are true and to induce them to purchase respondents' said courses of study on account thereof. The use of the fictitious collection agency has the tendency and capacity to induce the payment of disputed accounts which would not have been otherwise paid.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 17, 1950, issued and subsequently served its complaint in this proceeding upon the respondents, Interstate Training Service Corporation, a corporation, Conrad E. Green and Leon A. Crouch, as officers of said corporation, and Conrad E. Green, Leon A. Crouch, and Jacob W. Spatz, individually and trading as copartners, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of the respondents' answers to the complaint a trial examiner of the Commission was designated by it to take testimony and receive evidence in support of and in opposition to the allegations of said complaint, and at the initial and second hearings held for such purpose stipulations of all of the facts in the case were entered on the record. Proposed findings as to the facts having been submitted on behalf of the respondents, Conrad E. Green and Leon A. Crouch, the trial examiner on August 22, 1950, filed his initial decision.

The Commission, having reason to believe that the initial decision was deficient in certain material respects, on October 9, 1950, issued and thereafter served upon the parties its order placing this case on the Commission's own docket for review and affording the respondents an opportunity to show cause why said initial decision should not be altered in the manner and to the extent shown by the tentative decision attached to said order. The respondents not having appeared in response to the leave to show cause, this proceeding regularly came on for final consideration by the Commission on review; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that said proceeding is in the interest of the

public and makes the following findings as to the facts, conclusion drawn therefrom, and order, the same to be in lieu of the initial decision of the trial examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Interstate Training Service, improperly named in the complaint as Interstate Training Service Corp., is a corporation organized, existing and doing business under the laws of the State of Oregon. Respondents Conard E. Green and Leon A. Crouch are president and secretary-treasurer, respectively, of said corporation, and, as such officers, determine and control all of its policies and business practices. However, said Interstate Training Service, an Oregon corporation, has no ownership, control or other connection with the business and things referred to in the complaint herein, and since the organization of said corporation it has at no time owned any property or conducted any business of any name or nature whatsoever. Respondents Conard E. Green and Leon A. Crouch operate as a copartnership under the trade name and style of Interstate Training Service. The principal office and place of business of said individual respondents is at 4035 N. E. Sandy Boulevard, in the city of Portland, State of Oregon. Respondents Conard E. Green and Leon A. Crouch, doing business under the assumed name of Interstate Training Service, are now and for more than 2 years last past they have been engaged in the sale and distribution in commerce of courses of study and instruction in Diesel training and training in heavy equipment and heavy gasoline engines.

On or about July 1, 1946, respondents Conard E. Green and Leon A. Crouch formed a copartnership with respondent Jacob W. Spatz and thereafter traded under the firm name of American Academy of Applied Science, selling and distributing in commerce a course of instruction in fingerprinting science from the Weatherly Building in the city of Portland, State of Oregon. On or about January 1, 1948 said partnership was dissolved, and respondents Crouch and Green continued to operate said American Academy of Applied Science as part of Interstate Training Service, with respondent Spatz serving as director of said academy until approximately July 1, 1948. On or about that date, respondent Spatz purchased all interests in the business from respondents Green and Crouch, but the latter continued to carry out the contracts of all students who had enrolled for their course in fingerprinting science prior to July 1, 1948, under a qualified instructor employed by respondents Green and Crouch. The latter respondents have not, since July 1, 1948, solicited students or advertised the course of study given by the American Academy of

Applied Science, which since that date has been operated and is now being operated by respondent Spatz from his principal office and place of business at 1707 North Alexandria Street, Los Angeles, Calif.

PAR. 2. Respondents, engaged and affiliated as hereinabove set out and during the periods described, caused and do cause their courses of instruction and study, when sold, to be shipped from their respective places of business in Portland, Oreg., and Los Angeles, Calif., to purchasers thereof, located in States other than the States of Oregon and California. Respondents maintain, and have maintained, while affiliated as above set out, at all times mentioned herein, a course of trade in said courses of study and in instruction in commerce among and between the various States of the United States and such course of trade has been and is substantial.

PAR. 3. With respect to the courses of study in the operation of Diesel engines, respondents Conard E. Green and Leon A. Crouch, in soliciting the purchase of and selling said courses of study, made numerous statements and representations by means of advertisements in newspapers and magazines having a national circulation, through pamphlets, circulars and direct mail advertising and through their representatives and sales agents. Illustrative of the representations so made is the following advertisement used prior to and not subsequent to July 1, 1946:

DIESEL TRACTOR AND HEAVY EQUIPMENT TRAINING THOUSANDS OF JOB OPPORTUNITIES! Experts say thousands of new men will be needed to service, repair and operate this equipment. I. T. S. home training prepares you for these important jobs.

Further illustrative is the following quotation from a form letter sent by said respondents to the students of said respondents after their enrollment in the course of study:

I was happy to have had a part in making an affirmative decision with regard to your recent application for enrollment submitted to our school. A personal recommendation forwarded to the school by our representative, together with the information given with the application were the chief factors which led to your acceptance.

You are evidently mechanically inclined and have a sincere desire to get ahead in this interesting and essential field of work.

This training can be completed in one year by the average man who devotes one or two hours a day to it. Your application has been carefully checked by our investigating committee and duly accepted.

Further illustrative are the following quotations:

Interstate Training Service works closely with manufacturers, contractors and others in the Diesel and heavy equipment field. On completion of the course you should be qualified to operate, service or repair any machine in use whether it be a small two-cylinder job or the largest marine Diesel.

It will qualify you to handle any piece of equipment from a two bottom plow to a combine logging arch or earth mover. You will learn how to figure costs and time service. Your training is prepared and supervised by practical instructors who have years of experience in the Diesel tractor and heavy equipment field. They are men of demonstrated ability and are in constant contact with the major technical industries.

I. T. S. Free Placement Service * * * This service is free. There is no charge. Even before you have finished the course we consider you eligible for many of the openings that are brought to our attention by leading employers.

Free consultation service * * * Free Revision Service * * * Plastic Binder Free.

PAR. 4. By means of the foregoing representations and others similar thereto but not specifically set out herein, respondents represent and imply to the purchasing public that students are selected and accepted on the basis of their mechanical aptitude and upon the recommendation of the school's representatives; that the training in Diesel engine equipment may be completed in 1 year with 1 or 2 hours a day devoted to the study of said course; that the school works closely with manufacturers, contractors, and others in the Diesel engine field; that students upon having completed said course are qualified to operate, service, and repair any Diesel equipment, regardless of size or kind, and are able to compile cost estimates; that many students are placed in jobs even before they have completed said course; that there is a competent faculty with years of experience in the Diesel field which is constantly keeping in touch with developments in that industry; that the placement service operated by respondents, as well as consultation and revision services and students' supplies, are free.

PAR. 5. Through statements made by sales representatives of the respondents Conard E. Green and Leon A. Crouch, said respondents have further represented and implied that the opportunities for employment, improvement, and advancement in the field of Diesel equipment operating are unusual and unlimited; that thousands of jobs are available and that students are assured or guaranteed employment upon completion of said course in well-paying positions; that students receive resident shop or on-the-job training; that students are especially selected after taking written or oral tests given by said salesmen, designated "vocational advisors" and "field engineers."

PAR. 6. Some of the representations made as hereinabove described were and are false, others are exaggerated, and all but one are actually or potentially deceptive or misleading. Students are not especially selected by the school because of mechanical aptitude but are enrolled by the salesmen and accepted by the school regardless of any specific aptitude; said salesmen are not vocational advisors or field engineers qualified to give aptitude tests, but are simply salesmen whose purpose

it is to enroll as many students as possible. Theoretical training in Diesel engines given to students without previous practical training or experience, or practical training and experience obtained while taking respondents' course of study, cannot be completed within 1 year during 1 or 2 hours per day of the student's spare time to the extent of qualifying the student to operate, service, and repair Diesel equipment and to make cost estimates. The operation, repair and maintenance of Diesel equipment requires substantial practical training under the supervision of competent teachers or mechanics in addition to theoretical study. Students are not assured or guaranteed employment. Generally speaking, the demand for respondents' graduates and students is largely limited to men with practical experience, and while there is a need for competent experienced men in the Diesel field, respondents' graduates without practical experience are not qualified for such positions and will not be employed therein, but may find employment as mechanics' helpers or apprentices. Respondents do not work closely with manufacturers, contractors, and others, but endeavor to obtain information of new developments and changes in Diesel engines, and members of the industry do not, generally speaking, participate or take an active interest in the operation of said respondents' school. Such new developments are of comparatively small importance in connection with the teaching of the fundamental principles of Diesel engines. The school has during the past 4 years employed a staff of two to four qualified instructors. Said placement, revision, and consultation services, as well as the supplies furnished to students, are not free, but the price thereof is included in the cost of the course. Students do not receive resident shop or on-the-job training, but the course is confined to lessons by correspondence. The respondents' average gross business during the past 3 years has been approximately $300,000 per year, and the average number of students enrolled per month during said period was approximately 275.

PAR. 7. Prior to July 1, 1948, respondents Conard E. Green, Leon A. Crouch, and Jacob W. Spatz in partnership, under the trade name of American Academy of Applied Science, as described in paragraph 1 hereof, in connection with the solicitation and sale of contracts for courses of study in fingerprinting, by means of advertisements, circular letters, pamphlets, postal cards and other advertising material, and through sales agents, have made numerous statements and representations of which the following are typical:

Identification and Scientific Crime Detection Fields offer unlimited opportunities for TRAINED Men and Women * * * Investigate our FREE "1001" Job Placement Plan.

A Scientific Vocational and Aptitude test is yours FREE.

At the present time a large number of established fingerprint bureaus are being enlarged * * * and hundreds of NEW agencies are in process of formation, but EVEN MORE are needed.

Authorities complain that the supply of trained personnel is woefully inadequate to keep up with the demand.

There is a position to suit almost every preference, something that will appeal to each individual aptitude * * * People who enter this new profession now can face the future with a feeling of confidence, knowing that they have prepared themselves for almost unlimited opportunities.

