PAR. 6. The use by the respondent 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 respondent's said garments as to the fiber content thereof. By said acts and practices respondent also places in the hands of the aforesaid 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 respondent's products are purchased in the belief that they are composed wholly or partly of silk, the product of the cocoon of the silkworm.

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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission, on May 29, 1944, issued and thereafter served its complaint in this proceeding upon the respondent, National Dress Goods Co., 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, to which no answer was filed by the respondent, 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, 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. Respondent, National Dress Goods Co., 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 905 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, 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.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, 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 respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, National Dress Goods Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution 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 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

DARESH GARMENT COMPANY, INC.

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

Docket 5221. Complaint, Sept. 22, 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 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 Daresh Garment Co., Inc., 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, Daresh Garment Co., Inc., 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 808 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.

PAR. 6. The use by the respondent of the acts and practices hereinabove described has the capacity and tendency to mislead and deceive and does mislead and deceive wholesalers and retailers who purchase respondent's said garments as to the fiber content thereof. By said acts and practices respondent also places in the hands of the aforesaid 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 respondent's products are purchased in the belief that they are composed wholly or partly of silk, the product of the cocoon of the silkworm.

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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission, on September 22, 1944, issued and thereafter served its complaint in this proceeding upon the respondent, Daresh Garment Co., 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 (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. Respondent, Daresh Garment Co., 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 808 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, 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.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, 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 (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 respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Daresh Garment Co., 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 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 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

FRELICH, INC.

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

Docket 5223. Complaint, Sept. 25, 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 a corporation engaged in the manufacture and interstate sale and distribution of articles of wearing apparel consisting principally of ladies' clothes, and composed, in the case of some, 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 Frelich, Inc., 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, Frelich, Inc., 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 808 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.

PAR. 6. The use by the respondent of the acts and practices hereinabove described has the capacity and tendency to mislead and deceive and does mislead and deceive wholesalers and retailers who purchase respondent's said garments as to the fiber content thereof. By said acts and practices respondent also places in the hands of the aforesaid purchasers of its product 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 respondent's products are purchased in the belief that they are composed wholly or partly of silk, the product of the cocoon of the silkworm.

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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission, on September 25, 1944, issued and thereafter served its complaint in this proceeding upon the respondent, Frelich, 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 (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. Respondent, Frelich, 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 808 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' clothes, 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.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, 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 (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 respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Frelich, 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 "com-

merce" 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 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

WAX BROS. & ROSENBERG DRESS CO., INC.

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

Docket 5276. Complaint, Feb. 10, 1945—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 a corporation engaged in the manufacture and interstate sale and distribution of women's wearing apparel, some of which was 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 and *Mr. Charles 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 Wax Bros. & Rosenberg Dress Co., 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. The respondent, Wax Bros. & Rosenberg Dress Co., 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 located at 808 Washington Avenue, St. Louis, Mo.

PAR. 2. Respondent is now and for several years last past has been engaged in manufacturing women's wearing apparel from fabrics composed of rayon and also from fabrics composed of rayon and other fibers.

Respondent causes its said wearing apparel 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. 3. 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 fabrics 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. 4. 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 qualities and there has been for many years and still is a public demand for such products.

PAR. 5. 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. 6. The practice of the respondent in offering for sale and selling garments manufactured wholly or in part of rayon which resemble in texture and appearance garments manufactured wholly or in part of 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 silkworm.

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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission, on February 10, 1945, issued and thereafter served its complaint in this proceeding upon the respondent, Wax Bros. & Rosenberg Dress Co., 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 (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. Respondent, Wax Bros. & Rosenberg Dress Co., 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 808 Washington Avenue, St. Louis, Mo.

PAR. 2. The respondent is now, and for several years last past has been, engaged in manufacturing women's wearing apparel, some of which is 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 oustanding 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.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, 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 (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 respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Wax Bros. & Rosenberg Dress Co., 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 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 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

BRANDWEIN SPORTSWEAR, INC.

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

Docket 5629. Complaint, Dec. 27, 1948—Decision, Dec. 26, 1950

Where a corporation engaged in the introduction, and manufacture for introduction, into commerce, and in the interstate sale, transportation and distribution, among other wool products, of women's coats and other garments—

Misbranded said products, in violation of the provisions of the Wool Products Labeling Act and the rules and regulations promulgated thereunder, by failing to affix thereto a stamp, tag, label or other means of identification, or a substitute in lieu thereof, as provided by said act, showing the percentage of the fiber weight of wool and other fiber, including the name of the manufacturer or the manufacturer's identification number, and that of a seller or reseller of the product, or the names of persons subject to sec. 3 of said act:

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

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

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

Mr. Marcus Miller, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission having reason to believe that Brandwein Sportswear, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Brandwein Sportswear, Inc., is a New York corporation engaged in manufacturing and selling wearing apparel. It maintains a sales office at 244 West Thirty-ninth Street

in New York City, and its factory is located at 418 Madison Street, Hoboken, N. J.

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

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported and distributed in said commerce as aforesaid, were articles of wearing apparel, such as women's coats and other garments. Exemplifying respondent's practice of violating said act and the rules and regulations promulgated thereunder is its 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. 4. The aforesaid acts, practices, and methods of respondent as alleged were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission on December 27, 1948, issued and subsequently served its complaint in this proceeding upon the respondent, Brandwein Sportswear, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. After filing its original answer to the complaint, respondent requested and obtained leave to withdraw said answer and to substitute therefor an answer admitting all of the material allegations of fact in the complaint and waiving all intervening procedure and further hearings as to the facts. Such substitute answer was in due course filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by the Commission upon the complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Brandwein Sportswear, Inc., is a New York corporation engaged in manufacturing and selling wearing apparel. It maintains a sales office at 244 West Thirty-ninth Street in New York City and its factory is located at 418 Madison Street, in the city of Hoboken, State of New Jersey.

PAR. 2. The respondent is engaged in the introduction and manufacture for introduction into commerce, and 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 products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations pro-

mulgated thereunder. Since July 15, 1941, respondent has violated the provisions of said act and said rules and regulations in the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said Act and the Rules and Regulations.

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported and distributed in said commerce, as aforesaid, were articles of wearing apparel, such as women's coats and other garments. Exemplifying respondent's practice of violating said act and the rules and regulations promulgated thereunder is its 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 name of the manufacturer of the wool product, or 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.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent admitting all of the material allegations of fact in the complaint and waiving all intervening procedure and further hearings as to

the facts, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939:

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

(*a*) The percentage of the total fiber weight of such wool 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 is five percentum or more and (5) the aggregate of all other fibers;

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

(*c*) The name of the manufacturer of the wool product, or the name of one or more persons subject to section 3 of the Wool Products Labeling Act of 1939 with respect to such wool product, or the registered identification number of such person or persons, as provided for in rule 4 of the regulations to such act, as amended;

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (*a*) and (*b*) of section 3 of the Wool Products Labeling Act of 1939; and

Provided further, That nothing contained in this order shall be construed as limiting any applicable provisions of said act or the rules and regulations promulgated thereunder.

It is further ordered, That the 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

AMERICAN TEXTILE CONVERTERS, INC.

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

Docket 5659. Complaint, May 25, 1949—Decision, Dec. 26, 1950

Where a corporation engaged in the introduction, and manufacture for introduction into commerce, and in the sale, transportation, and distribution, among other wool products, as defined in the Wool Products Labeling Act of certain sweaters labeled by it as "100% Wool Worsted," some of which contained 46 percent wool and 54 percent cotton, and others 80 percent rayon and 20 percent wool—

Misbranded said products in that they did not have affixed thereto a stamp, tag, label, or other means of identification showing the constituent fibers and percentages thereof, and other information required by said act and the rules and regulations promulgated thereunder:

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

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

Mr. DeWitt T. Puckett and *Mr. Randolph W. Branch* for the Commission.

Mr. Harry A. Margolis, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that American Textile Converters, Inc., a corporation, herein 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, American Textile Converters, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and has its principal office at 350 Fifth Avenue, New York, N. Y. Said respondent owns and operates two manufacturing establishments located at 29 East

Tenth Street and 30 East Tenth Street in New York City, wherein certain manufacturing processes are carried on by respondent in connection with the manufacture of its products.

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

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported and distributed in said commerce as aforesaid, were children's sweaters. Exemplifying respondent's practice of violating said act and the rules and regulations promulgated thereunder is its 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. 4. The aforesaid acts, practices, and methods of respondent as alleged were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission on May 25, 1949, issued and subsequently served its complaint in this proceeding upon the respondent, American Textile Converters, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. No answer to the complaint was filed by respondent. Subsequently, at a hearing held before a trial examiner of the Commission theretofore duly designated by it, a stipulation of facts was entered into between the attorney supporting the complaint and the respondent, such stipulation being in lieu of evidence in support of or in opposition to the charges stated in the complaint. The stipulation expressly waived the filing by the trial examiner of a recommended decision in the matter. Thereafter, the proceeding regularly came on for final consideration by the Commission upon the complaint and stipulation (the filing of briefs and oral argument having been waived); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, American Textile Converters, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and has its principal office at 350 Fifth Avenue, in the city of New York, State of New York. Respondent owns and operates two manufacturing establishments located at 29 East Tenth Street and 30 East Tenth Street, in New York City, wherein certain manufacturing processes are carried on by the respondent in connection with the manufacture of its products.

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

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported, and distributed in said commerce, as aforesaid, were children's sweaters. Certain of such sweaters were labeled by respondent "100 percent wool worsted." Four sweaters so labeled were, at the instance of the Commission, analyzed for fiber content by the National Bureau of Standards. Two of these sweaters were found to contain 46 percent wool and 54 percent cotton, while the other two were found to contain 80 percent rayon and 20 percent wool. All of these sweaters were thus misbranded in that they did not have affixed to them a stamp, tag, label, or other means of identification showing the constituent fibers, and percentages thereof, of such products and other information required by the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (no answer having been filed by respondent) and a stipulation of facts entered into between counsel supporting the complaint and respondent, and the Commission having made its findings as to the facts and its conclu-

sion that respondent has violated the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939:

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

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

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

(*c*) The name of the manufacturer of the wool product, or the name of one or more persons subject to section 3 of the Wool Products Labeling Act of 1939 with respect to such wool product, or the registered identification number of such person or persons, as provided for in rule 4 of the regulations to such act, as amended;

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; and

Provided further, That nothing contained in this order shall be construed as limiting any applicable provisions of said act or the rules and regulations promulgated thereunder.

It is further ordered, That the 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.

Syllabus

IN THE MATTER OF

CASIMIRO MUOJO TRADING AS ALVI CO., AND AS ALVI, INC.

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

Docket 4484 Complaint, Apr. 5, 1941—Decision, Dec. 29, 1950

Where an individual engaged in the interstate sale and distribution of a certain hair dye cosmetic which he variously designated as "Vitale Instantaneous Hair Dye," and by other names; in advertising the same through newspapers and through circulars, leaflets and other advertising literature and otherwise—

(a) Represented falsely that said preparation was scientific, safe, and free from harmful, dangerous, and injurious chemicals; would end premature gray hair, produce a permanent natural uniform shade, and give the hair the warmth, color, luster, and glint of youth; and that its use would have no ill effects;

The facts being that it was a chemical dye and would not and could not accomplish the aforesaid results or affect the hair in any way other than as a dye; it contained paraphenylenediamine, a toxic coal-tar derivative, and use thereof would in some cases cause skin irritations and other harmful effects;

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

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

In said proceeding in which the complaint charged and in which the Commission originally found in its decision on August 7, 1941, 33 F. T. C. 935, that respondent's advertisements constituted false advertisements in that they failed to reveal that said preparation when applied to the skin or face or head was potentially dangerous by reason of its aforesaid content;

The Commission was of the opinion and found that said advertisements would not therefore constitute false advertisements under its present policy as promulgated on December 11, 1946, and amended on March 2, 1948, under which it stated that it would not thereafter consider any advertisement of a coal-tar hair dye of the "para" type as false merely because of such a failure to reveal such potential danger by reason of its paraphenylenediamine content, when the label on the preparation bore such a statement and when the accompanying directions were adequate for the preliminary testing;

It appearing in the instant matter that the accompanying label did bear such a statement and advised that a preliminary test according to directions should first be made and that the product must not be used for dyeing the eyelashes and eyebrows—which might cause blindness—and that the accompanying directions were in all respects adequate to enable purchasers to make the preliminary test referred to.

Mr. B. G. Wilson for the Commission.

Mr. Alfred C. Ditolla, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Casimiro Muojo, an individual, trading as Alvi Co. and as Alvi, Inc., 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. Respondent, Casimiro Muojo, is an individual trading as Alvi Co. and as Alvi, Inc., with his office and principal place of business at 158 Grand Street, New York, N. Y., from which address he transacts business under the above trade names.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a certain hair dye cosmetic, variously designated as Vitale Instantaneous Hair Dye, Vitale Rapid Hair Coloring, Vitale Rapid, Vitale Hair Coloring, Vitale Hair Dye, and as Vitale.

In the course and conduct of his business the respondent causes said cosmetics, when sold, to be transported from his place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia.

At all times mentioned herein, respondent has maintained a course of trade in said cosmetic, sold and distributed by him in commerce between and among the various States of the United States and in the District of Columbia.

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

nation of, false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among, and typical of, the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by advertisements in newspapers, are the following:

WHITE HAIR

Can be eliminated without danger in only 15 minutes by using Vitale Rapid once a month. It does not discolor upon washing and gives a natural shade. Price $2. Free sample. State color.

Alvi, Inc.
158 Grand Street
New York

GRAY HAIR

Will vanish in 15 minutes by using the rapid dye "Vitale" once a month. Box for 4 applications, $2. Ask for free sample and state the color of your hair.