Salaries are considerably above average * * * and it is among the very few uncrowded vocations.

The training program of the American Academy of Applied Science is SELECTIVE. Not everyone is eligible * * * Training will be limited to those men and women who by nature, intelligence, and disposition show a marked aptitude for this particular profession.

Training will be under direct supervision of Mr. Jacob William Spatz * * * assisted by a corps of experienced and able field representatives and division chiefs.

The director with an able corps of assistants * * *

Our staff of former United States Government Intelligence and Identification men * * *

Thousands will find unusual opportunities in this field that is fascinating, pleasant, and filled with possibilities of advancement.

Work is filled with excitement and intrigue. A profession packed with thrills, color, romance.

In addition, the first quotation above was used in one mailing subsequent to January 1, 1948, but has since been discontinued.

PAR. 8. By means of the foregoing representations and others of similar tenor and effect, including statements made by salesmen, respondents represent and imply that the opportunities for employment and advancement in the field of fingerprinting and crime detection are unusual and unlimited; that the demand for trained men is very great and the supply greatly inadequate; that many fingerprint bureaus are being enlarged, many more planned and still more needed; that there is a great variety of positions in said field, suitable for any personality; that salaries are considerably above the average; that the work is pleasant and filled with thrills, excitement and intrigue; that students are selected by respondents on the basis of their aptitude and personality and the training limited to those applicants who can qualify by nature or disposition for said work; that the training is given by a staff of experts and former Government employees and identification experts; that the job placement service and aptitude tests are free; that the United States Government is in need of trained fingerprint experts and that respondents' field representatives and division chiefs assist the staff of experts in charge of the training; that fingerprint and photographic dark room equipment is furnished free to the students,

and that they will receive resident and laboratory training at the school in addition to the lessons by correspondence.

PAR. 9. The statements and representations hereinabove set out in paragraph 7 and the reasonable implications therein contained are, with two exceptions, either false or exaggerated, and are deceptive or misleading or both. There are few opportunities for employment of respondents' graduates in the field of fingerprinting and crime detection. As a rule, positions for fingerprint experts in law enforcement agencies are filled through promotion of men already in the service of said agencies and who have had some practical training; and while some law enforcement agencies may establish new departments for fingerprinting, such additional or new bureaus are not established to the extent represented by respondents; in fact, many police and sheriff departments prefer to use the facilities of the Federal Bureau of Investigation for the identification of fingerprints. Neither respondents nor their sales agents select students on the basis of their aptitude or personality, nor are any scientific or vocational aptitude tests given to prospective purchasers of said course; in fact, respondents furnish leads to their salesmen and accept all persons who enroll. Remuneration in the field of fingerprinting and crime detection is not considerably above the average for comparable work in other vocations and trades. Not all persons are qualified to engage in the work of fingerprinting which requires patience, concentration, and a capacity for detail; and in order to become a qualified fingerprint expert, a substantial amount of practical training and experience is necessary. The large majority of persons engaged in the work of fingerprint identification do not come in contact with the dramatic phases of crime detection as described in respondents' advertising literature, but perform their work in a routine and uneventful manner and surroundings. The United States Government does not hire respondents' graduates because of the training received in said course; after having met Civil Service requirements they are trained in the Government's own training school. Neither the placement service nor the fingerprinting and photographic equipment are free, but the price thereof is included in the cost of said course. Respondents' salesmen are not division chiefs and field representatives and the use of said terms in connection with the sale of a course in fingerprinting and crime detection tends to create the misleading impression that said salesmen hold some official position or have some professional standing or that respondents' school is a more substantial organization than it is in fact. Respondents do not maintain a large staff or corps of former Government experts to teach said subjects; the teaching staff has never exceeded

three persons, including the director. All three have held positions as qualified identification experts with the United States Government. The work of the school is done mainly, but not entirely, by correspondence. Students have been privileged at all times to receive personal instruction at school headquarters and frequently have taken advantage of that privilege. Said personal instruction, when given, has been at no extra cost to the student.

PAR. 10. Prior to July 1, 1948, and from July 1, 1948, until September 1948, respondents Conard E. Green and Leon A. Crouch, for the purpose of collecting their delinquent accounts, have sent out collection letters in the name of Western Adjustment Bureau, thereby representing and implying that said Western Adjustment Bureau was an independent organization engaged in the business of collecting delinquent accounts generally, whereas in fact such bureau was operated by respondents during the times specified solely for the purpose of collecting their own delinquent accounts, which fact was not disclosed by respondents. Since July 1, 1948, respondent Spatz has not used the name of the Western Adjustment Bureau in connection with his operation as American Academy of Applied Science, and since September 1948, respondents Conard E. Green and Leon A. Crouch have fully disclosed the fact that Western Adjustment Bureau is operated as a division of Interstate Training Service.

CONCLUSION

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

The complaint in this proceeding also charged (in par. 8) that the use by the respondents of the trade name, American Academy of Applied Science, tends to mislead members of the public into the belief that respondents' business is a national, nonprofit organization devoted to the investigation and consideration of scientific problems and the advancement of science generally. The stipulations of fact on the basis of which the case is being disposed of do not substantiate this charge. It does appear, however, that respondent Jacob W. Spatz, in support of a motion for dismissal of this allegation and in order to avoid any possible misunderstanding that may otherwise result from the use of the trade name, American Academy of Applied Science, has expressly agreed that henceforth he will not use said name on advertising material, correspondence or courses of instruction, unless there is printed or typed in bold type and in juxtaposition therewith the words "A Correspondence Course," or a substantial equivalent thereof,

clearly and fully indicating that the instruction given by respondent Spatz under said name is correspondence instruction. In view of this agreement, paragraph 8 of the complaint is being dismissed.

ORDER

It is ordered, That Conard E. Green and Leon A. Crouch, individually and as copartners trading under the name of Interstate Training Service, or trading under any other trade or partnership name, and their agents, representatives, and employees, directly or indirectly, through any corporate or other device, in connection with the sale, offering for sale or distribution of courses of study and instruction in Diesel training and training in heavy equipment and gasoline engines, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That students are selected and accepted on the basis of their mechanical aptitude or upon the recommendation of respondents' representatives;

2. That the training in Diesel engine equipment may be completed in 1 year with 1 or 2 hours a day devoted to the study of the course;

3. That respondents work closely with manufacturers, contractors or others in the Diesel engine field;

4. That students, after completion of respondents' course, are qualified to operate, service, and repair any Diesel equipment, regardless of size or kind, and are able to compile cost estimates;

5. That students are assured or guaranteed employment after completion of respondents' course;

6. That the placement, consultation, and revision services and students' supplies furnished by respondents are free;

7. That the opportunities for employment, improvement, and advancement in the field of Diesel equipment operation are unusual and unlimited for those who take respondents' course without many years of previous practical experience in that field;

8. That students receive resident shop or on-the-job training;

9. That respondents' salesmen are vocational advisors or field engineers, or that they are otherwise qualified to give prospective students aptitude tests;

10. That the Western Adjustment Bureau, or any other name used by respondents, or any of them, for the purpose of collecting money due them, is a separate or independent organization.

It is further ordered, That Conrad E. Green, Leon A. Crouch, and Jacob W. Spatz, individually or as partners, doing business under the name of the American Academy of Applied Science, or any other

trade or partnership name, and their agents, representatives and employees, directly or indirectly, through any corporate or other device, in connection with the sale, offering for sale, or distribution of courses of study and instruction in fingerprinting or fingerprinting science, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That the opportunities for employment and advancement in the field of fingerprinting and crime detection are unusual and unlimited for those who take respondents' course;

2. That the demand for men trained merely in courses such as respondents is great and the supply inadequate;

3. That many fingerprint bureaus are being enlarged and many more planned;

4. That there is a position to suit every preference in the fingerprinting field or something which will appeal to every aptitude;

5. That salaries in the fingerprinting field are considerably above the average;

6. That fingerprinting work is filled with excitement and intrigue or packed with thrills, color, or romance;

7. That students are selected by respondents on the basis of aptitude and personality, or that the training is limited to those applicants who can qualify by nature or disposition for the work;

8. That the placement service or the equipment furnished by respondents is free to those taking the course;

9. That the United States Government is in need of those who take respondents' course;

10. That respondents employ "field representatives" or "division chiefs" other than salesmen.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to respondent Interstate Training Service, an Oregon corporation, and as to respondents Conard E. Green and Leon A. Crouch solely in their capacities as officers of said corporation.

It is further ordered That paragraph 8 of said complaint be, and it hereby is, dismissed as to all the respondents.

It is further ordered That Conard E. Green, Leon A. Crouch, and Jacob W. Spatz shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Complaint

IN THE MATTER OF
LEO F. STEADLE

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

Docket 5789. Complaint, June 27, 1950—Decision, Dec. 5, 1950

Where an individual engaged in the interstate sale and distribution of a device designated "Kingpin Air Valve" for use as a replacement for the standard idling pin in the carburetors of gasoline motors; through statements in circulars and advertisements in newspapers and periodicals of general circulation—

(*a*) Falsely represented that the use of his said device caused gasoline engines to start more easily and quickly, and increased gasoline mileage, saved gasoline, increased engine power and resulted in smoother engine performance; and

(*b*) Falsely represented that it reduced formation of carbon in an engine, resulted in higher motor efficiency, improved the air and gasoline ratio, resulted in increased vacuum pressure and better vaporization of gasoline, and eliminated rocking and rolling of engines;

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

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

Before *Mr. James A. Purcell*, trial examiner.
Mr. Jesse D. Kash for the Commission.

COMPLAINT

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

PARAGRAPH 1. Respondent Leo F. Steadle is an individual with his principal place of business located at 247 Butler Street, Kingston, Pa.

PAR. 2. Respondent is now and for more than one year last past has been engaged in the sale and distribution of a device designated as "Kingpin Air Valve" to be used as a replacement for the standard or conventional type of idling pin in the carburetors of gasoline motors.

In the course and conduct of his business the respondent causes said device, when sold, to be transported from his place of business in the

State of Pennsylvania to the purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said device in commerce among and between the various States of the United States. His volume of business in said device has been substantial.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of his said device in commerce, respondent has made and has authorized the making of certain statements and representations regarding said device by means of circulars and advertisements inserted in newspapers and periodicals circulated generally among the purchasing public. Typical representations are as follows:

Quicker starts in coldest weather.
Gas Saving Invention.
Oil goes a longer way.
Easier Starting—More Power.
Smoother Running.
Greater Gasoline Mileage.
Less Carbon Formation * * *

Dynamometer Tests prove that, at all motor speeds, the Kingpin increases horsepower and motor efficiency.

Reason—a finer ratio of gasoline and air means sharper explosion, therefore more power.

Gas Analyser Tests prove that the increased Fuel-Air ratio steps up motor efficiency. Reason, the improved ratio afforded by Kingpin reduces waste occasioned by imperfectly mixed gasoline.

Vacuum Gauge Tests prove that Kingpin increases vacuum pressure.

Rocking and Rolling is eliminated by the Kingpin, thus providing a more smoothly idling motor.

PAR. 4. Through the use of the foregoing statements and representations and others of the same import, but not specifically set out herein, respondent represented that the use of his said device causes gasoline engines to start easier and quicker; that it increases gasoline mileage, saves gasoline, decreases oil consumption, increases engine power, results in smoother engine performance, reduces formation of carbon in an engine, results in higher motor efficiency, improves the air-gas ratio, results in increased vacuum pressure, better vaporization of gasoline and eliminates rocking and rolling of engines.

PAR. 5. The foregoing representations are false, misleading and deceptive. In truth and in fact, the use of respondent's said device will not cause gasoline engines to start quicker or easier. Its use will not increase gasoline mileage, save gasoline or decrease oil consumption. Engine power will not be increased by the use of the device nor will smoother engine performance result therefrom. It will not reduce the formation of carbon in the engine or produce higher motor

efficiency. No improvement in the air-gas ratio, vacuum pressure or vaporization of gasoline will result from its use. It will not eliminate or lessen the rocking and rolling of an engine.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading statements and representations disseminated as aforesaid in connection with the offering for sale and sale of his device in commerce has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and into the purchase of substantial quantities of such device in commerce, because of such erroneous and mistaken belief.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission, on June 27, 1950, issued and subsequently served its complaint in this proceeding upon the respondent, Leo F. Steadle, an individual, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondent's answer thereto, the trial examiner granted a motion of the respondent for permission to withdraw his answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly received and filed in the office of the Commission. On September 20, 1950, the trial examiner filed his initial decision, which was served on the respondent on September 30, 1950.

The Commission, having reason to believe that the initial decision was deficient in certain material respects, subsequently placed this case on its own docket for review, and on October 24, 1950, it issued and thereafter served upon the parties, its order affording the respondent an opportunity to show cause why said initial decision should not be altered in the manner and to the extent shown in a tentative decision of the Commission attached to said order. Respondents not having appeared in response to the leave to show cause, this proceeding regularly came on for final consideration by the Commission upon the record herein on review; and the Commission, having

duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order, the same to be in lieu of the initial decision of the trial examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Leo F. Steadle is an individual, with his principal place of business at 247 Butler Street, Kingston, Pa.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of a device designated as "Kingpin Air Valve" to be used as a replacement for the standard or conventional type of idling pin in the carburetors of gasoline motors.

In the course and conduct of his business the respondent caused said device, when sold, to be transported from his place of business in the State of Pennsylvania to the purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said device in commerce among and between the various States of the United States. His volume of business in said device has been substantial.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of his said device in commerce, respondent has made and has authorized the making of certain statements and representations regarding said device by means of circulars and advertisements inserted in newspapers and periodicals circulated generally among the purchasing public. Typical representations are as follows:

Quicker starts in coldest weather.

Gas Saving Invention.

Oil goes a longer way.

Easier Starting—More Power. Smoother Running. Greater Gasoline Mileage. Less Carbon Formation. * * *

Dynamometer Tests prove that, at all motor speeds, the Kingpin increases horsepower and motor efficiency. Reason—a finer ratio of gasoline and air means sharper explosion, therefore, more power.

Gas Analyser Tests prove that the increased Fuel-Air ratio steps up motor efficiency. Reason, the improved ratio afforded by Kingpin reduces waste occasioned by imperfectly mixed gasoline.

Vacuum Gauge Tests prove that Kingpin increases vacuum pressure.

Rocking and Rolling is eliminated by the Kingpin, thus providing a more smoothly idling motor.

PAR. 4. Through the use of the foregoing statements and representations, and others of the same import but not specifically set out

herein, respondent represented that the use of his said device causes gasoline engines to start easier and quicker; that it increases gasoline mileage, saves gasoline, decreases oil consumption, increases engine power, results in smoother engine performance, reduces formation of carbon in an engine, results in higher motor efficiency, improves the air-gas ratio, results in increased vacuum pressure, better vaporization of gasoline, and eliminates rocking and rolling of engines.

PAR. 5. The foregoing representations are false, misleading, and deceptive. In truth and in fact, the use of respondent's said device will not cause gasoline engines to start quicker or easier. Its use will not increase gasoline mileage, save gasoline, or decrease oil consumption. Engine power will not be increased by the use of the device, nor will smoother engine performance result therefrom. It will not reduce the formation of carbon in the engine or produce higher motor efficiency. No improvement in the air-gas ratio, vacuum pressure, or vaporization of gasoline will result from its use. It will not eliminate or lessen the rocking and rolling of an engine.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations disseminated as aforesaid in connection with the offering for sale and sale of his device in commerce has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and into the purchase of substantial quantities of such device in commerce, because of such erroneous and mistaken belief.

CONCLUSION

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

ORDER

It is ordered, that the respondent, Leo F. Steadle, an individual, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of his automotive device designated as "Kingpin Air Valve," or any other substantially similar device, whether sold under the same name or any other name, do forthwith

cease and desist from representing, directly or by implication, that the use of said device:

(*a*) Will cause gasoline engines to start quicker or easier.

(*b*) Will save gasoline, increase gasoline mileage, or decrease oil consumption.

(*c*) Will increase engine power or result in smoother engine performance.

(*d*) Will reduce the formation of carbon in engines or produce higher motor efficiency.

(*e*) Will improve the fuel-air ratio, vacuum pressure, or vaporization of gasoline.

(*f*) Will eliminate or lessen the rocking or rolling of an engine.

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

Order

IN THE MATTER OF

ADA J. ALBERTY ET AL. TRADING UNDER THE NAMES OF ALBERTY FOOD PRODUCTS, ETC.

MODIFIED ORDER TO CEASE AND DESIST

Docket 5101. Order, December 13, 1950

Order modifying original order in *Alberty Food Products, etc.*, February 4, 1948, 44 F. T. C. 475, 515, in connection with the offer, sale or distribution of respondent's various preparations, in accordance with the action of the Court of Appeals for the District of Columbia in *Ada J. Alberty et al.* v. *Federal Trade Commission*, March 20, 1950, 182 F. (2d) 36, and as below set forth—

So as to eliminate from said original order, as regards respondents' Oxorin Tablets, Zen, and Vitamin A. Shark Liver Oil, such additional requirements as that the advertisement also contain such an affirmative statement as "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,

So as to delete from said original order such a provision, as respects respondents' "Alberty's Phospho-B," as that, if respondents claim that said product possesses any therapeutic value in the treatment of sleeplessness, etc., they must expressly limit such claims to "claims of value made for the preparation under the principles of the Homeopathic School of Medicine."

Mr. Randolph W. Branch for the Commission.

McFarland & Sellers, of Washington, D. C., for respondents, generally, and along with—

Hauerken, Ames & St. Clair, of San Francisco, Calif., for Helen M. Alberty Hackworth; and

O'Connor & O'Connor, of Los Angeles, Calif., for Florence M. Alberty St. Clair.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent Ada J. Alberty, and a stipulation as to the facts entered into by and between Ada J. Alberty, Helen M. Alberty Hackworth, Florence M. Alberty St. Clair, Harry R. Alberty, Margaret M. Alberty Quinn, and Kenneth Hackworth, and Daniel J. Murphy, then assistant chief trial counsel for the Commission, which stipulation provided, among other things, that the statement of facts contained therein might be taken as the facts in this proceeding and that the Commission might make its report, stating its findings as to the facts, including inferences

which it might draw from the stipulated facts, and its conclusion based thereon, and enter its order disposing of the proceeding without further evidence or other intervening procedure (the filing of a report or recommended decision by the trial examiner and the filing of briefs and presentation of oral argument having been expressly waived), and in which stipulation the aforesaid parties specifically waived the nonjoinder in the complaint of Helen M. Alberty Hackworth, Florence M. Alberty St. Clair, Harry R. Alberty, Margaret M. Alberty Quinn, and Kenneth Hackworth as parties respondent, and expressly agreed that said complaint should be deemed as amended to charge all of them as respondents with respect to the acts and practices set forth therein, and in which said parties other than Ada J. Alberty waived service of the complaint upon them and waived their right to file answers thereto; and the Commission, having made its findings as to the facts and its conclusion that said respondents had violated the provisions of the Federal Trade Commission Act, on February 4, 1948, issued its order to cease and desist.