Alvi Co.
158 Grand Street, N. Y.

GRAY HAIR

Can be eliminated without danger in only 15 minutes by using Vitale Rapid once a month. Does not lose color when washed and gives a natural shade. Price $2. Free sample. State color.

Alvi Co.
158 Grand Street, N. Y.

In answer to requests for free samples offered in the foregoing newspaper advertisements and in reply to inquiries regarding said product, the respondent also disseminated in the manner and for the purpose aforesaid, circulars, leaflets, and other advertising literature by the United States mails and by various other means in commerce, containing the following false, misleading, and deceptive statements and representations:

Vitale gives a clear and natural color. The Vitale can be used by all persons having perfect skin and hair. When in doubt, we advise you to wash a bit of the skin behind the ear or on the arm. When dry, mix a few drops from vials A and B and apply. If no redness appears on the following morning,

you can use Vitale with the assurance that it will do no harm. Vitale is a most economical modern dye, free from any harmful material. Send the coupon today for the large box, and you will be glad to have given your hair the warmth and luster of youth.

Alvi Co.
158 Grand Street
New York, N. Y.

VITALE HAIR COLORING

Only 15 minutes required to banish gray hair. One application is required. Vitale is easily applied in your own home with success.

Safe for scalp and hair. Perfect color. Vitale is safe. Over 30 years of experience in manufacturing hair preparations are your best guarantee.

Vitale, the scientific rapid hair coloring has brought happiness to thousands of women, security and youthful appearance to thousands of men.

Alvi Co.
158 Grand Street
New York, N. Y.

Thousands use the Vitale with great success. It has been endorsed by the leading beauticians in Europe and America for over 10 years, because it is not a commercialized hair dye, but the result of scientific researches. Vitale is perfectly safe. Hair colorings are safe to use. This modern hair coloring, free from any dangerous materials, is economical and safe. Write today for the large box, and you will be glad to have given the youthful color, and glint to your hair.

Alvi Co.
158 Grand Street
New York, N. Y.

Youthful Hair—END THE TRAGEDY OF PREMATURE GRAYNESS QUICKLY—SAFELY

In order to overcome the handicap of gray hair, "Vitale," a rapid ideal hair coloring, was developed after years of constant research and study.

Vitale, not only duplicates nature's color but penetrates inside the hair, after nature's own fashion, retaining its natural lustre silkiness and beauty.

Alvi Distributors
158 Grand Street
New York, N. Y.

Vitale Rapid to restore youthful color to gray hair in nature's way. It produces a natural color that cannot be distinguished even under close scrutiny. It does not contain injurious chemicals. It is permanent. It will give a uniform shade throughout a number of years. There is more quality, supreme quality and effectiveness in Vitale than any other preparation.

Alvi, Inc.
158 Grand Street
New York, N. Y.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondent represents that his hair dye cosmetic, designated as Vitale Instantaneous Hair Dye and by various other names as aforesaid, is scientific, safe, and free from harmful, dangerous, and injurious chemicals; that it will end premature gray hair; that it will produce a permanent, natural, uniform shade; that it gives the hair the warmth, color, luster, and glint of youth and that its use will have no ill effects upon the human body.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the cosmetic sold and distributed by the respondent as aforesaid is a chemical dye and will not end premature gray hair, nor will it produce a permanent, natural, uniform shade. It is incapable of giving the hair the warmth, color, luster or glint of youth, or affecting the hair in any way other than as a dye. The said preparation is not safe, scientific, or harmless, as its use may result in serious and irreparable injury to health.

Respondent's preparation contains paraphenylene-diamine, a toxic coal-tar derivative, in sufficient quantity to cause in some cases skin irritation and other harmful effects, if said preparation is used under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

The use of said cosmetic may cause, in some cases, violent local dermatitis, and if absorbed into the body, it may result in vertigo, gastritis, exophthalmos, asthma, diplopia, asthenia, or subcutaneous oedema about the face and head. Furthermore, the application of said cosmetic to the eyebrows or eyelashes in any case may cause blindness.

PAR. 6. The advertisements disseminated by the respondent, as aforesaid, contain no warning against the use of said preparation on the eyelashes or eyebrows, nor do such advertisements contain adequate warnings as to the necessity of a proper skin patch test before each application of said preparation to the hair, in order to determine the toxic reaction of the user. Consequently, such advertisements constitute false advertisements in that they fail to reveal facts material in the light of the representations contained therein, and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, may result in injury to health.

PAR. 7. The use by the respondent of the foregoing, false, deceptive, and misleading statements and representations with respect to his preparation, disseminated as aforesaid, has had and now has, the capacity and tendency to, and does, mislead and deceive a substan-

tial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's preparation.

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

REPORT, MODIFIED FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the fifth day of April 1941, issued, and on the seventh day of April 1941, served upon the respondent, Casimiro Muojo, an individual, trading as Alvi Co., and as Alvi, Inc., its complaint in this proceeding charging him with the use of unfair and deceptive acts or practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the respondent's answer, the Commission, by order entered herein, granted the respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all of the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Subsequently, this proceeding regularly came on for final hearing before the Commission upon said complaint and substitute answer; and the Commission, after having duly considered the matter, on August 7, 1941, made and issued its findings as to the facts, its conclusion drawn therefrom, and its order to cease and desist disposing of said proceeding.

Thereafter, pursuant to a motion filed by counsel in support of the complaint and consented to by the respondent, the Commission reconsidered the matter and, being of the opinion that the aforesaid findings as to the facts, conclusion, and order to cease and desist should be modified in certain respects, reopened the proceeding and said findings, conclusion, and order were set aside. In lieu of said findings as to the facts and conclusion, the Commission now makes this its modified findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Casimiro Moujo, is an individual trading as Alvi Co. and as Alvi, Inc., with his office and principal

place of business located at 158 Grand Street, in the city of New York, State of New York, from which address he transacts business under the above trade names.

PAR. 2. The respondent is now, and for more than 1 year last past he has been, engaged in the sale and distribution of a certain hair dye cosmetic, variously designated as Vitale Instantaneous Hair Dye, Vitale Rapid Hair Coloring, Vitale Rapid, Vitale Hair Coloring, Vitale Hair Dye, and as Vitale.

In the course and conduct of his business the respondent causes said cosmetic, when sold, to be transported from his place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia.

At all times mentioned herein, the respondent has maintained a course of trade in said cosmetic, sold and distributed by him in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and the respondent has also disseminated, and is now disseminating, and has cause and is now causing the dissemination of, false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among, and typical of, the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by advertisements in newspapers, are the following:

WHITE HAIR

Can be eliminated without danger in only 15 minutes by using Vitale Rapid once a month. It does not discolor upon washing and gives a natural shade. Price $2. Free sample. State color.

Alvi, Inc.
158 Grand Street
New York

GRAY HAIR

Will vanish in 15 minutes by using the rapid dye "Vitale" once a month. Box for 4 applications, $2. Ask for free sample and state the color of your hair. Alvi Co., 158 Grand Street, N. Y.

GRAY HAIR

Can be eliminated without danger in only 15 minutes by using Vitale Rapid once a month. Does not lose color when washed and gives a natural shade. Price $2. Free sample. State color. Alvi Co., 158 Grand Street, N. Y.

In answer to requests for free samples offered in the foregoing newspaper advertisements and in reply to inquiries regarding said product, the respondent has also disseminated in the manner and for the purpose aforesaid, circulars, leaflets and other advertising literature by the United States mails and by various other means in commerce, containing the following false, misleading, and deceptive statements and representations:

VITALE gives a clear and natural color. The VITALE can be used by all persons having perfect skin and hair. When in doubt, we advise you to wash a bit of the skin behind the ear or on the arm. When dry, mix a few drops from vials A and B and apply. If no redness appears on the following morning, you can use VITALE with the assurance that it will do no harm. VITALE is a most economical modern dye, free from any harmful material. Send the coupon today for the large box, and you will be glad to have given your hair the warmth and luster of youth.

Alvi Co.
158 Grand St.,
New York, N. Y.

VITALE HAIR COLORING.

Only 15 minutes required to banish gray hair.

One application is required.

VITALE is easily applied in your own home with success. SAFE FOR SCALP AND HAIR. Perfect color. VITALE is safe. Over 30 years of experience in manufacturing hair preparations are your best guarantee. VITALE, the scientific rapid hair coloring has brought happiness to thousands of women, security and youthful appearance to thousands of men.

Alvi Co.
158 Grand St.,
New York, N. Y.

Thousands use the VITALE with great success. It has been endorsed by the leading beauticians in Europe and America for over 10 years, because it is not a commercialized hair dye, but the result of scientific researches. VITALE is perfectly safe. Hair coloring are safe to use. This modern hair coloring, free from any dangerous materials, is economical and safe. Write today for the

large box, and you will be glad to have given the youthful color, and glint to your hair.

Alvi Co.
158 Grand Street,
New York, N. Y.

Youthful Hair
END TRAGEDY OF
PREMATURE GRAYNESS
QUICKLY,—SAFELY

In order to overcome the handicap of gray hair, "Vitale," a rapid ideal hair coloring, was developed after years of constant research and study. Vitale, not only duplicates nature's color but penetrates inside the hair, after Nature's own fashion, retaining its natural lustre silkiness and beauty.

Alvi Distributors
158 Grand St.,
New York, N. Y.

VITALE RAPID to restore youthful color to gray hair in nature's way. It produces a natural color that cannot be distinguished even under close scrutiny. It does not contain injurious chemicals. It is permanent. It will give a uniform shade throughout a number of years. There is more quality, supreme quality and effectiveness in VITALE than any other preparation.

Alvi, Inc.
158 Grand Street,
New York, N. Y.

PAR. 4. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, the respondent has represented that his hair dye cosmetic, designated as Vitale Instantaneous Hair Dye and by various other names as aforesaid, is scientific, safe, and free from harmful, dangerous, and injurious chemicals; that it will end premature gray hair; that it will produce a permanent, natural, uniform shade; that it gives the hair the warmth, color, luster, and glint of youth; and that its use will have no ill effects upon the human body.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the cosmetic sold and distributed by the respondent as aforesaid is a chemical dye and will not end premature gray hair, nor will it produce a permanent, natural, uniform shade. It is incapable of giving the hair the warmth, color, luster, or glint of youth, or of affecting the hair in any way other than as a dye. The preparation is not a scientific cosmetic, nor is it safe or harmless under all conditions of use. The respondent's prepa-

ration contains paraphenylenediamine, a toxic coal-tar derivative, and the use of a preparation containing this ingredient will in some cases cause skin irritations and other harmful effects. Insofar as the respondent's advertising stated or implied that his preparation will not under any circumstances cause injury to the user it was misleading and untrue.

PAR. 6. The complaint in this proceeding also charged, and the Commission, in its findings as to the facts issued on August 7, 1941, found that the respondent's advertisements concerning his hair dye preparation constituted false advertisements for the further reason that they failed to reveal that said preparation, when applied to the skin or to the face or head, is potentially dangerous by reason of its paraphenylenediamine content.

The record in this proceeding shows that the label on the container in which this preparation is sold bears the following statement:

CAUTION: This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes and eyebrows; to do so may cause blindness.

and that the accompanying directions are in all respects adequate to enable purchasers of the preparation to make the preliminary test referred to in said statement. The record now further shows that the Commission, on November 24, 1948, acting under its statement of policy promulgated on December 11, 1946, as amended on March 2, 1948, determined that it would not thereafter consider any advertisement of a coal-tar hair dye of the "para" type as false merely because of the failure of such advertisement to reveal that the preparation is potentially dangerous by reason of its paraphenylenediamine content, when the label on such preparation bears such a statement and when the accompanying directions are adequate for the preliminary testing. The Commission is of the opinion, therefore, and finds that the respondent's advertisements concerning his hair dye preparation would not under the Commission's present policy constitute false advertisements because of their failure to reveal that the preparation is potentially dangerous by reason of its paraphenylenediamine content.

PAR. 7. The use by the respondent of the false, deceptive, and misleading statements and representations referred to in paragraphs 3, 4, and 5, disseminated as aforesaid, had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements were true, and to induce a portion of

the purchasing public, because of such erroneous and mistaken belief, to purchase the respondent's preparation.

CONCLUSION

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

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of the respondent, in which answer the respondent admitted all of the material allegations of fact set forth in said complaint and stated that he waived all intervening procedure and further hearing as to said facts, the Commission, after having made its findings as to the facts and its conclusion that said respondent had violated the provisions of the Federal Trade Commission Act, on August 7, 1941, issued, and on August 8, 1941, served upon the respondent said findings as to the facts, conclusion, and its order to cease and desist; and this proceeding having been reopened and said findings as to the facts, conclusion, and order to cease and desist having been set aside:

It is ordered, That the respondent, Casimiro Muojo, an individual, trading as Alvi Co. and as Alvi, Inc., or trading under any other name or names, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of his hair dye cosmetic variously designated as Vitale Instantaneous Hair Dye, Vitale Rapid Hair Coloring, Vitale Rapid, Vitale Hair Coloring, Vitale Hair Dye, and as Vitale, or any other hair dye cosmetic or product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing to be disseminated, any advertisement (*a*) by means of the United States mails, or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that said preparation is a safe or scientific cosmetic, free from harmful, injurious, or dangerous chemicals; or that its use will end pre-

mature gray hair or produce a permanent, natural, uniform shade or give warmth, color, luster, or glint of youth to the hair.

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

Complaint

IN THE MATTER OF

GLOBE CARDBOARD NOVELTY CO., INC., ET AL.