Said order to cease and desist having been modified by the United States Court of Appeals for the District of Columbia in the manner and to the extent set forth in the Court's opinion in the case of *Ada J. Alberty, et al., Petitioners*, v. *Federal Trade Commission, Respondent:*

It is ordered that the respondents, Ada J. Alberty, Helen M. Alberty Hackworth, Florence M. Alberty St. Clair, Harry R. Alberty, Margaret M. Alberty Quinn, and Kenneth Hackworth, individually and trading under the names Alberty Food Products, The Alberty Food Products, Alberty Products, Alberty Products Sales Co., The Cap-Lone Co., and Cheno Products, or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondents' products designated "Ri-Co Tablets"; "Alberty's Vitamin-Mineral Capsules"; "Alberty's Wheat Germ"; "Alberty's Ointment"; "Oxorin Tablets"; "Cap-Lone Tablets"; "Alberty High Potency B Complex"; "Alberty Wheat Germ Oil"; "Alberty Garlic and Vegetable Oil Perles"; "Vimol Tablets"; "Alberty's Vitamin A-Shark Liver Oil"; "Alberty's Vitamin B Complex"; "Alberty Phospho-B" (also known as "Phloxo-B"); "Zen"; "Alberty's Sabinol"; and "Ad-a-Min Capsules," or any other products of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce,

as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication:

(*a*) That the preparation "Ri-Co Tablets" constitutes an adequate or competent treatment for arthritis, rheumatism, gout or "rheumatic gout"; or that said preparation will eliminate uric acid from the system; provided, however, that nothing herein shall be construed as prohibiting the representation that according to the principles of the homeopathic school of medicine the preparation is of value in ameliorating the symptoms of muscular or ligamentous pain and stiffness due to arthritis or rheumatism, except when such symptoms are accompanied by a febrile condition.

(*b*) That the preparation "Alberty's Ointment" is of therapeutic value in the treatment, either constitutional or local, of arthritis, rheumatism, gout or "rheumatic gout," or in the relief of pain, swelling, stiffness, or any other symptom incident to arthritis, rheumatism or gout.

(*c*) That the preparation "Sabinol" is an adequate or competent treatment for diseases or ailments of the kidneys; that said preparation will flush the kidneys; that it possesses any therapeutic value in the treatment of circles about the eyes, dull aching feeling across the back, sharp pains in the kidneys, frequent urination during the night, spots before the eyes, swelling of the feet, ankles, or lower limbs, puffiness about the eyes, or lack of vitality; or that it is an eliminant of uric acid from the system; provided, however, that nothing herein shall be construed as prohibiting the representations that according to the principles of the homeopathic school of medicine (1) the preparation is of value in relieving the symptoms of pain or discomfort due to gravel or stone in the kidneys or to spasms of the ureters, or (2) there may be some elimination of uric acid from the system incident to the use of the preparation.

(*d*) That the preparation "Oxorin Tablets" will have any therapeutic effect upon the blood or the red corpuscles thereof, except in cases of simple iron deficiency anemia; or that said preparation will relieve, correct, or have any beneficial effect upon the condition of lassitude characterized by such expressions as "weariness," "tiredness," "weakness," "lack of energy," or "general run down condition," unless such representation be expressly limited to symptoms or conditions due to simple iron deficiency anemia.

(*e*) That three tablets of the preparation "Zen" will provide an individual with 15 grains of iron, or with any amount of iron in excess of approximately 2½ grains; that said preparation is a dependable blood building tonic, or that it will be beneficial in any respect to the

blood in excess of its value in the treatment of simple iron deficiency anemia; or that said preparation will be effective in the restoration of energy in those who lack it, unless such representation be expressly limited to cases of lack of energy due to simple iron deficiency anemia.

(*f*) That the preparation "Cap-Lone Tablets" constitutes a competent or effective treatment for or is of therapeutic value in the relief of pyorrhea or constipation; that said preparation will regulate the bowels or purify the blood; that it is beneficial to the skin, brain, nerves, stomach, intestines, or the glands of the body; or that it possesses any value as a restorative or tonic.

(*g*) That the administration of the preparation "Cap-Lone Tablets," as recommended by respondents, is effective in relieving or substantially improving any of the physiological conditions or manifestations arising from a deficiency of the minerals calcium or phosphorus; or that such use of said preparation provides any benefits whatever in excess of serving as a dietary supplement in supplying quantities of the minerals calcium and phosphorus.

(*h*) That the preparation "Garlic and Vegetable Oil Perles" aids in the digestion or absorption of food or acts as an "intestinal disinfectant"; that said preparation constitutes a competent or effective treatment for hypertension, high blood pressure, or any of the symptoms of hypertension; or that it possesses any therapeutic value in the treatment of dyspepsia or catarrhal affections of the digestive tract or other bowel inflammations in excess of a carminative effect when such conditions result in gas or distention due thereto; provided, however, that nothing herein shall be construed as prohibiting the representation that according to the principles of the homeopathic school of medicine said preparation possesses laxative properties due to its action on the mucous membranes of the digestive tract, resulting in increased peristalsis.

(*i*) That the preparation "Vitamin A Shark Liver Oil" will

1. Benefit the conditions of sterility, eczema or inflamed membranes of the nose, throat, lungs or the urinary or reproductive organs;

2. Be of therapeutic value in the treatment or prevention of kidney stones;

3. Aid or benefit the liver, kidneys, nerves, or glandular system;

4. Avert or benefit the conditions, in children, of susceptibility to colds, children's diseases, poor eyesight, or the delay in or impairment of healthy development of teeth and bones;

5. Benefit the conditions of dry skin, skin eruptions on the body, or inflamed membranes of the eye, unless such representation be expressly limited to cases in which such conditions are caused by a deficiency of Vitamin A;

6. Afford any relief from "eye strain" or susceptibility of the eyes to fatigue, unless such representation be expressly limited to "eye strain" or susceptibility of the eyes to fatigue associated with the condition of "night blindness" caused by a deficiency of Vitamin A;

7. Increase vigor or vitality, or give a feeling of well being, or aid the skin or eyes, unless such representation be expressly limited to cases in which vigor, vitality or well being has been impaired by a deficiency of Vitamin A or in which the condition or functioning of the skin or eyes is a sign or manifestation of a deficiency of Vitamin A;

8. Supply energy to children, unless such representation be expressly limited to cases of lack of energy caused by a deficiency of Vitamin A.

(*j*) That the following symptoms or conditions, or any of them, are attributable to a deficiency of vitamin A, or that said symptoms or conditions will be benefited by the use of vitamin A: dry skin (except zerosis), common eruptions on the skin such as pimples, boils, and blackheads, "eye strain" or susceptibility of the eyes to fatigue (except insofar as those conditions may be associated with "night blindness"), sterility, eczema, inflamed membranes of the nose, throat, lungs, or urinary or reproductive organs, kidney stones, the improper or inadequate functioning of the liver, kidneys, nerves, or glandular system, and, in children, susceptibility to colds, children's diseases, poor eyesight, and delay in or impairment of healthy development of teeth or bones.

(*k*) That the preparation "Alberty's Phospho B," or "Phloxo B," possesses any therapeutic value in the treatment of excitability, upset feeling, or poor memory; or that said preparation possesses any theraupeutic value in the treatment of sleeplessness, nervousness, irritability or sensitiveness, unless such representation be expressly limited to claims of value made for the preparation in the treatment of sleeplessness, nervousness, irritability or sensitiveness in cases in which these symptoms are due to anemia or asthenia.

(*l*) That the administration of the preparation "Alberty's Phospho B," or "Phloxo B," as recommended by respondents, is effective in relieving or substantially improving any of the physiological conditions or manifestations arising from a deficiency of Vitamin B_1 in the human body; or that such use of said preparation provides any benefits whatever in excess of the value claimed for it in the treatment of the symptoms of anemia and asthenia and its value in averting the development of a deficiency of Vitamin B_1.

(*m*) That the preparations "Alberty's Vitamin B Complex," "Alberty's High Potency B Complex" and "Vimol," or any of them

1. Are beneficial to persons whose thyroid glands are over active.

2. Will relax the nerves or induce sleep;

3. Will avert or postpone old age or its consequences;

4. Will "tone" the muscles or restore vitality;

5. Will assure the user of proper digestion, sound nerves, good intestinal activity, or regular bowel movements;

6. Will protect one against nervous fatigue or exhaustion due to overwork, worry, mental strain, acidosis, chronic diseases, sexual excesses or improper functioning of the ductless glands, or other causes;

7. Constitute remedies or competent or effective treatments for nervousness, excitability, insomnia, arthritis, neuritis, gastro-intestinal troubles, constipation, piles, vomiting in pregnancy, improper lactation in nursing mothers, retarded growth in children, pellagra, diabetes, anemia, nervous disorders, absence of appetite, or alcoholic polyneuritis; or

8. Possess significant tonic properties.

(*n*) That the administration of the preparations "Alberty's Vitamin B Complex," "Alberty's High Potency B Complex," or "Vimol," as prescribed by respondents, is effective in relieving or substantially improving any of the physiological conditions or manifestations arising from a deficiency of one or more components of the Vitamin B complex in the human body; or that such use of any of said preparations will provide any benefits whatever in excess of the following:

1. That "Alberty's Vitamin B Complex" will avert the development of a deficiency of Vitamin B_1 and will serve as a dietary supplement in supplying quantities of Vitamin B_2;

2. That "Alberty's High Potency B Complex" will avert the development of a deficiency of Vitamins B_1 and B_2;

3. That "Vimol" will serve as a dietary supplement in supplying quantities of vitamin B_1.

(*o*) That the following symptoms or conditions, or any of them, are attributable to a deficiency of Vitamin B, or that said symptoms or conditions will be benefited by the use of Vitamin B: failure of the brain to function efficiently, arthritis, neuritis, except polyneuritis, hemorrhoids, and premature old age.

(*p*) That the Vitamin B complex is familiarly or appropriately referred to as the "Youth Vitamin" or the "Modern Tonic Vitamin."