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

Docket 4808. Complaint, Aug. 10, 1942—Decision, Dec. 29, 1950

Where a corporation and two partners, who were also its officers and formulated and controlled its acts and practices, engaged in the manufacture and interstate sale and distribution of push cards and punch boards which were so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes, and under which, in accordance with the particular explanatory legend set forth thereon or supplied by the purchaser in the place provided therefor, the cost of the push or punch and the article secured thereby was determined by the number revealed by the tab or hole selected by chance, and persons who selected by chance a concealed lucky number or name received articles of merchandise at much less than the normal retail price, and others received nothing for the cost of the push or punch other than the privilege of making the same—

Sold such devices to manufacturers of and dealers in other merchandise, including sellers, distributors, and retailers of candy, cigarettes, clocks, razors, cosmetics, clothing, etc., in interstate commerce, who packed and assembled assortments of various articles, together with said push cards and punch boards, for exposition to the purchasing public and sale thereto by the direct or indirect retailer purchasers thereof, in accordance with the aforesaid plan, involving the sale of a chance to procure articles at much less than their normal retail price, and an unfair act and practice in commerce within the intent and meaning of the Federal Trade Commission Act, and one contrary to an established public policy of the United States Government;

With the result that many members of the public, because of said element of chance were induced to trade or deal with retailers who thus sold such merchandise; and many retailers were induced to deal or trade with such manufacturers, wholesalers, and jobbers; substantial trade in commerce was diverted from competitors who refrained from so selling or distributing their merchandise and from supplying the devices to others; and gambling among members of the public was taught and encouraged, all to the injury thereof:

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

Before *Mr. Randolph Preston*, trial examiner.

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

Mr. Arthur S. Salus and *Mr. Nathan Lavine*, of Philadelphia, Pa., 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 Globe Cardboard Novelty Co., Inc., a corporation; Morris Aaron, individually, and as an officer of Globe Cardboard Novelty Co., Inc., and as a copartner in the firm trading as Globe Printing Co.; and Louis Broudo, individually, and as an officer of Globe Cardboard Novelty Co., Inc., and as a copartner of the firm trading as Globe Printing Co., all 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 Globe Cardboard Novelty Co., Inc., hereinafter referred to as corporate respondent, is a corporation organized and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business at 515 Greenwich Street, New York City, N. Y. Individual respondents Morris Aaron and Louis Broudo are president and treasurer respectively of the said corporate respondent, and they formulate, direct, dictate, and control the acts and practices of the said corporate respondent from its aforesaid principal office and place of business. Individual respondents Morris Aaron and Louis Broudo are also copartners trading as Globe Printing Co., having their principal office and place of business at 1023 Race Street, Philadelphia, Pa.

Respondents are now, and for some time last past have been, engaged in the manufacture of devices commonly known as push cards and punch boards and in the sale and distribution, in commerce between and among the various States of the United States and in the District of Columbia, of said devices to manufacturers of, and dealers in, various other articles of merchandise.

Respondents cause and have caused said devices, when sold, to be transported from their aforesaid places of business to purchasers thereof at their respective points of location in various States of the United States other than the States of New York and Pennsylvania and in the District of Columbia. There is now, and for some time last past has been, a course of trade in such push card and punch board devices by said respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed, to said manufacturers and dealers push cards and punch boards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used in making sales of mechandise to the consuming public. One of said push cards

bears 35 feminine names with ruled columns on the face thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 35 small, partially perforated disks on the face of which is printed the word "push." Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on the face of the card. The push card bears a legend or instructions as follows:

NO BLANKS—ALL WINNERS. A ONE-POUND BOX OF CHOCOLATES WITH EVERY PUNCH. PAY WHAT YOU DRAW. ONE CENT TO THIRTY-NINE CENTS. (SEAL) PERSONS SELECTING NAME UNDER SEAL RECEIVES A BOX OF CHOCOLATES.

Many of said push cards and punch boards have printed on the faces thereof other legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various other specified articles of merchandise. The prices of the sales on said push cards and punch boards vary in accordance with the individual device. Each purchaser is entitled to one push or punch from the push card or punch board, and when a push or punch is made a disk or printed slip is separated from the push card or punch board and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punch board devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punch boards the purchasers thereof place instructions or legends which have the same import or meaning as the instructions or legends placed by the respondents on said push card and punch board devices first hereinabove described. Respondents sell and distribute, and have sold and distributed, many kinds of said push cards and punch boards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of other merchandise and vary only in detail. The only use to be made of said push card and punch board devices and the only

manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' said push card and punch board devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push card and punch board devices. Retail dealers who have purchased said assortments, either directly or indirectly, and retail dealers who have purchased said devices direct from respondents and made up their own assortments, have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punch boards in accordance with the sales plan as described in paragraph 2 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punch boards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute said merchandise together with said devices and who have many competitors who sell or distribute like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said push card and punch board devices or other similar devices which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise, or to suffer the loss of substantial trade. Said competitors do not sell or distribute their merchandise by means of push card or punch board devices or similar devices because of the element of chance or lottery features involved therein, and because such practices are contrary to the public policy of the Government of the United States and such competitors refrain from supplying to, or placing in the hands of, other push card or punch board devices, or any other similar devices which are to be used or which may be used in connection with the sale or distribution of the merchandise of such competitors to the general public by means of a lottery, game of chance or gift enterprise. As a result thereof substantial trade in commerce among and

between the various States of the United States and in the District of Columbia has been unfairly diverted from said competitors who do not sell or use said devices to persons, firms and corporations who purchase and use said devices of the respondents.

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

The sale or distribution of said push card and punch board devices by respondents as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of their merchandise. The respondents thus supply to, and place in the hands of, said persons, firms, and corporations the means of, and instrumentalities for, engaging in unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission, on August 10, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Globe Cardboard Novelty Co., Inc., a corporation, Morris Aron, individually and as an officer of Globe Cardboard Novelty Co., Inc., and as a copartner in the firm trading as Globe Printing Co., and Louis Broudo, individually and as an officer of Globe Cardboard Novelty Co., Inc., and as a copartner in the firm trading as Globe Printing Co., charging them with the use of unfair acts and practices in commerce in violation of said Act. On September 15, 1942, the respondents filed their answer in which they denied the material allegations of the complaint, but in a motion dated April 10, 1950,

they requested permission to withdraw the answer previously filed and to file in lieu thereof a substitute answer in which they admitted the material allegations of fact in the complaint and waived all intervening procedure and further hearing as to said facts but reserved the right to file briefs and present oral argument. Said motion was granted by the trial examiner, and the substitute answer was filed on April 21, 1950. The Commission, after consideration of the complaint and substitute answer thereto, afforded the respondents opportunity to show cause why the tentative order to cease and desist entered on August 31, 1950, should not be entered herein as an order to cease and desist. In response to such leave to show cause, a brief on behalf of the respondents and reply brief by counsel supporting the complaint were filed and oral argument was presented. Thereafter this proceeding regularly came on for final consideration by the Commission upon the complaint, substitute answer, and briefs and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Globe Cardboard Novelty Co., Inc., hereinafter referred to as corporate respondent, is a corporation organized and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business at 515 Greenwich Street, New York City, N. Y. Individual respondents Morris Aron and Louis Broudo are president and treasurer respectively of the said corporate respondent, and they formulate, direct, dictate, and control the acts and practices of the said corporate respondent from its aforesaid principal office and place of business. Individual respondents Morris Aron and Louis Broudo are also copartners trading as Globe Printing Co., having their principal office and place of business at 1023 Race Street, Philadelphia, Pa.

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

Respondents cause and have caused said devices, when sold, to be transported from their aforesaid places of business to purchasers thereof at their respective points of location in various States of the United States other than the States of New York and Pennsylvania

and in the District of Columbia. There is now, and for some time last past has been, a course of trade in such push card and punchboard devices by said respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, as described in paragraph one hereof, respondents sell and distribute, and have sold and distributed, to said manufacturers and dealers push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used in making sales of merchandise to the consuming public. One of said push cards bears 35 feminine names with ruled columns on the face thereof for writing in the names of the customer opposite the feminine name selected. Said push card has thirty-five small, partially perforated disks on the face of which is printed the word "push." Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on the face of the card. The push card bears a legend or instructions as follows:

NO BLANKS—ALL WINNERS. A ONE-POUND BOX OF CHOCOLATES WITH EVERY PUNCH. PAY WHAT YOU DRAW. ONE CENT TO THIRTY-NINE CENTS. (SEAL) PERSON SELECTING NAME UNDER SEAL RECEIVES A BOX OF CHOCOLATES.

Many of said push cards and punchboards have printed on the faces thereof other legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various other specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one push or punch from the push card or punchboard, and when a push or punch is made a disc or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punchboard devices have no instruc-

tions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import or meaning as the instructions or legends placed by the respondents on said push card and punchboard devices first hereinabove described. Respondents sell and distribute, and have sold and distributed, many kinds of said push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of other merchandise and vary only in detail. The only use to be made of said push card and punchboard devices and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove described.

PAR. 4. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' said push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push card and punchboard devices. Retail dealers who have purchased said assortments, either directly or indirectly, and retail dealers who have purchased said devices direct from respondents and made up their own assortments, have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sales plan as described in paragraph 2 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise together with said devices and who have many competitors who sell or distribute like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said push card and punchboard devices or other similar devices which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise, or to suffer the loss of substantial trade. Said competitors do not sell or distribute their merchandise

by means of push card or punchboard devices or similar devices because of the element of chance or lottery features involved therein, and because such practices are contrary to the public policy of the Government of the United States and such competitors refrain from supplying to, or placing in the hands of, others push card or punchboard devices, or any other similar devices which are to be used or which may be used in connection with the sale or distribution of the merchandise of such competitors to the general public by means of a lottery, game of chance, or gift enterprise. As a result thereof substantial trade in commerce among and between the various States of the United States and in the District of Columbia has been unfairly diverted from said competitors who do not sell or use said devices to persons, firms, and corporations who purchase and use said devices of the respondents.

PAR. 5. The sale of merchandise to the purchasing public in the manner above set out involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or method in the sale of merchandise and the sale of merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of the sort which is contrary to an established public policy of the Government of the United States and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

The sale or distribution of said push card and punchboard devices by respondents as hereinabove described supplies to and places in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of their merchandise. The respondents thus supply to, and place in the hands of, said persons, firms, and corporations the means of, and instrumentalities for, engaging in unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, substitute answer there-

to, in which answer the respondents admitted all of the material allegations of fact set forth in the complaint, and briefs and oral argument of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent Globe Cardboard Novelty Co., Inc., a corporation, its officers, agents, representatives, and employees, and the respondents Morris Aron and Louis Broudo, individually and as officers of respondent corporation and as copartners trading as Globe Printing Co. or trading under any other name, their agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

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

It is further ordered, That the 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.

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

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

Syllabus

IN THE MATTER OF

DABROL PRODUCTS CORPORATION 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 5656. Complaint, Oct. 25, 1949 [1]*—Decision, Dec. 29, 1950*

The term "Pennsylvania oil" is recognized throughout the trade, the oil industry and by a substantial part of the purchasing public as meaning a lubricant oil refined from a crude oil extracted or produced in the geographic area known as the Pennsylvania Oil Field, which includes the western portion of the State of Pennsylvania and contiguous portions of the states of New York, Ohio, and West Virginia. Such oil has for some time been well and favorably known to the purchasing public, enjoys a preference on the part of such public over oils refined from crude oils produced in other localities, commands a premium in price and enjoys a constant demand from dealers which, if not supplied, would cause the loss of trade in other oils.

There is a marked preference on the part of the purchasing public generally for new and unused oil over used, reprocessed, cleaned and recleaned oil, partially due, at least, to the belief that the former is superior in lubrication performance to the latter; and relatively few members of the purchasing public would knowingly buy crank-case drainings or other used oil regardless of what cleaning or other processing had subsequently been given to it.

The advertising for sale and sale of previously used lubricating oil, whether reclaimed, recleaned, refined or reconditioned, without plainly stating or labeling such facts is a misdemeanor by law in Illinois, Indiana, Wisconsin, and Pennsylvania and is forbidden by law in California, and said laws make clear the probability of deception in the absence of disclosure and the public policy of those states requiring such disclosure for the protection of the purchasing public.

He who represents must know, or not knowing, must find out, and, as regards such matters, ascertainment of the objective truth cannot, in the public interest, be left to the ignorance, lassitude or inertia of or acceptance by any industry, with apparent profit motives, but such ascertainment must exhaust all sources of knowledge available, since freedom of assertion carriers with it also the responsibility to keep currently informed in all fields and from all sources on which the assertion impinges.

Where a corporation engaged in processing and blending lubricating oil—purchasing therefore crude oil, partially refined oil and waste or reused oil—and in selling and distributing the product in bulk and in containers to and through its distributing subsidiary and other outlets, under its brand names "Cert-O-Penn" or "Pennolenne," along with its said subsidiary engaged in the interstate sale and distribution of said products and similar products purchased from other sources, and an individual who controlled and operated both companies—

(*a*) Represented through statements on the containers in which their said branded oils were sold, that said oils were 100 percent Pennsylvania motor oil made from the highest grade crude oil, and so implied through the names themselves;

[1] Amended.

The facts being that except under unusual circumstances, when the bill of lading showed origin of shipment, they knew neither origin of shipment nor of refining of the oils bought by them; and the oil thus sold, as disclosed by the optical rotation and infrared absorption tests, were either not Pennsylvania oil at all, or not wholly so; and

(*b*) Made similar false representations through similar means as to lubricating oils which they packed for another concern under its brand names "Martins 100" and "Marco-Penn";

With the effect of misleading and deceiving substantial numbers of wholesalers, retailers and members of the purchasing public into the erroneous belief that such representations were true, and of causing substantial purchases of their products because of such belief, with the result that the public received a product different from that for which it thought it paid its money; and,

Where said corporations and individuals, engaged as above indicated, in processing and reselling large quantities of used or waste oil bought from dealers in Chicago who made a business of collecting it from garages, filling stations, and industrial plants—packing some of it under its said brand names, and reselling some without representation as to source, some in bulk and some in containers of the same size and appearance as those in which virgin oil is customarily sold—

(*c*) Failed to disclose that said oil was composed wholly or in part of used oil which had been reprocessed or reclaimed;

With tendency and capacity to mislead and deceive substantial numbers of wholesalers, retailers and members of public into the erroneous belief that they were purchasing and reselling or using new and unused oil and thereby causing them to purchase substantial quantities thereof;

Effect of which acts and practices was to place in the hands of wholesalers and retailers of lubricating oil a means whereby they might mislead the purchasing public in respect to the origin and virginity of their said product:

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

As respects the question of interstate commerce in said proceeding, while said corporation first named did not sell oil in interstate commerce, the bulk of its products were so sold by its said subsidiary which it owned and controlled, and while the individual referred to likewise did not sell oil in interstate commerce, he represented the active management and control of the subsidiary which did so, and the operation of the two corporations was integrated under his control and operation.

While oil refiners, processors, blenders, dealers and distributors are on the whole entirely ignorant of the optical rotation and infrared absorption tests, and are on the whole more concerned with performance than with the origin of oils, buying on specification and sending samples to a testing laboratory, and respondents followed said practice, and up to the time of the instant proceeding had no knowledge of tests more definitive than the inspection tests which they had used and which the industry used, the laboratory with which they dealt for testing purposes was aware of them and favored them as more definitive, and the knowledge in question was readily accessible to

respondents, notwithstanding the fact they did not have it and the laboratory techniques concerned were neither known to nor used by the industry or by the respondents.

In said proceeding the quality of the lubricating oils sold by respondents under said brand names was not in question or an issue and no finding was made either as to the quality or efficiency of respondents' product, but when respondents undertook to induce sales with an assertion of the origin of their lubricating oil, knowing a particular origin to be an inducement, they concomitantly assumed not only the guarantee of the truth of such assertion, but also the coincident responsibility of ascertaining that truth by any and all means under penalty of foregoing the assertion.

As respects the charge in the complaint that the use of the brand-name "Cert-O-Penn" created an impression in the minds of purchasers that the oil sold under that name had been or was "certified by some official or recognized agency or laboratory as to quality, value and efficacy," there was no evidence that it had done so, nor was there any necessary implication to that effect from the name itself, and whatever slight implication as to certification from some unknown source might exist was neither substantial nor preponderant.

Before *Mr. Frank Hier*, trial examiner.
Mr. Jesse D. Kash for the Commission.
Petit, Olin & Overmyer, of Chicago, Ill., for respondents.

AMENDED COMPLAINT [2]

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 Dabrol Products Corp., a corporation, and Andrew O'Blasney, individually and as an officer of Dabrol Products Corp., hereinafter referred to as respondents, have violated the provisions of said act and, it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Dabrol Products Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 6265 West Sixty-sixth Place in the city of Chicago,

[2] The Commission on September 26, 1950, issued an order adding party respondent, as follows:

"This matter coming before the Commission upon the requests of the attorney supporting the amended complaint to add the Tri-O-Lene Oil Co., a corporation, as a respondent herein, pursuant to an agreement entered into by counsel for the respondents and counsel supporting the complaint and made a part of the record herein, 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 amended complaint be amended by adding the Tri-O-Lene Oil Co., a corporation, as a respondent and such other grammatical corrections be made in the complaint as may be made necessary by such action."

State of Illinois. The corporation trades under the name of Tri-O-Lene Oil Co.

Respondent, Andrew O'Blasney, is the president, vice president, and treasurer of Dabrol Products Corp. with his office and principal place of business located at 6265 West Sixty-sixth Place in Chicago, Ill. This individual dominates the affairs of corporate respondent and is responsible for its acts and practices including those hereinafter referred to.

PAR. 2. The respondents are now and for several years last past have been engaged in the business of reclaiming and reprocessing used motor oil and in selling and distributing such lubricating oil or a blend of such oil and new oil in commerce between and among the various States of the United States to wholesale and retail dealers for resale to the purchasing public, among which are those designated and sold under the brand names of "CERT-O-PENN" and "PENNOLENNE."

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

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, the respondents, subsequent to March 21, 1938, have made and are now making certain representations regarding the value and origin of their said products and the results to be obtained from their use, by means of printings on the containers of said products and by various other means. Typical representations on said containers are as follows:

CERT-O-PENN

ALLOYED
100 PERCENT PENNSYLVANIA
MOTOR OIL

The oil that has no equal

1. You bought in this can the finest motor oil obtainable.
2. The proof, years of accurate performance.
3. Choicest heart of crudes and utmost in refining makes "Cert-O-Penn" the oil that has no equal.
4. Maximum mileage will be had if proper grade is used. Consult your station manager or mechanic.

5. This oil is good and good for your motor. Guaranteed by Tri-O-Lene Oil Co., Chicago.

1 U. S. Liquid quart.

* * * * * * *

PENNOLENNE

The Heart of Lubrication

(Pictorial representation of a heart over which the words "100% Pure Pennsylvania Oil" are printed.)

TEMPORIZED

Better Lubrication Guaranteed for 2000 Miles

PENNOLENNE

PENNOLENNE motor oil made from the highest grade crude oil, a choice Pennsylvania Motor Oil that has been alloyed and temporized by the addition of a special compounded inhibitor. Sufficient quantities have been added to prolong the life and improve the performance of modern high speed motors. Its increased film strength and surface tension will prevent and reduce the formation of harmful varnish, gum and sludge. Good as the best, better than the rest. Tri-O-Lene Oil Co., Chicago.

PAR. 5. Through the use of the aforesaid statements, the respondents have represented and now represent that their said products "Cert-O-Penn" and "Pennolenne" are refined and processed entirely from oil produced in the Pennsylvania oil field. Through the use of the term "Cert" as a part of the brand name of their product "Cert-O-Penn" respondents represent that said product has been certified by some official or recognized agency or laboratory as to the quality, value and efficacy of said product in use.

The use by the respondents of the brand names "Cert-O-Penn" and "Pennolenne" within and of themselves constitute representations that such products are refined entirely of oil produced in the Pennsylvania oil field.

Respondents also sell oil in bulk for resale by distributors and dealers and in containers furnished by distributors and dealers bearing their private brand names and represent on order blanks and otherwise that such oil is 100 percent Pennsylvania Motor Oil.

PAR. 6. The aforesaid statements, representations and trade or brand names are false, misleading, and deceptive. In truth and in fact, respondents' "Cert-O-Penn" and "Pennolenne" oil and its oil sold in bulk and supplied in containers under private brand labels are not refined entirely from oil produced in the Pennsylvania oil field, but contain large amounts of oil produced in oil fields other than the Pennsylvania field, and respondents' product "Cert-O-Penn" has not

been certified by any official or recognized agency or laboratory as to the quality, value, and efficacy of said product in use.

PAR. 7. The term "Pennsylvania oil" is recognized throughout the trade and by a substantial portion of the purchasing public as meaning oil refined from crude oil produced in the geographical area known as the Pennsylvania Oil Field which includes the western portion of Pennsylvania and contiguous portions of New York, Ohio, and West Virginia. Pennsylvania oil has for some time been well and favorably known to the purchasing public and there is a preference on the part of a substantial portion of the public for such oil over oils refined from crude oil produced in other localities.

PAR. 8. Respondents' oil consists in whole or in substantial part of used oil obtained from drainings of motor crank cases and thereafter reclaimed or reprocessed. Said oil is sold in containers of the same general size, kind, and appearance as those used for new oil and has the appearance of new and unused oil. The containers bear no markings of any kind indicating that said products are reclaimed or reprocessed oil. In the absence of a disclosure on the container that the oil therein is reclaimed or reprocessed the general understanding and belief on the part of dealers and the purchasing public is that oil sold in containers such as are used by respondents is in fact new oil and not reclaimed or processed oil. There is a marked preference on the part of a substantial portion of the purchasing public for new and unused oil over used and reclaimed or reprocessed oil, such preference being due in part to the belief that new and unused oil is superior in quality to oil that has been used and reclaimed or reprocessed.

PAR. 9. The respondents' said acts and practices further serve to place in the hands of wholesalers and retailers a means and instrumentality whereby such persons may mislead the purchasing public in respect to the origin and quality of respondents' products.

PAR. 10. The use by the respondents of the aforesaid false, deceptive and misleading statements and representations with respect to their products and the failure to disclose that their oils are compounded in whole or in part of used oil which has been reclaimed or reprocessed has had and now has a tendency and capacity to and does mislead and deceive a substantial number of wholesalers, retailers and members of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and that the oils are new oils, and cause and has caused a substantial number of the purchasing public to purchase substantial quantities of respondents' products because of such erroneous and mistaken belief.

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

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 December 29, 1950, the initial decision in the instant matter of trial examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION

By Frank Hier, Trial Examiner

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 13, 1949, issued and subsequently served its complaint in this proceeding upon respondents Dabrol Products Corp., a corporation, and upon Andrew O'Blasney, individually and as an officer thereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On June 23, 1949, respondents filed their answer to said complaint. On October 25, 1949, amended complaint was issued and subsequently served on the same respondents, making the same charges of the use of unfair and deceptive acts and practices in commerce but incorporating additional allegations of fact. On November 22, 1949, respondents filed their answer to the amended complaint. Subsequently, by order of the Commission, Tri-O-Lene Oil Co., a corporation, was added as a party respondent. Thereafter, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said amended complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the amended complaint, answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by all counsel, and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent Dabrol Products Corp. is a corporation organized, existing and doing business under and by virtue of the laws

of the State of Illinois, with its office and principal place of business located at 6265 West Sixty-sixth Place in the city of Chicago, State of Illinois.

Respondent Tri-O-Lene Oil Co. is a corporation organized, existing and doing business under the laws of the State of Illinois, with its office and principal place of business located at 6265 West Sixty-sixth Place in the city of Chicago, State of Illinois. It is a wholly owned subsidiary of respondent Dabrol Products Corp.

Respondent Andrew O'Blasney is the president and treasurer of the two corporate respondents and directs and controls the business of both.

PAR. 2. Respondent Dabrol Products Corp. refines, processes and blends lubricating oil, purchasing crude oil, partially refined oil and waste or used oil for that purpose. It sells and has sold its products to respondent Tri-O-Lene Oil Co. for resale and distribution. It also sells and has sold through other outlets. In 1949, 80 percent of its sales consisted of reprocessed or cleaned waste or used oil. It sells and has sold in bulk and also packs and has packed lubricating oil in containers under its brand names, "Cert-O-Penn" and "Pennolenne." The lubricating oil therein may be entirely refined virgin oil or may be entirely reprocessed, used oil. It also packs and has packed lubricating oil in containers for the Martin Oil Co. and Martin Oil Service under the brand names of the latter, "Martin's 100" and "Marco-Penn."

PAR. 3. Respondent Tri-O-Lene Oil Co. has acted and acts as the distribution subsidiary of its owner, Dabrol Products Corp., and, as such, causes and has caused its products to be transported from its place of business in Chicago, Ill., to purchasers thereof located in various other States of the United States. It has maintained and does maintain a constant course of trade in these products in commerce between and among the various States of the United States. It also sells lubricating products purchased from other sources than its parent.

PAR. 4. Although respondent Dabrol Products Corp. has not sold and does not for itself sell oil in interstate commerce, the bulk of its products are so sold in such commerce by its selling subsidiary, Tri-O-Lene Oil Co., which Dabrol Products Corp. owns and controls. Although respondent Andrew O'Blasney as an officer of Dabrol Products Corp. or as an individual has not sold and does not sell oil in interstate commerce, he is also the active management and control of Tri-O-Lene Oil Co. which does sell oil in interstate commerce. The operation of the two corporations is integrated, both being controlled and operated by respondent O'Blasney.

PAR. 5. In the course and conduct of this business, as hereinabove described, and to induce the purchase of their products, respondents represent their branded oils Cert-O-Penn and Pennolenne to be 100 percent Pennsylvania motor oil made from the highest grade crude oil by statements to this effect on the containers in which said oil is sold. In addition, the brand names themselves fairly imply that the product is Pennsylvania oil.

PAR. 6. The term "Pennsylvania oil" is recognized throughout the trade, the oil industry and by a substantial part of the purchasing public as meaning a lubricating oil refined from a crude oil extracted or produced in the geographical area known as the Pennsylvania Oil Field which includes the western portion of the State of Pennsylvania and contiguous portions of the States of New York, Ohio, and West Virginia. Pennsylvania oil has for some time been well and favorably known to the purchasing public and there is a preference on the part of the purchasing public for such oil over oils refined from crude oils produced in other localities. Pennsylvania oils command a premium in price from the consumer over such other oils. There is a consistent demand for it from dealers which, if not supplied, would cause the loss of trade in other oils.

PAR. 7. Respondents purchase waste or used oil for the most part locally in Chicago, Ill., and do not know its origin. Unused, virgin or new oil has been and is bought by them on specification only, mostly through brokers who refuse to reveal the source. Hence, except in the exceptional circumstance where the bill of lading shows the origin of the shipment, respondents do not know even the origin of shipment or refining of the lubricating oil, the crude oil or the partially refined oil which they buy. There is no proof in the record that origin of the crude oil cannot be traced or ascertained—there is some evidence that it can. There is no proof in the record that any of the oil respondents sold under representation that it was Pennsylvania oil was traced to specific production point, either by respondents to show that it was Pennsylvania oil or by counsel in support of the complaint to show that it was not Pennsylvania oil. Respondents admit they bought no Pennsylvania crude oil from any source during 1946–8.