(*q*) That the preparations "Alberty's Vitamin-Mineral Capsules" and "Ad-a-Min Capsules," or either of them, will:

1. Assure the user of abounding health or vigor, or increase resistance to disease;

2. Avert pellagra, cataracts or skin diseases;

3. Enable barren women to conceive;

4. Improve the functioning of the liver, kidneys, nerves, glandular system, muscles or intestines;

5. Benefit the skin or teeth of adults or aid in the treatment of gingivitis, or

6. Improve the metabolism of the body.

(*r*) That the administration of the preparations "Alberty's Vitamin-Mineral Capsules" or "Ad-a-Min Capsules," as recommended by respondents, is effective in relieving or substantially improving any of the physiological conditions or manifestations arising from a deficiency of any of the Vitamins A, B1, C, D, or G, in the human body; or that such use of either of said preparations will provide any benefits whatever in excess of the following:

1. That "Alberty's Vitamin-Mineral Capsules" will avert the development of a deficiency of Vitamin D and will serve as a dietary supplement in supplying quantities of Vitamins A, B1, C and G and the minerals iron, calcium, phosphorus and iodine;

2. That "Ad-a-Min Capsules" will avert the development of a deficiency of Vitamins A and D and will serve as a dietary supplement in supplying quantities of Vitamins B1, C and G and the minerals iron, calcium, phosphorus and iodine.

(*s*) That the preparations "Alberty's Wheat Germ" and "Alberty's Wheat Germ Oil," or either of them, will promote mental alertness, improve the memory, stimulate sex desire, increase reproductive power, increase the size or firmness of testicles, increase vigor or muscular tone, prevent miscarriages, render barren women fertile, or provide a cure for acne vulgaris.

(*t*) That Vitamin E is recognized or appropriately referred to as the "Reproduction Vitamin," "Master Vitamin" or the "Vitamin of General Fitness."

(*u*) That all persons will be benefited, physically or mentally, by taking all or any of respondents' aforesaid preparations.

(*v*) That it is necessary for a person to receive daily adequate amounts of essential nutritional elements.

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 preparations, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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

IN THE MATTER OF

JOSEPH ROSENBLUM ET AL. TRADING AS MODERN MANNER CLOTHES

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

Docket 5263. Complaint, Jan. 2, 1945—Decision, Dec. 19, 1950

Where two partners engaged in the interstate sale and distribution of women's suits, dresses, and similar articles, and in employing agents or sales persons to sell their said merchandise to the buying public—

Represented through correspondence and circulars to prospective agents whom they had first contacted through such advertisements as "WE START YOU IN BUSINESS FIFTH AVENUE NEW YORK FIRM DESIRES WOMEN TO SELL DRESSES, SUITS, SPORTSWEAR * * *," etc.; that if such prospects became their representatives, they would receive, in addition to regular commissions, free dresses, coats, suits and other articles of wearing apparel;

The facts being that said partners did not give said dresses or other articles free, but required the payment of a valuable consideration on the part of said agents in the form of service and the sale of a certain number of articles of wearing apparel, and did not disclose said condition in the initial contact and until in later correspondence;

With capacity and tendency to mislead and deceive prospective distributors of their products into the erroneous belief that they would receive some of said merchandise free:

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

As respects charges that respondents had misrepresented the fiber content of certain of the garments sold by them and had misrepresented that the styles of wearing apparel featured in certain magazines were their products, and that said advertisements were placed in said fashion magazines by them, the Commission was of the opinion and found that such charges were not sustained by the evidence.

As respects a further charge in the complaint that respondent had violated the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, it appearing that the improper labeling which formed the basis for the charge was discontinued prior to the issuance of the complaint, and also that said rules and regulations had been amended since the complaint was issued so as to permit the use of labels similar to those formerly appearing on garments sold by the respondents: corrective action with respect to said charge was unwarranted.

Before *Mr. Arthur F. Thomas* and *Mr. George Biddle*, trial examiners.

Mr. DeWitt T. Puckett, *Mr. George M. Martin*, and *Mr. Randolph W. Branch* for the Commission.

Mr. Copal Mintz, of New York City, for respondents.

COMPLAINT [1]

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Joseph Rosenblum, an individual trading and doing business as Modern Manner Clothes, hereinafter referred to as respondent, has violated the provisions of said acts, and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Joseph Rosenblum, is an individual trading and doing business as Modern Manner Clothes, with his office and principal place of business at 315 Fifth Avenue, New York, N. Y. He is now, and for more than one year last past has been, engaged in the sale and distribution of wearing apparel, such as women's suits, dresses, and similar articles.

The respondent has caused and is now causing some of said products when sold by him to be transported from his said place of business in the State of New York to purchasers thereof located in various States of the United States and in the District of Columbia. The

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[1] The Commission on January 14, 1947, issued an order amending complaint, as follows:

"This matter coming on to be heard by the Commission upon the request of counsel supporting the complaint that the complaint herein be amended by including Sadie Rosenblum as a party respondent, and it appearing that the respondent Joseph Rosenblum and the said Sadie Rosenblum have consented and agreed that she be made a party respondent in the matter without the issuance and service of formal amended complaint or notice with respect thereto and have further consented and agreed that the testimony heretofore taken in the case shall apply to the said Sadie Rosenblum and have the same force and effect as if she had been named a party respondent in the first instance and had been duly served with a copy of complaint and given due notice of all hearings and other proceedings in the matter, and the Commission having duly considered the matter and the record herein and being now fully advised in the premises:

"*It is ordered*, That the complaint herein be, and the same hereby is, amended by including Sadie Rosenblum as a party respondent in this proceeding and designating her as a copartner with Joseph Rosenblum trading and doing business as Modern Manner Clothes.

"*It is further ordered*, That the testimony heretofore taken in the case shall apply to the said Sadie Rosenblum and have the same force and effect as if she had been named a party respondent in the first instance and had been duly served with a copy of complaint and given due notice of all hearing and other proceedings in the matter."

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

PAR. 2. In the course and conduct of his business as aforesaid, the respondent employs agents or sales persons to canvass, solicit, sell and distribute his said merchandise to members of the buying public in the various States of the United States and in the District of Columbia. Respondent contacts said agents by means of advertisements inserted in the want ad columns of newspapers. Typical of said want ads is the following:

WE START YOU IN BUSINESS

Fifth Avenue, New York firm desires women to sell dresses, coats, sportswear, negligee, lingerie featured in "Vogue" and "Madamoiselle." Also children's garments. Good commission. Sample book free. Write Modern Manner * * * New York.

PAR. 3. After contact with prospective agents has been made as aforesaid, the respondent represents to them by means of correspondence that if they become his representatives they will receive, in addition to their regular commissions, free dresses, coats, suits, and other articles of wearing apparel. Among and typical of the statements and representations made by the respondent in his correspondence as aforesaid are the following:

Moreover, in addition to your regular profits you will get your own dresses, coats and suits—free.

Your own Dresses Free. Modern Manner enables you to have all your personal dresses, suits, coats, lingerie Free. Every month Modern Manner offers a special bonus to active representatives. Practically every Modern Manner representative earns at least from 10 to 12 dresses a season without any cost to her.

By getting all these free bonus dresses, you have a complete wardrobe of smart Fifth Avenue styles.

You, too, have a most marvelous opportunity to get your new wardrobe.

Here is our special offer—

SELL 12 dresses and GET a $5.00 dress FREE
15 dresses and GET a $6.00 dress FREE
20 dresses and GET a $9.00 dress FREE
25 dresses and GET a $12.00 dress FREE
30 dresses and GET a $15.00 dress FREE
(or 3—$5.00 dresses)

If such persons become respondent's agents, they are supplied with order blanks, samples of materials from which purchasers make their selections, and other data to be used in connection with the sale of respondent's merchandise.

PAR. 4. Through the use of the aforesaid representations and others of similar import not specifically set out herein, the respondent represents to his agents and prospective agents that in addition to their regular profits or commissions they will receive dresses, coats, suits and other articles free.

PAR. 5. The aforesaid representations and statements made by respondent are false, misleading and deceptive. In truth and in fact the garment or garments referred to are not given free by respondent but require the payment of a valuable consideration on the part of the agent or sales person in the form of service and the sale of a certain number of articles of wearing apparel by the said agent or sales person before the same is delivered to the agent or sales person. The said condition and requirement to the procurement of said garments is not disclosed in the initial advertisement by which contact is first made but is made in later correspondence with prospective distributors.

PAR. 6. The use by the respondent of the aforesaid false, deceptive, and misleading statements and representations, disseminated as aforesaid, with respect to the articles of merchandise purported to be given free by respondent to such distributors has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial number of prospective distributors of respondent's products into the erroneous and mistaken belief that such false statements and representations are true and that they will receive some of respondent's merchandise free.

PAR. 7. In the course and conduct of his aforesaid business and for the purpose of aiding his agents in selling his said products, the respondent has used and is now using various statements and representations which purport to be descriptive of his various products which representations are inserted in sales kits and other literature sent to his distributors. Among and typical of such statements and representations found in said sales kits and other literature are the following:

Vogue says, "the overblouse is back."

Featured in Mademoiselle.

Featured in Mademoiselle and Glamour.

Tell them that the fashions you have are appearing in such magazines as Mademoiselle, Vogue and Harpers.

As seen in Vogue and Mademoiselle.

Modern Manner Clothes is the only company in direct selling that specializes in styles that are frequently featured and advertised in fashion magazines such as Mademoiselle and Vogue.

If you have a chance, please look through the current issues of Mademoiselle, or Vogue. You will see many of our styles featured in those magazines.

Lacy Wool.

100% Wool Shetland.

PAR. 8. Through the use of the aforesaid statements and representations, the respondent has represented that the said wearing apparel designated as "Lacy Wool" is 100 percent Wool; that the styles of wearing apparel featured in the fashion magazines Vogue and Mademoiselle are his products and that said advertisements are placed in said magazines by respondent, and that said wearing apparel designated as Shetland is composed of the wool of Shetland sheep.

PAR. 9. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact the garments designated as "Lacy Wool" are not composed of 100 percent wool but are composed of 50 percent rayon and 50 percent wool; respondent does not advertise in the magazines Vogue or Mademoiselle or in any other well known and nationally circulated women's magazines, and the garments designated as Shetland are not in fact composed of the wool of Shetland sheep.

PAR. 10. The use by the respondent of the aforesaid false, misleading, and deceptive representations and statements with respect to his said wearing apparel, as alleged in Paragraph Seven, has had and now has the tendency and capacity to mislead and deceive and has misled and deceived purchasers and prospective purchasers into the erroneous and mistaken belief that such representations are true and causes a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of said wearing apparel.

PAR. 11. Among the products offered for sale and sold by the respondent, in commerce as aforesaid, are some which are composed wholly or in part of rayon.

PAR. 12. Rayon is a chemically manufactured fiber which may be manufactured so as to simulate natural fibers in texture and appearance and fabrics manufactured from such rayon fibers simulate natural fiber fabric in texture and appearance. Garments manufactured from such rayon fabrics have the appearance and feel of natural fiber garments, and many members of the purchasing public are unable to distinguish between such rayon garments and garments manufactured from natural fibers. Consequently, such rayon garments are readily accepted by some members of the purchasing public as natural fiber products.

PAR. 13. Products manufactured from silk, the product of the cocoon of the silk worm, have for many years been held and still are held in great public esteem because of their outstanding quality and there has been for many years and still is a public demand for such products.

PAR. 14. The respondent sells in commerce, as aforesaid, garments composed wholly or in part of rayon, which garments simulate in texture and appearance garments composed wholly or in part of silk, the product of the cocoon of the silk worm. Respondent does not inform the purchasing public of the fact that the garments which resemble silk in texture and appearance are made wholly or in part of rayon and not of silk.

PAR. 15. The practice of the respondent in offering for sale and selling said garments manufactured wholly or in part of rayon which resemble in texture and appearance garments manufactured from silk, in commerce as aforesaid, without disclosing in words familiar to the purchasing public the fact that the said garments are composed wholly or in part of rayon, is misleading and deceptive and many members of the purchasing public are thereby led to believe that said garments are composed wholly or in part of silk, the product of the cocoon of the silk worm.

PAR. 16. Silk fibers have long been woven into a variety of fabrics, and distinctive terms well known to and understood by the purchasing public have been applied to such silk fabrics as designating the different types of weaving. Among the terms well known to and understood by the purchasing public as designating a type of fabric woven from silk are "crepe," "sheer," and "shantung." The use of these terms to designate, describe or refer to fabrics having the texture and appearance of silk is understood by the purchasing public to indicate that the fabrics are composed of silk unless such terms are accompanied by words familiar to the purchasing public indicating clearly that such fabrics are not composed of silk but of fibers other than the product of the cocoon of the silk worm.

PAR. 17. The respondent, in connection with the offering for sale and sale of his said articles of clothing composed wholly or in part of rayon, which clothing resembles, in texture and appearance, clothing manufactured from silk, the product of the cocoon of the silk worm, in commerce as aforesaid, in advertisements circulated among the purchasing public, designates, describes and refers to certain of said clothing as "shantung," "crepe," and "sheer" and does not accompany such words with words familiar to the purchasing public which dis-

close the fact that said fabrics are not composed of silk, the product of the cocoon of the silk worm, but wholly or in part of rayon.

PAR. 18. The use by the respondent of the acts and practices described in paragraph 17 has the capacity and tendency to and does mislead and deceive members of the purchasing public as to the fiber content of his said product, and as a result of this deception substantial quantities of respondent's products are purchased in the belief that they are composed of silk, the product of the cocoon of the silk worm.

PAR. 19. Respondent is also engaged in the sale, transportation, and distribution of wool products, as such products are defined in the Wool Products Labeling Act of 1939, in commerce, as "commerce" is defined in said act, and in the Federal Trade Commission Act. Many of respondent's said products are composed wholly or in part of wool, reprocessed wool or reused wool as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since July 15, 1941, respondent has violated the provisions of said act and said rules and regulations in the introduction, offering for sale, sale and distribution of said wool products in said commerce by causing said wool products to be misbranded within the intent and meaning of said act and the rules and regulations.

PAR. 20. Among the wool products introduced into commerce, offered for sale, sold, transported, and distributed in commerce, as aforesaid, are articles of wearing apparel. Exemplifying respondent's practices of violating said act and the rules and regulations promulgated thereunder is his misbranding of the aforesaid garments in violation of the provisions of said act and said rules and regulations by failing to affix to said garments a stamp, tag, label or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding five percentum of said total fiber weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was five 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.

PAR. 2. The acts, practices, and methods of respondent, as alleged in paragraphs 19 and 20 hereof, constitute misbranding of wool products and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and all of the aforesaid acts, practices and methods as alleged herein are to the prejudice and injury of the public and constitute unfair or deceptive acts or practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission, on January 2, 1945, issued and thereafter served its complaint in this proceeding upon respondent, Joseph Rosenblum, an individual trading and doing business as Modern Manner Clothes, charging him with the use of unfair or deceptive acts or practices in violation of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939. After the respondent filed his answer to the complaint, testimony and other evidence were introduced before a trial examiner of the Commission theretofore duly designated by it and such testimony and other evidence were duly recorded and filed in the office of the Commission. Based upon the consent and agreement of all parties, the Commission, on January 14, 1947, ordered that the complaint be amended by including Sadie Rosenblum as a party respondent and designating her as a copartner with Joseph Rosenblum trading and doing business as Modern Manner Clothes, and further ordered that the testimony theretofore taken in the case shall apply to said Sadie Rosenblum and have the same force and effect as if she had been named a party respondent in the first instance and had been duly served with a copy of the complaint and given due notice of all hearings and other proceedings in the matter.

Thereafter this proceeding came on for final hearing before the Commission upon the amended complaint, answer thereto, testimony and other evidence, trial examiner's recommended decision and exceptions thereto, and briefs and oral argument of counsel; and the Commission, having duly considered the matter and having entered its order disposing of the exceptions to the trial examiner's recommended decision, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Joseph Rosenblum and Sadie Rosenblum, are copartners trading and doing business as Modern Manner Clothes, with their office and principal place of business at 315 Fifth Avenue, New York, N. Y.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of wearing apparel, such as women's suits, dresses, and similar articles.

The respondents have caused, and are now causing, some of said products, when sold by them, to be transported from their said place of business in the State of New York to purchasers thereof located in various States of the United States and in the District of Columbia. The respondents maintain, and at all times mentioned hereinabove have maintained, a substantial course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as aforesaid the respondents employ agents or salespersons to canvas, solicit, sell, and distribute their said merchandise to members of the buying public in the various States of the United States and in the District of Columbia. Respondents contact said agents by means of advertisements inserted in the want ad columns of newspapers. Typical of said want ads is the following:

WE START YOU IN BUSINESS

Fifth Avenue, New York firm desires women to
sell dresses, coats, sportswear, negligee,
lingerie featured in "Vogue" and "Mademoiselle."
Also children's garments. Good commission.
Sample book free. Write Modern Manner * * *
New York.

PAR. 4. After contact with prospective agents has been made as aforesaid, the respondents inform them by means of correspondence and circulars that if they become respondents' representatives they will receive, in addition to their regular commissions, free dresses, coats, suits, and other articles of wearing apparel. Among and typical of the statements and representations made by the respondents in said correspondence and circulars are the following:

Moreover, in addition to your regular profits you will get your own dresses, coats and suits—Free.

Your own Dresses Free. Modern Manner enables you to have all your personal dresses, suits, coats, lingerie Free. Every month Modern Manner offers a special bonus to active representatives. Practically every Modern Manner

representative earns at least from 10 to 12 dresses a season without any cost to her.

By getting all these free bonus dresses, you have a complete wardrobe of Smart Fifth Avenue styles.

You, too, have a most marvelous opportunity to get your new wardrobe.

Here is our special offer—

SELL 12 dresses and GET a $ 5.00 dress FREE
15 dresses and GET a $ 6.00 dress FREE
20 dresses and GET a $ 9.00 dress FREE
25 dresses and GET a $12.00 dress FREE
30 dresses and GET a $15.00 dress FREE
(or 3—$5.00 dresses)

If such persons become respondents' agents, they are supplied with order blanks, samples of materials from which purchasers make their selections, and other data to be used in connection with the sale of respondents' merchandise.

PAR. 5. The aforesaid representations and statements made by respondents are false, misleading, and deceptive. In truth and in fact the respondents do not give the dresses or other articles of wearing apparel free, but require the payment of a valuable consideration on the part of the agents or salespersons in the form of service and the sale of a certain number of articles of wearing apparel by said agents or salespersons before the same are delivered to the agents or salespersons. The said condition and requirement to the procurement of said garments is not disclosed in the initial advertisement by which contact is first made but is made in later correspondence with prospective distributors.

PAR. 6. The use by the respondents of the aforesaid false, deceptive, and misleading statements and representations, disseminated as aforesaid, with respect to the articles of merchandise purported to be given free by respondents to such distributors has had, and now has, the capacity and tendency to mislead and deceive prospective distributors of respondents' products into the erroneous and mistaken belief that such false statements and representations are true and that they will receive some of respondents' merchandise free.

PAR. 7. The complaint herein also contains charges that the respondents have misrepresented the fiber content of certain of the garments they sell and have misrepresented that the styles of wearing apparel featured in certain magazines are their products and that advertisements were placed in said fashion magazines by respondents. The Commission is of the opinion, and so finds, that such charges are not sustained by the evidence.

There is a further charge in the complaint that the respondents have violated the provisions of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder. It appears that the improper labeling which formed the basis for this charge was discontinued prior to the issuance of the complaint herein, and it further appears that the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939 have been amended since the complaint was issued so as to permit the use of labels similar to those formerly appearing on garments sold by the respondents. Under these circumstances, corrective action with respect to this charge in the complaint is unwarranted.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

I. *It is ordered*, That respondents, Joseph Rosenblum and Sadie Rosenblum, individually and as copartners trading and doing business as Modern Manner Clothes, or under any other name, and their respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of wearing apparel or other items of merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "free," or any other word or words of similar import or meaning, to designate, describe, or refer to wearing apparel, or other merchandise, which is not in truth and in fact a gift or gratuity or is not given to the recipient thereof without requiring the performance of some service inuring directly or indirectly to the benefit of the respondents.