PAR. 8. Up until about 1937, the geographic origin of a particular sample of oil was determined by measurement of its viscosity and specific gravity. If the former was close to 100 and the latter was close to 30, the oil was regarded as having been produced from the Pennsylvania field. If substantially lower, the oil was regarded as having been produced from other fields. These tests were accepted and used by scientists, chemists, and the oil industry as definitive

of origin. During the nineteen thirties the practice of refining lubricating oil from crude by the use of chemical solvents, instead of the old and usual method of distillation or refractionation by heat, became common. It was then discovered that lubricating oils refined by the solvent method would have a specific gravity and viscosity index indicative of Pennsylvania oil when, in fact, it was made from crude oils produced in other fields. Research to discover and develop more definitive tests for origin was undertaken and in 1937, the so-called optical rotation test was developed at Pennsylvania State College.

PAR. 9. The optical rotation test is performed by passing a beam of light through a film of a sample of the oil, placed in a polarimeter. After passing through the film of oil, the light beam is rotated or deflected. The amount of such deflection is accurately measured and it has been found that oils known to be extracted from the Pennsylvania field have a deflection of 0.34° or less, whereas oils from elsewhere are deflected in excess of that amount regardless of the method of processing or blending. This test has been used since 1937 by Pennsylvania State College in testing thousands of samples of oil; it is also used by the National Bureau of Standards of the Department of Commerce in Washington and by various other testing laboratories. A description of the technique and results of this test appeared in Analytical Chemistry in May 1948. The laboratory to which respondents sent samples of oil for testing was and is also familiar with the test.

PAR. 10. Various samples of respondents' lubricating oil, either sold to the public under the representation that they were 100 percent Pennsylvania oil, as hereinabove set out, or packed by respondents for the Martin Oil Co. or Martin Oil Service and sold under similar representation, were submitted to this test and found not to be Pennsylvania oil at all or not entirely Pennsylvania oil.

PAR. 11. About 1945 Armour Institute of Chicago undertook research to discover an additional test specifically for origin of lubricating oil. After several years of such work, there was developed the so-called infrared absorption test by which there is measured the amount of light absorbed by a film of oil through which the light is passed. It was found in testing 800 samples of oil that oil from the Pennsylvania field showed marked absorption of light at 10.3 microns on the spectrum, indicative of the wave length of the light, whereas oil from other sources did not. The technique and results of this test appeared in an article in Analytical Chemistry in August 1949.[1]

[1] Although the complaint is dated May 13, 1949, the amended complaint on which this proceeding was litigated was issued October 25, 1949.

Although this test is comparatively recent in publication, it was known and is regarded as authoritative as to origin determination by the laboratory employed by respondents to test their lubricating oils.

PAR. 12. Analytical Chemistry is a publication widely circulated and read by chemists and other scientists and highly regarded by them. Before any article is published therein, it must be critically reviewed by others in the same field of chemistry and at least not disapproved by them. Articles therein are accepted by scientists as having at least some fundamental truth.

PAR. 13. Various samples of respondents' lubricating oils, sold under the representation, as above described, that they were 100 percent Pennsylvania oil or packed by respondents for the Martin Oil Co. or Martin Oil Service and sold under similar representations, were submitted to the infrared absorption test and found not to be Pennsylvania oil at all or not wholly Pennsylvania oil.

PAR. 14. Oil refiners, processors, blenders, dealers and distributors are, on the whole, entirely ignorant of the optical rotation and infrared absorption tests. They are, on the whole, more concerned with performance than with origin. They still buy oil on specification as to viscosity, specific gravity, flash point, fire point, pour point, carbon residue, and other physical and performance characteristics. Before payment, it is customary to send samples to a testing laboratory, together with a list of the specifications on which the oil was bought, to ascertain if the oil meets the specifications. Respondents followed this practice. Specific determination of origin was apparently not requested, although the laboratory with whom respondents dealt for testing purposes, according to the record herein, was aware of the optical rotation and infrared absorption tests, regarded them as more definitive of origin than the so-called inspection tests enumerated above and knew that the latter were not definitive of origin. Respondents, up until this proceeding, had no knowledge of any tests more definitive than the inspection tests which they had used and which the industry used. Knowledge respondents had not, but that knowledge was readily accessible to them.

PAR. 15. Respondents have thus been selling lubricating oil in commerce, represented by them to be 100 percent Pennsylvania oil when, as a matter of objective fact, as revealed by laboratory techniques neither known to nor used by the oil industry or by respondents, but readily knowledgeable to both, such oil was not 100 percent Pennsylvania oil. Such representations were therefore false, misleading and deceptive, and have resulted in the public receiving a product different from that which it thought it was purchasing and for which it paid its money. They have a tendency and capacity to and do mislead

and deceive and have misled and deceived substantial numbers of wholesalers, retail dealers and members of the purchasing public into the erroneous and mistaken belief that such representations were and are true and has caused and do cause substantial purchases of respondents' products because of such belief.

PAR. 16. Respondents buy, clean, process, and resell, and have done so for some years, large quantities of used or waste oil from dealers in Chicago who make a business of collecting same from garages, filling stations and industrial plants. Some of this oil was and is packed by respondents in containers bearing the representation 100 percent Pennsylvania oil under respondents' brand names Cert-O-Penn and Pennolenne. Some of this oil is resold as lubricating oil without representation as to source. Some of it is sold in bulk. Some of it was not disclosed to be reprocessed or cleaned, used or waste oil. The containers in which some of it is sold for resale to consumers are the same in size and appearance as those in which virgin oil is customarily sold and bear no disclosure that the contents are wholly or partially used oil.

PAR. 17. There is a marked preference on the part of the purchasing public generally for new and unused oil over used, reprocessed, cleaned or reclaimed oil, partially due at least to the belief that the former is superior in lubrication performance to the latter. Relatively few members of the purchasing public would knowingly buy crank-case drainings or other used oil regardless of what cleaning or other process had subsequently been given to it.

PAR. 18. The advertising for sale and sale of previously used lubricating oil, whether reclaimed, recleaned, rerefined or reconditioned, without plainly stating or labeling such fact, is a misdemeanor by law in the States of Illinois, Indiana, Wisconsin, and Pennsylvania and is forbidden by law in the State of California. The laws of these States make clear the probability of deception in the absence of disclosure and the public policy of those States requiring such disclosure for the protection of the purchasing public.

PAR. 19. The sale of such oil by respondents, as described above in paragraph 16, without disclosure that such oil is composed wholly or in part of used oil which has been reprocessed or reclaimed, has had and now has a tendency and capacity to mislead and deceive substantial numbers of wholesalers, retailers, and members of the purchasing public into the erroneous and mistaken belief that they are purchasing and reselling or using new and unused oil and cause and has caused them to purchase substantial quantities of respondents' products.

PAR. 20. There is no evidence that the brand name "Cert-O-Penn" created an impression in the minds of purchasers that the oil sold

under that name had been or was "certified by some official or recognized agency or laboratory as to quality, value, and efficiency" nor is there any necessary implication to that effect from the name itself. Whatever slight implication as to certification from some unknown source may exist is neither substantial nor preponderant.

PAR. 21. Respondents' acts and practices, as hereinabove described, serve to place in the hands of wholesalers and retailers of lubricating oil a means and instrumentality whereby such persons may mislead the purchasing public in respect to the origin and virginity of respondents' products.

CONCLUSIONS

1. The quality of the lubricating oils sold by respondents under the brand names Cert-O-Penn and Pennolenne is not in question in this proceeding. There is no attack, criticism, or implication that respondents' oil is inferior as to performance or lubricating qualities or in the sense of its utility, adaptability, or efficiency as a lubricating oil. None of this was in issue in this proceeding. There is therefore no finding made either way as to the quality or efficiency of respondents' products.

2. When respondents undertook to induce sales with an assertion of the origin of their lubricating oil, knowing particular origin to be an inducement, they concomitantly assumed not only the guarantee of the truth of such assertion, but also the coincident responsibility of ascertaining that truth by any and all means under penalty of foregoing the assertion. He who represents must know, or not knowing, must find out.

3. Ascertainment of the objective truth cannot, in the public interest, be left to the ignorance, lassitude, or inertia of or acceptance by any industry, with apparent profit motives, but must exhaust all sources of knowledge available. Freedom of assertion carries with it also the responsibility to keep currently informed in all fields and from all sources on which the assertion impinges.

4. Packing lubricating oil in new cans for sale in garages, filling stations, and automotive stores to the general public amounts to an active representation that such oil has never before been used by others as a lubricant because of the almost universal belief on the part of the public, unconnected with the oil industry, that such oil, so sold, is new, and failure to disclose such prior use deceives and misleads the public accordingly.

5. The acts and practices of respondents in representing as Pennsylvania oil, oil which was not Pennsylvania oil, in whole or in substantial part, and in packaging and selling used or waste oil, such as crank-case drainings, after cleaning or other reprocessing, without

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

ORDER TO CEASE AND DESIST

It is ordered, That Dabrol Products Corp., a corporation, Tri-O-Lene Oil Co., a corporation, their officers, directors, employees and representatives, and Andrew O'Blasney, individually and as an officer of such corporations, his employees and representatives, through any corporate or other device, in connection with the sale, offering for sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of lubricating oil, do forthwith cease and desist from:

1. Representing directly or by implication, abbreviation, or derivation, that any lubricating oil is 100 percent Pennsylvania oil, or Pennsylvania oil, when any part of such oil is not, in fact, derived from crude oil extracted from that portion of western Pennsylvania and contiguous portions of New York, Ohio, and West Virginia, generally known as the Pennsylvania Oil Field.

2. Using the brand names "Cert-O-Penn" or "Pennolenne," or any other name of similar import, or any abbreviation, derivation, or simulation of the word "Pennsylvania," to designate or describe lubricating oil, any part of which is not derived from crude oil, extracted from that portion of western Pennsylvania, and contiguous portions of Ohio, New York, and West Virginia, generally known as the Pennsylvania Oil Field.

3. Packaging lubricating oil in cans or containers for others for resale to the purchasing public, which cans or containers violate in any way the prohibitions contained in paragraphs 1 and 2 hereinabove.

4. Advertising, selling, or offering for sale any lubricating oil, previously used for lubricating purposes, without disclosing such prior use to the purchaser or potential purchaser, either directly or by appropriate statement to that effect on the container.

5. Packaging previously used lubricating oil for others for resale to the purchasing public in containers which do not clearly and conspicuously disclose such prior use.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents, Dabrol Products Corp., Andrew O'Blasney, and Tri-O-Lene Oil Co. shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of December 29, 1950].

Syllabus

IN THE MATTER OF

BELL DIATHERMY CO., INC., ET AL.

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

Docket 5727. Complaint, Dec. 21, 1949—Decision, Dec. 29, 1950

Diathermy differs from other methods of applying heat in that through its use heat can be produced beneath the surface of the body, and it is not recognized that diathermy exerts any effect on the body other than through the production of heat.

As respects the use of diathermy, when heat is applied to the body many physiological changes occur both in the local area in which it is applied and in other areas, and there is ever-present danger in its application which an expert must keep in mind continuously—and which is much greater in the hands of a layman—in that, applied too rapidly or in too great a quantity, it will produce burns, can produce harm in ways other than by the production of burns, is contra-indicated in certain conditions and dangerous in others, and safe use of diathermy devices requires an exact diagnosis by a competent physician before administering the treatment, and the application under his instruction.

Where a corporation and its president and treasurer, engaged in the interstate sale of their "Bell Diathermy Apparatus" for use by members of the public in giving self administered applications of diathermy in their homes, through statements in advertisements, directly and by implication—

(*a*) Represented that their said device provided a competent, self-administered treatment for and would cure arthritis and be effective in the alleviation and relief of pain associated therewith; the facts being that while an agent such as their device which could develop heat about a joint might have some value when used with other treatments in some forms of arthritis, there are many forms in which it would have no value and could do harm;

(*b*) Represented that it would be thus effective in the case of rheumatism; the facts being that while it might have some adjunctive value in the treatment of some of the aches and pains thus referred to by the layman, it was not a competent cure or treatment for all of them and its use could do harm;

(*c*) Represented that it would be thus effective in the case of asthma; the facts again being that it could no more than afford relief when used in conjunction with other methods;

(*d*) Represented that it would be effective in the case of neuritis, lumbago and sciatica; the facts being that while application of heat by its use might in some instances cause a diminution of pain in the case of the first, the device would not relieve or cure the many conditions which cause those ailments;

(*e*) Represented that its use would be effective in the treatment of bursitis; the facts being that heat is of little value in the treatment of the bursae, and when a bursa is acutely inflamed, the worst thing one can do is to apply heat in any fashion;

(*f*) Represented falsely that its use would be effective in the case of neuralgia; the facts being that said term is used to indicate the existence of pain along the course of a nerve, causes of which are multitudinous; and

(*g*) Failed to reveal facts material in the light of the aforesaid representations and with respect to the consequences which might result from the use of their device under prescribed or usual conditions in that there is ever-present danger in the treatment of a patient through use of such a device, and its safe use requires diagnosis by a competent physician and application under his instruction;

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

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. Webster Ballinger*, trial examiner.

Mr. William L. Taggart for the Commission.

Mr. Zoltan Gross, of New York City, for respondents.

COMPLAINT

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

PARAGRAPH 1. Respondent, Bell Diathermy Co., Inc., is a corporation, organized under the laws of the State of New York. Its principal place of business is located at 545 Fifth Avenue, New York, N. Y. George Edelstein is the president and treasurer and Etta Edelstein is the secretary of corporate respondent and as such officers formulate, direct, and control the acts and practices of said corporation. The post office address of all of said respondents is 545 Fifth Avenue, New York, N. Y.