II. *It is further ordered*, That the charges in the complaint that respondents have misrepresented the fiber content of certain of the garments they sell; have misrepresented that the styles of wearing apparel featured in magazines are their products and that advertisements were placed in said fashion magazines by the respondents; and have violated the provisions of the Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated thereunder, be, and the same hereby are, dismissed.

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

IN THE MATTER OF

MARY MUFFET, INC.

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

Docket 5104. Complaint, Dec. 18, 1943—Decision, Dec. 26, 1950

Products manufactured from silk, the product of the cocoon of the silkworm, have for many years been held, and still are held, in great public esteem and confidence because of their outstanding qualities.

Where a corporation engaged in the manufacture and interstate sale and distribution, among other articles of wearing apparel, of ladies' dresses and blouses composed in whole or in part of rayon—

Offered and sold such articles, which resembled silk or other natural fibers in texture and appearance, without disclosing in words familiar to the purchasing public that they were composed of rayon;

With the result that many members thereof were thereby led to believe that said articles were composed of silk or other natural fibers, and that there was placed in the hands of purchasers of said wearing apparel a means whereby they might mislead and deceive wholesalers, retailers and the purchasing public as to their fiber content:

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

While the complaint charged that respondent had misrepresented the fiber content of its products through the use of the word "crepe" to designate articles of wearing apparel composed of rayon, without any accompanying word or words familiar to the purchasing public to disclose the fact that said products were not composed of silk, the Commission was of the opinion and found that such charge was not sustained by the evidence.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. DeWitt T. Puckett, *Mr. George M. Martin*, and *Mr. Russell T. Porter* for the Commission.

Mr. Melvin A. Albert and *Mr. Claude Sonnenreich*, of New York City, and *Boyle*, *Priest* & *Elliott*, of St. Louis, Mo., for respondent.

COMPLAINT

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

PARAGRAPH 1. Mary Muffet, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri with its principal office and place of business at 1136 Washington Avenue, St. Louis, Mo.

PAR. 2. The respondent is now and for several years last past has been engaged in manufacturing rayon fabrics and articles of wearing apparel.

Respondent causes its said fabrics and wearing apparel when sold to be transported from its place of business in the State of Missouri to the purchasers thereof located in the various other States of the United States and in the District of Columbia.

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

PAR. 3. Rayon is a chemically manufactured fiber which may be manufactured so as to simulate silk in texture and appearance. Fabrics and articles of wearing apparel manufactured from such rayon fibers have the appearance and feel of silk and many members of the purchasing public are unable to distinguish between such rayon fabrics and articles of wearing apparel and fabrics and articles of wearing apparel manufactured from silk. Consequently such rayon fabrics and articles of wearing apparel are readily accepted by some of the purchasing public as silk products.

PAR. 4. Products manufactured from silk, the product of the cocoon of the silkworm, have for many years held and still hold great public esteem and confidence because of their outstanding qualities. Such fibers have long been woven into a variety of fabrics and articles of wearing apparel and distinctive terms well known to and understood by the purchasing public have been applied to such silk fabrics and articles of wearing apparel as designating the different types of weave. Among the terms well known and understood by the purchasing public as designating a type of fabric or article of wearing apparel woven or made from silk is the term "crepe." The use of this term to designate, describe or refer to fabrics or articles of wearing apparel having the texture and appearance of silk is understood by the purchasing public to indicate that the fabric or article of wearing apparel is composed of silk unless such term is accompanied by a word or words familiar to the purchasing public indicating clearly that such fabric or article of wearing apparel is not composed of silk but of fibers other than the product of the cocoon of the silkworm. When such term is accompanied by a word or words familiar to the purchasing public indicating that the fabric or article of wearing

apparel is not composed of silk but of fibers other than silk, the purchasing public understands such terms to refer only to the type of weave and not to the fiber content of the fabric.

PAR. 5. The respondent manufactures and sells in commerce as aforesaid fabrics and articles of wearing apparel composed of rayon fibers, which fabrics and articles of wearing apparel simulate in texture and appearance fabrics and articles of wearing apparel composed of silk, the product of the cocoon of the silkworm. Respondent does not inform the purchasing public of the fact that the fabrics and articles of wearing apparel which resemble silk in texture and appearance are made of rayon and not of silk.

The practice of the respondent in offering for sale and selling said fabrics and articles of wearing apparel manufactured from rayon and which resemble in texture and appearance fabrics and articles of wearing apparel manufactured from silk in commerce as aforesaid without disclosing in words familiar to the purchasing public the fact that said fabrics and articles of wearing apparel are composed of rayon is misleading and deceptive and many members of the purchasing public are thereby led to believe that the said fibers are composed of silk, a product of the cocoon of the silkworm.

PAR. 6. In addition to misrepresenting the fiber content of its said fabrics and articles of wearing apparel in the manner described above, the respondent, in the course and conduct of its said business, has further misrepresented and now misrepresents the fiber content of its fabrics and articles of wearing apparel through the use of the word "crepe" to designate articles composed of rayon, in its advertising matter circulated among the purchasing public, which word is not accompanied by words or terms familiar to the purchasing public which disclose the fact that said fabrics are not composed of silk, the product of the cocoon of the silkworm, but of rayon.

By and through the use of the word "crepe" in the manner aforesaid, respondent has represented and now represents that its said merchandise composed of rayon is in fact composed of silk, the product of the cocoon of the silkworm.

PAR. 7. The use by the respondent of the acts and practices hereinabove described have the capacity and tendency to and do mislead and deceive the purchasers of its said products as to the fiber content thereof. By said acts and practices respondent also places in the hands of the purchasers of its fabrics a means and instrumentality whereby they may and do mislead and deceive wholesalers, retailers and the purchasing public as to the fiber content of said products. As a result of this deception substantial quantities of respondent's products are purchased in the belief that they are composed of silk.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission, on December 18, 1943, issued and thereafter served its complaint in this proceeding upon the respondent, Mary Muffet, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for final consideration by the Commission on the complaint, answer thereto, testimony and other evidence, recommended decision of the trial examiner with exceptions thereto, and briefs and oral argument of counsel; and the Commission, having duly considered the matter and having entered its order disposing of the exceptions to the recommended decision of the trial examiner, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Mary Muffet, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business at 1136 Washington Avenue, St. Louis, Mo.

PAR. 2. The respondent is now, and for several years last past has been, engaged in manufacturing articles of wearing apparel, principally ladies' dresses and blouses, some of which are composed in whole or in part of rayon.

The respondent causes its said articles of wearing apparel composed in whole or in part of rayon, when sold, to be transported from its place of business in the State of Missouri to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce

among and between the various States of the United States and in the District of Columbia.

PAR. 3. Rayon is a chemically manufactured fiber which may be manufactured so as to simulate silk and other natural fibers in texture and appearance. Fabrics and articles of wearing apparel manufactured from such rayon fibers have the appearance and feel of silk or other natural fibers and many members of the purchasing public are unable to distinguish between such rayon fabrics and articles of wearing apparel and fabrics and articles of wearing apparel manufactured from silk or other natural fibers. Consequently, such rayon fabrics and articles of wearing apparel are readily accepted by some of the purchasing public as silk or other natural-fiber products.

PAR. 4. Products manufactured from silk, the product of the cocoon of the silkworm, have for many years been held, and still are held, in great public esteem and confidence because of their outstanding qualities.

PAR. 5. The respondent manufactures and sells in commerce as aforesaid articles of wearing apparel composed in whole or in part of rayon fibers, which articles of wearing apparel simulate in texture and appearance articles of wearing apparel composed of silk, the product of the cocoon of the silkworm, or other natural fibers. Respondent does not inform the purchasing public of the fact that the articles of wearing apparel which resemble silk or other natural-fiber garments in texture and appearance are made of rayon and not of silk or other natural fibers.

PAR. 6. The Commission finds that the practice of the respondent of offering for sale and selling in commerce, as aforesaid, articles of wearing apparel manufactured wholly or in part from rayon, which resemble in texture and appearance articles of wearing apparel manufactured from silk or other natural fibers, without disclosing, in words familiar to the purchasing public, the fact that said articles of apparel are composed of rayon, is misleading and deceptive and many members of the purchasing public are thereby led to believe that said articles of wearing apparel are composed of silk, the product of the cocoon of the silkworm, or other natural fibers.

PAR. 7. The use by the respondent of the acts and practices hereinabove described has the capacity and tendency to mislead and deceive the purchasers of its said products as to the fiber content thereof. By said acts and practices respondent also places in the hands of the purchasers of its articles of wearing apparel a means and instrumentality whereby they may mislead and deceive wholesalers, retailers, and the purchasing public as to the fiber content of said products.

PAR. 8. While the complaint herein charges that the respondent has misrepresented the fiber content of its products through the use of the word "crepe" to designate articles of wearing apparel composed of rayon, without any accompanying word or words familiar to the purchasing public to disclose the fact that such products are not composed of silk, but of rayon, the Commission is of the opinion, and finds, that such charge is not sustained by the evidence.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Mary Muffet, Inc., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of articles of wearing apparel or other products composed in whole or in part of rayon, in commerce as "commerce" is described in the Federal Trade Commission Act, do forthwith cease and desist from advertising, offering for sale, or selling products composed in whole or in part of rayon without clearly disclosing such rayon content.

It is further ordered, That the charge in the complaint that respondent has misrepresented the fiber content of certain of its products through the use of the word "crepe" be, and the same hereby is, dismissed.

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

IN THE MATTER OF

MAX ORENSTEIN ET AL. DOING BUSINESS AS IRENE KAROL

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

Docket 5139. Complaint, Mar. 15, 1944—Decision, Dec. 26, 1950

Products manufactured from silk, the product of the cocoon of the silk worm, have for many years been held, and still are held, in great public esteem and confidence because of their outstanding qualities.

Where two partners engaged in the manufacture and interstate sale and distribution, among other articles of wearing apparel, of ladies' dresses and blouses composed in whole or in part of rayon—

Offered and sold such articles, which resembled silk or other natural fibers in texture and appearance, without disclosing in words familiar to the purchasing public that they were composed of rayon;

With the result that many members thereof were thereby led to believe that said articles were composed of silk or other natural fibers, and that there was placed in the hands of purchasers of said wearing apparel a means whereby they might mislead and deceive wholesalers, retailers and the purchasing public as to their fiber content:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. DeWitt T. Puckett, *Mr. George M. Martin*, and *Mr. Russell T. Porter* for the Commission.

Mr. Melvin A. Albert, of New York City, and *Boyle, Priest & Elliott*, of St. Louis, Mo., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Max Orenstein and Louis Karpf, individually and as copartners, trading and doing business as Irene Karol, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Max Orenstein and Louis Karpf are copartners, trading and doing business as Irene Karol, and have their principal office and place of business at 808 Washington Avenue, St. Louis, Mo.

The respondents are now and for several years last past have been engaged in manufacturing garments from fabrics composed of rayon, and also from fabrics composed of rayon and other fibers.

Respondents cause their said garments, when sold, to be transported from their said place of business in the State of Missouri to the purchasers thereof, located in the various States of the United States and in the District of Columbia.

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

PAR. 2. Rayon is a chemically manufactured fiber which may be manufactured so as to simulate silk fibers in texture and appearance and fabrics manufactured from such rayon fibers simulate silk fabrics in texture and appearance. Garments manufactured from fabrics composed of rayon have the appearance and feel of silk and many members of the purchasing public are unable to distinguish between such rayon garments and garments manufactured from silk, the product of the cocoon of the silk worm. Consequently, such garments are readily accepted by some members of the purchasing public as silk products.

PAR. 3. Products manufactured from silk, the product of the cocoon of the silk worm, have for many years been held and are still held in great public esteem because of their outstanding qualities and there has been for many years, and still is, a public demand for such products.

PAR. 4. The respondents manufacture and sell in commerce as aforesaid, garments composed wholly or in part of rayon which garments simulate in texture and appearance garments composed wholly or in part of silk, the product of the cocoon of the silk worm. Respondents do not inform the purchasing public of the fact that the garments, which resemble silk in texture and appearance, are made wholly or in part of rayon and not of silk.

PAR. 5. The practice of the respondents in offering for sale and selling said garments, manufactured wholly or in part of rayon, which resemble in texture and appearance garments manufactured from silk, in commerce as aforesaid, without disclosing in words familiar to the purchasing public the fact that said garments are composed wholly or in part of rayon, is misleading and deceptive and many members of the purchasing public are thereby led to believe that the said garments are composed wholly or in part of silk, the product of the cocoon of the silk worm.

PAR. 6. The use by respondents of the acts and practices hereinabove described have the capacity and tendency to mislead and deceive and do mislead and deceive wholesalers and retailers who purchase respondents' said garments as to the fiber content thereof. By said acts and practices respondents also place in the hands of purchasers of its products for resale a means and instrumentality whereby they may and do mislead and deceive the purchasing public as to the fiber content of said products. As a result of this deception, substantial quantities of respondents' products are purchased in the belief that they are composed wholly or partly of silk, the product of the cocoon of the silk worm.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission, on March 15, 1944, issued and thereafter served its complaint in this proceeding upon the respondents, Max Orenstein and Louis Karpf, individually and as copartners trading and doing business as Irene Karol, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for final consideration by the Commission on the complaint, answer thereto, testimony and other evidence, recommended decision of the trial examiner with exceptions thereto, and briefs and oral argument of counsel (Pursuant to request of counsel, exceptions to the trial examiner's recommended decision and briefs and oral argument of counsel in the matter of Mary Muffet, Inc., Docket 5104, were considered to the extent applicable, the same as though they had been physically filed or made in this proceeding); and the Commission, having duly considered the matter and having entered its order disposing of the exceptions to the recommended decision of the trial examiner, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Max Orenstein and Louis Karpf, are copartners trading and doing business as Irene Karol, with their principal office and place of business at 808 Washington Avenue, St. Louis, Mo.

PAR. 2. The respondents are now, and for several years last past have been, engaged in manufacturing articles of wearing apparel, principally ladies' dresses, some of which are composed in whole or in part of rayon.

The respondents cause their said articles of wearing apparel, composed in whole or in part of rayon, when sold, to be transported from their place of business in the State of Missouri to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Rayon is a chemically manufactured fiber which may be manufactured so as to simulate silk and other natural fibers in texture and appearance. Fabrics and articles of wearing apparel manufactured from such rayon fibers have the appearance and feel of silk or other natural fibers, and many members of the purchasing public are unable to distinguish between such rayon fabrics and articles of wearing apparel and fabrics and articles of wearing apparel manufactured from silk or other natural fibers. Consequently, such rayon fabrics and articles of wearing apparel are readily accepted by some of the purchasing public as silk or other natural-fiber products.

PAR. 4. Products manufactured from silk, the product of the cocoon of the silkworm, have for many years been held, and still are held, in great public esteem and confidence because of their outstanding qualities.

PAR. 5. The respondents manufacture and sell in commerce as aforesaid articles of wearing apparel composed in whole or in part of rayon fibers, which articles of wearing apparel simulate in texture and appearance articles of wearing apparel composed of silk, the product of the cocoon of the silkworm, or other natural fibers. Respondents do not inform the purchasing public of the fact that the articles of wearing apparel which resemble silk or other natural-fiber garments in texture and appearance are made of rayon and not of silk or other natural fibers.

PAR. 6. The Commission finds that the practice of the respondents of business at 905 Washington Avenue, St. Louis, Mo.

wearing apparel, manufactured wholly or in part from rayon, which resemble in texture and appearance articles of wearing apparel manufactured from silk or other natural fibers, without disclosing, in words familiar to the purchasing public, the fact that said articles of apparel are composed of rayon, is misleading and deceptive and many members of the purchasing public are thereby led to believe that said articles of wearing apparel are composed of silk, the product of the cocoon of the silkworm, or other natural fibers.

PAR. 7. The use by the respondents of the acts and practices hereinabove described has the capacity and tendency to mislead and deceive the purchasers of their said products as to the fiber content thereof. By said acts and practices respondents also place in the hands of the purchasers of their articles of wearing apparel a means and instrumentality whereby they may mislead and deceive wholesalers, retailers, and the purchasing public as to the fiber content of said products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner with exceptions thereto, and briefs and oral argument of counsel (pursuant to request of counsel exceptions to the trial examiner's recommended decision and briefs and oral argument of counsel in the matter of Mary Muffet, Inc., Docket 5104, were considered in this matter to the extent applicable, the same as though they had been physically filed or made in this proceeding); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Max Orenstein and Louis Karpf, individually and as copartners trading and doing business as Irene Karol, or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of

articles of wearing apparel, or other products, composed in whole or in part of rayon, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from advertising, offering for sale, or selling products composed in whole or in part of rayon without clearly disclosing such rayon content.

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

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IN THE MATTER OF

NATIONAL DRESS GOODS COMPANY

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

Docket 5167. Complaint, May 29, 1944—Decision, Dec. 26, 1950

Products manufactured from silk, the product of the cocoon of the silkworm, have for many years been held, and still are held, in great public esteem and confidence because of their outstanding qualities.

Where a corporation engaged in the manufacture and interstate sale and distribution, among other articles of wearing apparel, of ladies' dresses and blouses composed in whole or in part of rayon—

Offered and sold such articles, which resembled silk or other natural fibers in texture and appearance, without disclosing in words familiar to the purchasing public that they were composed of rayon;

With the result that many members thereof were thereby led to believe that said articles were composed of silk or other natural fibers, and that there was placed in the hands of purchasers of said wearing apparel a means whereby they might mislead and deceive wholesalers, retailers and the purchasing public as to their fiber content:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. DeWitt T. Puckett, *Mr. George M. Martin*, and *Mr. Russell T. Porter* for the Commission.

Mr. Melvin A. Albert, of New York City, and *Boyle, Priest & Elliott*, of St. Louis, Mo., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, National Dress Goods Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, and has its principal office and place of business at 905 Washington Avenue, St. Louis, Mo.

The respondent is now and for several years last past has been engaged in manufacturing garments from fabrics composed of rayon, and also from fabrics composed of rayon and other fibers.

Respondent causes its said garments, when sold, to be transported from its said place of business in the State of Missouri to the purchasers thereof, located in the various States of the United States and in the District of Columbia.

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

PAR 2. Rayon is a chemically manufactured fiber which may be manufactured so as to simulate silk fibers in texture and appearance and fabrics manufactured from such rayon fibers simulate silk fabrics in texture and appearance. Garments manufactured from fabrics composed of rayon have the appearance and feel of silk and many members of the purchasing public are unable to distinguish between such rayon garments and garments manufactured from silk, the product of the cocoon of the silkworm. Consequently, such rayon garments are readily accepted by some members of the purchasing public as silk products.

PAR. 3. Products manufactured from silk, the product of the cocoon of the silkworm, have for many years been held and are still held in great public esteem because of their outstanding qualities, and there has been for many years, and still is, a public demand for such products.

PAR. 4. The respondent manufactures and sells in commerce as aforesaid, garments composed wholly or in part of rayon which garments simulate in texture and appearance garments composed wholly or in part of silk, the product of the cocoon of the silkworm. Respondent does not inform the purchasing public of the fact that the garments, which resemble silk in texture and appearance, are made wholly or in part of rayon and not of silk.

PAR. 5. The practice of the respondent in offering for sale and selling said garments, manufactured wholly or in part of rayon, which garments resemble in texture and appearance garments manufactured from silk, in commerce as aforesaid, without disclosing in words familiar to the purchasing public the fact that said garments are composed wholly or in part of rayon, is misleading and deceptive and many members of the purchasing public are thereby led to believe that the said rayon garments are composed wholly or in part of silk, the product of the cocoon of the silkworm.