PAR. 2. The respondents are now and have been for more than one year last past engaged in the sale and distribution of a device, as "device" is defined in the Federal Trade Commission Act, designated as Bell Diathermy Apparatus.

In the course and conduct of their business respondents cause and have caused said device, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States.

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

PAR. 3. Respondents' device or apparatus is essentially a portable cabinet housing a transformer, a short-wave generator, two radio tubes, and two coils, which is designed and used for the generation of electrical short waves and the application thereof to parts of the human body by means of insulated electrodes. The electrical energy necessary for the operation of this device is secured by attaching it to domestic electrical current in the user's home. It operates upon a frequency of 27,300 kilocycles with a power output of 200 watts. Said device has a control for modulating the power output and a time switch which will automatically limit its period of operation to a predetermined time, both of which may be regulated by the operator. When the two electrodes are applied to the user's body and the device or apparatus is put into operation, the passage of the electrical short waves between the electrodes creates heat within the body tissues of the user because of their resistance to the passage of such electrical currents. This device or apparatus has been offered for sale and sold to members of the public for use in giving self-administered applications of diathermy in their homes.

PAR. 4. In the course and conduct of their business respondents during 1948 disseminated and caused the dissemination of certain advertisements concerning their said device by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce the purchase of their said device, including but not limited to advertisements inserted in various newspapers and by means of circulars; and respondents have disseminated and caused the dissemination of advertisements concerning their said device by various means, including but not limited to the advertisements and circulars referred to above 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.

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

ARTHRITIS
RHEUMATISM

ASTHMA	SCIATICA
NEURITIS	BURSITIS
LUMBAGO	NEURALGIA

Are you tortured and still suffering from any of the above ailments, after taking the usual remedies? Learn what thousands of others have discovered about

SHORT WAVE DIATHERMY

a new, modern, nonsurgical treatment method. If you Are a Sufferer Write for FREE HOME TRIAL OFFER. MAIL COUPON

BELL DIATHERMY CO., INC.
545 5th Avenue, New York 17, N. Y.

FREE HOME TRIAL OFFER

To Sufferers from
ARTHRITIS
RHEUMATISM

ASTHMA	SCIATICA
NEURITIS	BURSITIS
LUMBAGO	NEURALGIA

SHORT WAVE
DIATHERMY

A modern, accepted method of treatment for these ailments has brought blessed help and relief to thousands of sufferers. To show what diathermy can do for you, we will gladly give you a *FREE trial in your home, at your convenience, without cost or obligation. It will pay you well to take advantage of this offer.

Why continue in pain and agony when help is ready to come to your own doorstep? Don't delay—act now! Simply send your name and address on a postcard to:

BELL DIATHERMY CO., INC.
545 Fifth Avenue, New York 17, N. Y.

*Offer limited to U. S. A. and Canada.

DON'T SUFFER NEEDLESSLY! ! - - - THANKFUL THOUSANDS who formerly carried the agonizing burdens of

ARTHRITIS
SCIATICA—NEURITIS
RHEUMATISM
NEURALGIA—LUMBAGO
ASTHMA BURSITIS

have gathered comfort and life is a pleasure again thanks to the analgesic effect of Bell Diathermy Short Wave.

If you are a sufferer, you too can try this almost miraculous discovery in the privacy of your own home . . . at no cost. Just write to us asking for a FREE trial—a postcard will do, act now.

BELL DIATHERMY CO., INC.
545 5th Avenue, New York 17, N. Y.

PAR. 6. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented directly and by implication that their device, when used by members

of the general public in the treatment of self-diagnosed diseases, is a competent treatment for and will cure arthritis, rheumatism, asthma, neuritis, lumbago, sciatica, bursitis and neuralgia and that its use will be effective in the alleviation and relief of the pain associated with said conditions.

PAR. 7. The said advertisements are misleading in material respects and constitute false advertisements as that term is defined in the Federal Trade Commission Act. In truth and in fact respondents' said device is not a competent treatment for and will not cure arthritis, rheumatism, asthma, neuritis, lumbago, sciatica, bursitis, and neuralgia; and said representations concerning said device constitutes false advertisements for the further reason that they fail to reveal facts material in the light of such representations and facts material with respect to the consequences which may result from the use of said device under the conditions prescribed or under such conditions as are customary and usual.

The use of respondents' device in applying high frequency electric currents to produce heat in body tissues for therapeutic purposes is a form of treatment powerful enough to do serious injury to the user if improperly applied. When used unskillfully, said device or apparatus may burn or otherwise seriously injure the person to whom it is applied. The application of diathermy treatment by an unskilled person in cases where there are advanced blood-vessel changes of the legs, which are usually characterized by severe pains in the extremities, may, in excess dosage, not only cause serious burns but may lead directly to gangrene and necessitate amputation of the leg. Neuralgia and neuritis are frequently symptoms of some underlying cause or disease, such as tumor, tuberculosis, syphilis, cancer, and diabetes, and an attempt to relieve the pain resulting from such conditions by the use of a diathermy device such as respondents', without securing proper diagnosis as to the cause of such pain may result in fatal delay in the treatment of the underlying cause of such symptoms. The application of diathermy in any area of the body where appreciation of heat has been impaired or lost may result in serious burns and destruction of tissue, and diathermy is definitely contraindicated in any acute inflammatory process, acute arthritis characterized by infection, and acute bursitis.

The safe use of a diathermy device such as respondents' requires that there first be a complete diagnosis by a competent physician, a determination of whether or not diathermy is indicated, and, if so, the frequency and rate of application, thorough and adequate instruction by a trained technician in the use of the device including, among other things, the proper placement of the electrodes, control

and regulation of the amount of heat to be applied, and preventive measures against burns and tissue destruction.

PAR. 8. The use by the respondents of the false, deceptive, and misleading statements and representations set out herein with respect to their device, disseminated as aforesaid, has had the capacity and tendency to, and has, misled a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and has induced a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said device.

PAR. 9. The foregoing 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 December 21, 1949, issued and subsequently served its complaint in this proceeding upon the respondents, Bell Diathermy Co., Inc., a corporation, and George Edelstein and Etta Edelstein, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. On August 4, 1950, the trial examiner filed his initial decision.

This matter thereafter came on to be heard by the Commission upon an appeal from said initial decision filed by counsel supporting the complaint, which appeal was not opposed by the respondents and on which oral argument was not requested; and the Commission, having duly considered said appeal and the record herein 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 Bell Diathermy Co., Inc., is a corporation organized under the laws of the State of New York. Its prin-

cipal place of business is located at 545 Fifth Avenue, New York, N. Y. Respondent George Edelstein is the president and treasurer and respondent Etta Edelstein is the secretary of the corporate respondent and as such officers formulate, direct, and control the acts and practices of said corporation. The post office address of all of said respondents is 545 Fifth Avenue, New York, N. Y.

PAR. 2. The respondents are now, and have been for more than 1 year last past, engaged in the sale and distribution of a device, as "device" is defined in the Federal Trade Commission Act, designated as "Bell Diathermy Apparatus."

In the course and conduct of their business respondents cause, and have caused, said device, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said device in commerce between and among the various States of the United States.

PAR. 3. Respondents' device or apparatus is essentially a portable cabinet housing a transformer, a short-wave generator, two radio tubes, and two coils, which is designed and used for the generation of electrical short waves and the application thereof to parts of the human body by means of insulated electrodes. The electrical energy necessary for the operation of this device is secured by attaching it to domestic electrical current in the user's home. It operates upon a frequency of 27,300 kilocycles with a power output of 200 watts. Said device has a control for modulating the power output and a time switch which will automatically limit its period of operation to a predetermined time, both of which may be regulated by the operator. When the two electrodes are applied to the user's body and the device or apparatus is put into operation, the passage of the electrical short waves between the electrodes creates heat within the body tissues of the user because of their resistance to the passage of such electrical currents. The device is offered for sale and sold to members of the public for use in giving self-administered applications of diathermy in their homes.

PAR. 4. In the course and conduct of their business respondents, during 1948, disseminated and caused the dissemination of certain advertisements concerning their said device, by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, the purchase of their said device. Respondents disseminated, and also caused the dissemination of, advertisements concerning their said device by various means, for the pur-

pose 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 the statements and representations contained in the said advertisements disseminated as aforesaid are the following:

ARTHRITIS
RHEUMATISM

ASTHMA — SCIATICA
NEURITIS — BURSITIS
LUMBAGO — NEURALGIA

Are you tortured and still suffering from any of the above ailments, after taking the usual remedies? Learn what thousands of others have discovered about

SHORT WAVE DIATHERMY

a new, modern, non-surgical treatment method. If you Are a Sufferer Write for FREE HOME TRIAL OFFER. MAIL COUPON

BELL DIATHERMY CO., INC.
545 5th Avenue, New York 17, N. Y.

FREE HOME TRIAL OFFER

To Sufferers from
ARTHRITIS
RHEUMATISM

ASTHMA — SCIATICA
NEURITIS — BURSITIS
LUMBAGO — NEURALGIA

SHORT WAVE
DIATHERMY

A modern, accepted method of treatment for these ailments has brought blessed help and relief to thousands of sufferers. To show what diathermy can do for you, we will gladly give you a *FREE trial in your home, at your convenience, without cost or obligation. It will pay you well to take advantage of this offer. Why continue in pain and agony when help is ready to come to your own doorstep? Don't delay—act now! Simply send your name and address on a postcard to:

BELL DIATHERMY CO. INC.
545 Fifth Avenue, New York 17, N. Y.

*Offer limited to U. S. A. and Canada.

DON'T SUFFER NEEDLESSLY!! - - - THANKFUL THOUSANDS who formerly carried the agonizing burdens of

ARTHRITIS
SCIATICA - - - - - - NEURITIS
RHEUMATISM
NEURALGIA - - LUMBAGO
ASTHMA BURSITIS

have gathered comfort and life is a pleasure again thinks to the analgesic effect of Bell Diathermy Short Wave.

If you are a sufferer, you too can try this almost miraculous discovery in the privacy of your own home . . . at no cost. Just write to us asking for a FREE trial—a postcard will do, act now.

BELL DIATHERMY CO. INC.
545 5th Avenue, New York 17, N. Y.

PAR. 5. Through the use of advertisements containing the statements and representations set forth in paragraph 4, respondents have represented, directly and by implication, that their said device provides a competent self-administered treatment for, and will cure, arthritis, rheumatism, asthma, neuritis, lumbago, sciatica, bursitis, and neuralgia, and that its use will be effective in the alleviation and relief of pain associated with said ailments.

PAR. 6. The aforesaid advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act.

There are many different varieties of arthritis. An agent such as respondents' device which can develop heat and in about the region of a joint may have some adjunctive value when used in conjunction with other procedures in the treatment of some forms of arthritis, but there are many forms of arthritis where respondents' device has no value, and its use can do harm.

Rheumatism is a generic term which has no exact medical connotation. It is a term apt to be used by the layman to refer to the existence of aches and pains in the various parts of the body. Respondents' device when used in conjunction with other forms of treatment may have some adjunctive value in the treatment of some of the aches and pains referred to by the layman as rheumatism, but said device is not a competent cure or treatment for all such aches and pains, and its use can do harm.

Respondents' device when used in conjunction with other methods may afford some relief to a sufferer from asthma. However, said device is not a competent treatment or cure for asthma.

There are many conditions which could produce neuritis. The application of heat by the use of respondents' device may in some cases cause a diminution of pain, but said device cannot relieve the condition which causes neuritis and it is not a competent treatment or cure for neuritis.

Lumbago is a term used by the layman to indicate the existence of pain in the back, particularly the lower back. There are many causes which produce pain in the lower back. Respondents' device provides neither a treatment nor a cure for lumbago.

The causes of the pain referred to as sciatica are many, and in order to alleviate or cure such pain, it would be necessary to alleviate or cure

the condition which is responsible for the irritation or the inflammation of the sciatic nerve. No one thing or instrument can possibly relieve or cure all cases of sciatica. Respondents' device is not a competent treatment or cure for sciatica.

Bursitis refers to an inflammation of the bursa. The treatment of bursitis differs in various stages. Heat is of little value in the treatment of the bursae. When the bursa is acutely inflamed, the worst thing one can do is to apply heat in any fashion. Respondents' device is not a competent treatment or cure for bursitis.

Neuralgia is a term used to indicate the existence of pain along the course of a nerve. The causes of pain are multitudinous. Respondents' device is not a competent treatment or cure for neuralgia.

PAR. 7. The aforesaid representations constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, and facts material with respect to the consequences which may result from the use of respondents' said device under the conditions prescribed or under such conditions as are customary or usual.

Diathermy differs from other commonly used methods of applying heat in that through its use heat can be produced in the tissues lying beneath the surface of the body. It is not recognized that diathermy exerts any effect on the human body other than through the production of heat. When heat is applied to the human body many physiological changes occur, both in the local area in which it is applied and in other areas. If heat is applied too rapidly or in too great a quantity, it will produce burns. In certain diseases, such as Buerger's disease, the danger of producing burns is considerably increased. There is an ever present danger which an expert must keep in mind continuously in the treatment of a patient. In the hands of a layman that danger is much greater. Diathermy can produce harm in ways other than by the production of burns. It can increase the gravity of a medical condition. It is, for example, contraindicated in the presence of malignant growths. It is contraindicated where there is danger of bleeding. Its use is dangerous when applied to an extremity the circulation of which is damaged. The safe use of a diathermy device such as respondents' requires an exact diagnosis by a competent physician before administering the treatment, and the application under his instructions.

PAR. 8. The use by the respondents of the aforesaid false advertisements with respect to their said device has had the capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and has induced a portion of the purchasing

public because of such erroneous and mistaken belief to purchase respondents' said device.

CONCLUSION

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

ORDER

It is ordered, That the respondents, Bell Diathermy Co., Inc., a corporation, its officers, and George Edelstein and Etta Edelstein, individually and as officers of respondent corporation, said respondents' respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the sale, offering for sale, or distribution of a device or apparatus designated as "Bell Diathermy" or "Bell Short Wave Diathermy," or any other device or apparatus of substantially similar character, 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, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that said device, when used by the unskilled lay public in the treatment of self-diagnosed conditions, is a competent treatment for, or cure of, arthritis, asthma, neuritis, lumbago, sciatica, bursitis, or neuralgia, or similar disorders, or which advertisement fails to conspicuously reveal that said device is not safe for use for any condition unless and until a competent medical authority has determined, as a result of diagnosis, that the use of diathermy is indicated and has prescribed the frequency and rate of application of such diathermy treatments and the user has been adequately instructed by a trained technician in the use of such device.

2. Disseminating or causing to be disseminated, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said device, any advertisement which contains any of the representations prohibited in paragraph "1" of this order, or which fails to comply with the affirmative requirements set forth in paragraph "1" of this order.

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

IN THE MATTER OF

NATIONAL OZONE CORPORATION AND MRS. MARGARET RYAN, INDIVIDUALLY AND AS AN OFFICER THEREOF, AND TRADING ALSO AS CHARLES N. RYAN, ATMORAY, INC., AND NATIONAL OZONE CORPORATION

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

Docket 5748. Complaint, Mar. 9, 1950—Decision, Dec. 29, 1950

Inhalation of excessive amounts of ozone may result in severe irritation of the respiratory organs; in order to avoid injury the concentration of ozone should not exceed one part per million parts of air where exposure is for a prolonged period of time; and proximity to the device should be avoided.

Where an individual engaged in the interstate sale and distribution of her "Atmoray Ozone Generator"; through statements in circulars and other advertising media, directly and by implication—

(*a*) Represented falsely that the ozone produced by her device was a natural substitute for sunlight, and as effective as sunlight in the elimination and alleviation of contamination; the facts being that ozone was not such a substitute in many respects, and was not thus equally effective in eliminating contamination under many conditions;

(*b*) Represented that it was safe for use under all conditions and in all places; the facts being that it was not safe when persons were subjected to the ozone produced by it for prolonged periods of time, when the concentration was more than one part per million parts of air; and

(*c*) Represented that its use destroyed all odors and eliminated airborne bacteria, carbon monoxide gas and excessive carbon dioxide gas, and purified the air in food locker plants, schools, warehouses, theaters, and other buildings; when in fact its use would not eliminate or destroy all odors; it would not purify the air under all conditions; in concentrations tolerable to humans it would not destroy all bacteria in the air; and it would not eliminate all carbon monoxide gas or excessive carbon dioxide gas under all conditions; and

(*d*) Failed to reveal certain material facts in her advertisements in that safety in the use of her device depended upon the amount of ozone produced by it, the size of the room in which it was operated, the ventilation, the nature of other materials in the room, and the length of time it was operated; and in that inhalation of excessive amounts of ozone may result in severe irritations of the respiratory organs, and proximity of the device should be avoided;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public, both actual and potential, into the erroneous belief that such unqualified, exaggerated, and deceptive representations were true in all of their breadth and implications, and to induce the purchase of substantial quantities of her said device:

Held, That such acts and practices, under the circumstances set forth, were

to the actual and potential prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Frank Hier*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Paulus VanDeinse and *Mr. Millen F. Kneeland*, of Portland, Oreg., 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 National Ozone Corp., a corporation, and Mrs. Margaret Ryan, individually and as an officer of National Ozone Corp., and trading also as Charles N. Ryan, Atmoray, Inc., and National Ozone Corp., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent National Ozone Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at 408 Northeast Thompson Street, Portland, Oreg.

Respondent Mrs. Margaret Ryan is an individual trading, respectively, from the above address as Charles N. Ryan, Atmoray, Inc., and National Ozone Corp. Said respondent is secretary and treasurer of corporate respondent National Ozone Corp., owns all the stock in said corporation, and controls and directs the acts, practices, and policies of said corporation, including its advertising representations.

PAR. 2. Respondents are now and have for more than two years last past engaged in the business of selling and distributing a device designated as "Atmoray Ozone Generator."

In the course and conduct of their said business respondents have caused said device when sold to be transported from their aforesaid place of business in the State of Oregon to purchasers thereof, including distributing agents, located in various other States of the United States.

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

PAR. 3. Respondents, in the course and conduct of their business and for the purpose of inducing the sale of their said device, have made certain statements with respect to the effectiveness, usefulness,

and safety of said device in circulars designated "Atmoray Ozone Generators" and in other advertising media. Among the statements contained in said advertising literature are the following:

OZONE NATURAL SUBSTITUTE FOR SUNLIGHT. * * *

Successive tests have shown that Ozone in very dilute concentrations is just as effective in the elimination and alleviation of contamination as introduction of sunlight itself.

Effect of Ozone. It is likewise highly effective in the elimination and destruction of all odors of organic origin.

Atmoray produces no harmful rays and is safe to use anywhere.

Ozone destroys airborne bacteria, odors, and monoxide gas.

Excessive carbon dioxide gas is also eliminated * * *.

Complete air purification in one compact unit for food locker plants, warehouses, theaters, rest rooms, garages * * *.

PAR. 4. Through the use of the aforesaid statements and representations and others of the same import not specifically set out herein, respondents represented that the ozone produced by their device is a substitute for sunlight and that it is as effective as sunlight in the elimination and alleviation of contamination; that said device is safe to use under all conditions, places, and circumstances; that its use destroys all odors; that by using said device, airborne bacteria, carbon monoxide gas and excessive dioxide gas are eliminated and that the air is purified in food locker plants, warehouses, theaters, rest rooms, garages, and other buildings.

PAR. 5. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, ozone is not a substitute for sunlight in many respects and it is not as effective as sunlight in eliminating or alleviating contamination under many conditions. Said device is not safe to use when persons are subjected to the ozone produced by it for prolonged periods of time when the concentration of ozone is more than one part per million parts of air. Its use will not eliminate or destroy all odors. Ozone will not purify the air and in concentrations tolerable by humans, it will not destroy all bacteria in the air. Ozone will not eliminate carbon monoxide gas or excessive carbon dioxide gas.

PAR. 6. The safety in the use of respondents' device depends upon the amount of ozone produced by it, the size of the room in which the device is operated, the ventilation, the nature of other materials in the room and the length of the time the device is operated. Inhalation of excessive amounts of ozone may result in severe irritation of the respiratory organs. In order to avoid injury, the concentration of ozone should not exceed one part per million parts of air where exposure is for prolonged periods of time and proximity to the device

should be avoided. Respondents' advertisements are deceptive in that they fail to reveal the aforesaid material facts.

PAR. 7. The use by the respondents of the foregoing statements and representations had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such statements and representations were true; that said device may be used under all circumstances and conditions with safety, and by reason of such belief, induced the purchase of substantial quantities of respondents' said device.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 9, 1950, issued and subsequently served its complaint in this proceeding upon the respondent, Mrs. Margaret Ryan, charging her and the National Ozone Corp. with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of Mrs. Margaret Ryan's answer 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 hearing held for such purpose stipulations of all of the facts in the case were entered on the record. The filing of proposed findings as to the facts and conclusions having been specifically waived, the trial examiner on August 17, 1950, filed his initial decision.

The Commission, having reason to believe that the initial decision was deficient in certain material respects, on October 24, 1950, issued and thereafter served upon the respondent, Margaret Ryan, its order placing this case on the Commission's own docket for review and affording the respondent an opportunty 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 respondent 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 National Ozone Corp. was a corporation organized and doing business under the laws of the State of Oregon, with its principal office and place of business located at 408 Northeast Thompson Street, in the city of Portland, State of Oregon. Said corporation was dissolved in 1947.

PAR. 2. Respondent Mrs. Margaret Ryan is an individual trading as Charles N. Ryan and as Atmoray from her principal place of business located at 3922 North Williams Avenue, in the city of Portland, State of Oregon. She is the widow of Charles N. Ryan and used as a trade name, National Ozone Corp., only for the purpose of maintaining a telephone listing.

PAR. 3. Respondent Mrs. Margaret Ryan is now, and for more than 2 years last past she has been, engaged in the business of selling and distributing a device designated as "Atmoray Ozone Generator," and causes said device, when sold, to be transported from her place of business in Portland, Oreg., to purchasers thereof, including distributing agents, located in various other States of the United States. Respondent Margaret Ryan maintains, and at all times mentioned herein she has maintained, a substantial course of trade in said device in commerce between and among the various States of the United States.

PAR. 4. In the course and conduct of her business and for the purpose of inducing and furthering the sale of the aforesaid device, respondent Margaret Ryan has made certain statements as to the effectiveness, usefulness, and safety of said device in circulars designated "Atmoray Ozone Generators" and in other advertising media, of which the following are typical excerpts:

Ozone Natural Substitute for Sunlight.

Successive tests have shown that Ozone in very dilute concentrations is just as effective in the elimination and alleviation of contamination as the introduction of sunlight itself.

It (Ozone) is likewise highly effective in the elimination and destruction of all odors of organic origin.

Atmoray produces no harmful rays and is safe to use anywhere.

Ozone destroys airborne bacteria, odors, and monoxide gas and prevents the growth of mold.

Ozone is the enemy of carbon monoxide gas. Excessive carbon dioxide gas is also eliminated * * *.

Complete air purification in one compact unit for food locker plants, warehouses, theaters, rest rooms, garages, hospitals, zoos, pounds, pet shops, schools, meat markets, factories, etc.

PAR. 5. Through the use of such statements, and others of similar import, respondent Margaret Ryan has represented directly and by implication that the ozone produced by her device is a natural substitute for sunlight and as effective as sunlight in the elimination and alleviation of contamination; that said device is safe for use under all conditions, places, and circumstances; that its use destroys all odors, and eliminates airborne bacteria, carbon monoxide gas and excessive carbon dioxide gas, and purifies the air in food locker plants, schools, warehouses, theaters, and other buildings.

PAR. 6. The foregoing statements are exaggerated, false in their implication and misleading and deceptive in their breadth and lack of qualification. In fact, ozone is not a substitute for sunlight in many respects. It is not as effective as sunlight in eliminating or alleviating contamination under many conditions. The Atmoray Ozone Generator is not safe to use when persons are subjected to the ozone produced by it for prolonged periods of time when the concentration of ozone is more than one part per million parts of air. Its use will not eliminate or destroy all odors. Ozone will not purify the air under all conditions; and in concentrations tolerable to humans, it will not destroy all bacteria in the air. Ozone will not eliminate all carbon monoxide gas or excessive carbon dioxide gas under all conditions.

PAR. 7. Safety in the use of respondent's device depends upon the amount of ozone produced by it, the size of the room in which the device is operated, the ventilation, the nature of other materials in the room, and the length of time the device is operated. Inhalation of excessive amounts of ozone may result in severe irritations of the respiratory organs. In order to avoid injury, the concentration of ozone should not exceed one part per million parts of air where exposure is for prolonged periods of time, and proximity of the device should be avoided. Respondent's advertisements fail to reveal these material facts.

PAR. 8. The use by respondent Margaret Ryan of the above-quoted statements and representations have, and have had, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public, actual and potential, into the erroneous and mistaken belief that all of such statements and representations were and are true in all of their breadth and implications and the capacity and tendency to induce the purchase of substantial quantities of respondent's said device.

CONCLUSION

The acts and practices of the respondent Margaret Ryan, as hereinabove set out and described, are to the actual and potential prejudice

and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent, Margaret Ryan, an individual trading under the names of Charles N. Ryan, Atmoray, and National Ozone Corp., or trading under any other name or trade designation, and her agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of her device now designated the Atmoray Ozone Generator, or of any other device of the same or similar purpose or effect, do forthwith cease and desist from representing, directly or by implication:

1. That ozone is a natural substitute for sunlight.

2. That ozone is as effective as sunlight in eliminating or alleviating contamination.

3. That ozone will eliminate and destroy all odors.

4. That in concentrations tolerable to humans ozone destroys airborne bacteria, or that it eliminates carbon monoxide or excessive carbon dioxide from the air under all conditions.

5. That ozone purifies the air under all conditions.

6. That said device is safe for use anywhere, unless it be stated in connection with said representation and in an equally forceful manner that concentrations of ozone in excess of one part per million parts of air for prolonged periods of time may result in respiratory irritation upon inhalation and that proximity to the device should be avoided.

It is further ordered, That the complaint in this proceeding be, and the same hereby is, dismissed as the National Ozone Corp.

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

IN THE MATTER OF

AMERICAN CANDLE CO., INC.

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

Docket 5787. Complaint, June 26, 1950—Decision, Jan. 2, 1951

Where a corporation engaged in the manufacture and interstate sale and distribution of candles, including its "Atonal" candles for use in religious ceremonies; in advertisements in religious publications and in circulars and other sales literature—

Represented that said "Atonal" candles were made entirely from pure beeswax when in fact they contained other material as well;

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

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. William L. Pack*, trial examiner.

Mr. Charles S. Cox for the Commission.

Mr. Guy M. Puca, of Brooklyn, N. Y., 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 the American Candle Co., Inc., 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, American Candle Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 55–13 Flushing Avenue, Maspeth, Long Island, N. Y.

PAR. 2. Respondent for some years last past has been engaged in the manufacture, sale, and distribution of candles. Some of its candles are advertised and sold for use in religious ceremonies. Respondent causes and has caused its aforesaid products when sold to be transported from its aforesaid place of business in the State of New York

to 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 course of trade in said products among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its products, has made certain statements and representations with reference to said products and particularly with respect to a product designated by it as "Atonal," in religious newspapers and magazines, circulars, and sales literature which have been circulated among purchasers and prospective purchasers located in the various States of the United States and in the District of Columbia. Typical of the statements and representations contained in said advertising matter are the following:

Pure Beeswax Candles

By using the purest waxes and by profiting from the skill of an experienced personnel, our longer-burning Beeswax candles are worthy of the reverence due them.

Atonal---------- 100% Beeswax

Made entirely from pure Beeswax

PAR. 4. By means of the statements aforesaid, respondent represented that its "Atonal" candles are composed of and made entirely from pure beeswax.

PAR. 5. Said statements and representations are false, misleading, and deceptive. In truth and in fact, respondent's said candles are not composed of or made entirely from pure beeswax but contain substantial amounts of other substances.

PAR. 6. The use by respondent of the foregoing false, misleading, and deceptive statements and representations had the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such representations and statements were true and caused the purchasing public because of such erroneous and mistaken belief to purchase substantial quantities of respondent's said product.

PAR. 7. The aforesaid acts and practices, 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 January 2, 1951, the initial decision in the instant matter of trial examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 26, 1950, issued and subsequently served its complaint in this proceeding upon the respondent, American Candle Co., Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After respondent filed its answer to the complaint, a hearing was held before the above-named trial examiner, theretofore duly designated by the Commission, at which hearing a stipulation was entered into upon the record by counsel whereby it was stipulated and agreed that the facts set forth in such stipulation might be taken as the facts in this proceeding and in lieu of testimony in support of and in opposition to the charges stated in the complaint, and that such statement of facts might 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. The stipulation further provided that upon appeal to or review by the Commission such stipulation might be set aside by the Commission and this matter remanded for further proceedings under the complaint. Thereafter the proceeding regularly came on for final consideration by the trial examiner upon the complaint, answer, and stipulation, and the trial examiner, 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. The respondent, American Candle Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 55–13 Flushing Avenue, Maspeth, Long Island, N. Y. Respondent has for some years last past been engaged in the manufacture, sale, and distribution of candles.

PAR. 2. Respondent causes and has caused its products, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in its products in commerce between

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

PAR. 3. Some of respondent's candles are intended for use in religious ceremonies, such candles being designated by the trade name "Atonal." In the course and conduct of its business and for the purpose of inducing the purchase of such candles, respondent has made certain representations with respect thereto, such representations appearing in advertisements inserted in religious publications and also in circulars and other sales literature, all of such advertising material being circulated among purchasers and prospective purchasers of respondent's products. Typical of the representations contained in such advertising matter are the following:

Pure Beeswax Candles

By using the purest waxes and by profiting from the skill of an experienced personnel, our longer-burning Beeswax candles are worthy of the reverence due them.

Atonal---------- 100% Beeswax

Made entirely from pure Beeswax.

PAR. 4. Through the use of these statements respondent represented that the candles in question were made entirely from pure beeswax.

PAR. 5. These representations were erroneous and misleading, as the candles so designated and referred to were not in fact made entirely from pure beeswax but contained other materials as well.

PAR. 6. The record indicates that respondent's use of the representations in question may have been due in part to inaccurate information supplied respondent by certain of its suppliers, and that respondent no longer uses such representations in connection with candles which are not in fact composed entirely of pure beeswax.

PAR. 7. The use by respondent of the erroneous and misleading representations referred to above has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the composition of respondent's products, and the tendency and capacity to cause such portion of the public to purchase such products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of 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, American Candle Co., 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 candles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or by implication, that respondent's candles are composed entirely of pure beeswax, when such is not the fact.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent, American Candle Co., Inc., shall, within 60 days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist [as required by said declaratory decision and order of January 2, 1951].

IN THE MATTER OF

HERBERT D. FINE TRADING AS HERBERT D. FINE CO., PLASTI-KOTE CO., ETC., 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 5379. Complaint, Sept. 6, 1945—Decision, Jan. 3, 1951

Where an individual and a corporation, with offices and principal places of business at the same address, engaged in the interstate sale and distribution of paints and varnishes which they sold under the general trade name of "Plasti-Kote" and various designations such as "Plasti-Kote Transparent," etc.; through statements in advertising folders, pamphlet, circular letters, and other advertising media, directly or by implication—

(*a*) Falsely represented that their products were radically new laboratory products, wholly different from others used for similar purposes, and that they created a permanent glossy finish;

(*b*) Falsely represented that their "Plasti-Kote Texture Finish" would not wear out, that their "Plasti-Kote Perma-Seal" hardened and waterproofed the surfaces to which applied, that their "Plasti-Kote Exterior" was superior to old type house paints, and that "Plasti-Kote Tile Finish" would last for years under constant use, resisted boiling water and was alcoholproof;

(*c*) Falsely represented that their products renewed leaky roofs, fireproofed surfaces to which applied, and would withstand heat up to 800° F.;

(*d*) Falsely represented that their products outwear wax surfaces 200 to 1 and were modern finishes for all types of floors;

(*e*) Falsely represented that their said products were manufactured by them; when in fact the only operation they performed was that of packaging products they purchased from others;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their said products and thereby cause its purchase thereof:

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.

In said proceeding, in which the complaint attacked also the use by respondent of the words "Plastic" and "Plasti" in their trade names and in designating their products, charging that said products were not plastics as the term is understood by the trade and the purchasing public—an issue regarded by both counsel and the trial examiner as the paramount one in the proceeding and as to which a considerable volume of testimony and other evidence was introduced on both sides;

The evidence failed to afford an adequate basis for a satisfactory disposition of said issue by the Commission, and the Commission, therefore made no findings on the question of whether or not respondents' products might or might not properly be referred to as plastic paints.

In said proceeding in which the complaint also charged that a number of other advertising statements used by respondents were false and misleading, including such statements as that their Plasti-Kote created a cellophane-like plastic coating, was perfect or satisfactory for exterior use where a weather resistant finish was desired, was nonskid or slipproof in the case of the "Transparent," afforded a safeguard against grease or cosmetics in the case of the tile finish, and could be used satisfactorily over damp surfaces and hardened and colored cement floors, resisted damage by fruit acid and stains, and eliminated the use of wax on surfaces to which applied: the Commission was of the opinion and found that such charges were not sustained by the greater weight of the evidence.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Wyner & Wyner, of Cleveland, Ohio, and *Long, St. Louis & Nyce*, of Washington, D. C., for respondents.

COMPLAINT [1]

Pusuant 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 Herbert D. Fine, an individual trading as H. D. Fine Co., Plasti-Kote Co., and Plastic Coating Co., hereinafter referred to as the 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. Herbert D. Fine is an individual trading as H. D. Fine Co., Plasti-Kote Co., and Plastic Coating Co., with his office and principal place of business located at 400 Lakeside Avenue NW., Cleveland, Ohio, and with branch offices located at 227 South Los Angeles Street, Los Angeles, Calif., and 122 East Forty-second Street, New York, N. Y.

PAR. 2. The respondent is now and for more than 1 year last past has been engaged in the sale and distribution of paints and varnishes var-

[1] The Commission on January 3, 1951, issued an order amending complaint, as follows:

"Subsequent to the issuance of the complaint in this matter on September 6, 1945, the business conducted by the respondent, Herbert D. Fine, under the trade name of H. D. Fine Co. was incorporated under the laws of the State of Ohio, the date of such incorporation being March 1, 1946. A stipulation was thereafter entered into between counsel supporting the complaint and counsel for respondents wherein it was agreed in substance that the complaint in this proceeding might be considered as having been amended to include said corporation as a respondent, and that the case might proceed in the same manner as though said corporation had been originally named in the complaint.

"*It is therefore ordered,* That the complaint herein be, and it hereby is, amended to include said corporation as a respondent in this proceeding to the same effect as though said corporation had been named in the complaint as originally issued."

iously designated as Plasti-Kote Transparent, Plastic Floor Finish, Plasti-Kote Tile Floor Finish, Plasti-Kote Perma-Seal, Plasti-Kote Semi-Lustre, Plasti-Kote Tile Finish, Plasti-Kote Exterior, Plasti-Kote Texture Finish, and Plasti-Kote No Prime Flat. Said products contain substantially the same ingredients and are made by the same formula with the addition of pigments or colors.

The respondent causes said products, when sold, to be transported from his said place of business in the States of Ohio, California, and New York to purchasers thereof located at various points in the several States of the United States and the District of Columbia. Respondent maintains and at all times herein mentioned has maintained a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, and for the purpose of inducing the purchase of his products, the respondent has circulated and is now circulating among prospective purchasers throughout the United States, by United States mails, by means of advertisements inserted in newspapers and magazines, by means of advertising folders, pamphlets, circular letters, and other advertising material, all of general circulation, many false statements and representations concerning his said products. Among and typical of such false statements and representations are the following:

PLASTI-KOTE TRANSPARENT

Plasti-Kote TRANSPARENT, THE NEW CELLOPHANE-LIKE PLASTIC COATING.

. . . amazing new Liquid "CELLOPHANE-LIKE" Plastic Finish.

. . . radically new laboratory product.

PLASTI-KOTE is wholly different from any product being used today for maintenance of the types of floors mentioned above, . . .

Plasti-Kote will far outwear ordinary varnishes . . . perfect for exterior use where a weather-resistant finish is desired.

Plasti-Kote is a permanent glossy finish . . .

Plasti-Kote (Transparent) . . . NON-SKID . . . It is slip-proof.

ALCOHOL PROOF—Plasti-Kote transparent is widely used for bar and table tops. Heat or alcohol leaves no marks and it resists all fruit acids and stains.

PLASTI-KOTE TEXTURE FINISH

PLASTI-KOTE Texture Finish . . . Easily applied—can't wear out.

PLASTI-KOTE PERMA-SEAL

PLASTI-KOTE Perma-Seal . . . Hardens and waterproofs.

PLASTIC FLOOR FINISH

PLASTIC FLOOR FINISH . . . LASTS for MONTHS under heavy traffic, . . .

PLASTI-KOTE Exterior A thoroughly tested modern product that surpasses old type house paints.

PLASTI-KOTE Tile Finish A smooth, dazzling, high gloss Tile Enamel that endures through years of constant use.

RESISTS . . . Boiling Water

Dressing tables, trays and table tops need this safeguard against grease, cosmetics, alcohol and other liquids—

PLASTI-KOTE

Problems you can solve with Plasti-Kote:

1. Paint over damp surfaces without shut-down.
2. Harden and color cement floors.
3. Paint damp, rusty metal.
4. Paint over white wash.
5. Resist damage by acids.
6. Renew leaky roofs.
7. Fire proof surfaces.
8. Withstands heat up to 800° F.

Plasti-Kote is a modern finish for linoleum finish and all types of floors. Plasti-Kote's put on like paint. Only $2.95 a quart at all drug stores. Non-skid—no falls or sprains. If you wives who'll modernize your home this attractive way, call up your dealer and simply say—Send me some Plasti-Kote today.

PLASTIC COATING COMPANY America's Largest Manufacturer of Plastic Paint.

Now a non-skid plastic floor finish that out-wears wax 200 to 1. PLASTI-KOTE eliminates the use of wax.

PAR. 4. Through the foregoing statements and representations hereinabove set forth, and others similar thereto but not specifically set out herein, the respondent represents, directly or by implication, that his products designated Plasti-Kote produce a cellophane-like plastic coating; that said products are amazing new liquids and create a plastic finish; that said products are radically new laboratory products; that said products are wholly different from any product being used today for maintenance of all surfaces, including wood, concrete, linoleum, asphalt tile, rubber, and cork; that Plasti-Kote will outwear ordinary varnishes; that Plasti-Kote is perfect for exterior use where a weather-resistant finish is desired; that Plasti-Kote creates a permanent glossy finish; that Plasti-Kote Texture Finish will not wear out; that Plasti-Kote Perma-Seal hardens and waterproofs the surface upon which it is applied; that Plastic Floor Finish will last for months under heavy usage, and creates a non-skid and slip-proof condition on the surface to which it is applied; that Plasti-Kote Exterior

has been thoroughly tested, is modern and is superior to old-type house paints; that Plasti-Kote Tile Finish is a smooth, dazzling, high gloss "Tile Enamel" that lasts for years under constant use; which resists boiling water, grease, cosmetics, and other liquids and is alcoholproof; that heat or alcohol leave no marks on surfaces treated with his products, and that such surfaces resist the action of fruit acids and stains; that Plasti-Kote products can be painted over damp surfaces; that said products harden and color cement floors; that said products can be used to paint damp, rusty metal; that said products are an effective coloring over whitewashed objects, resist damage by acids, renew leaky roofs, and fireproof surfaces upon which they are applied; that said products will withstand heat up to 800° F.; that Plasti-Kote eliminates the use of wax on the surface to which it is applied; that said products outwears wax surfaces 200 to 1; that Plasti-Kote is a modern finish for all types of floors; that the Plastic Coating Co. is America's largest manufacturer of plastic paint; that his products are manufactured in a plant owned or controlled and operated by him.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, respondent's product Plasti-Kote does not create a cellophane-like plastic coating; Plasti-Kote is not a radically new laboratory product and is not wholly different from any product being used today for maintenance of all types of surfaces; Plasti-Kote will not outwear ordinary varnish; Plasti-Kote is not perfect or satisfactory for exterior use where a weather-resistant finish is desired; Plasti-Kote does not create a permanent glossy finish; Plasti-Kote Texture Finish does wear out and is not permanent; Plasti-Kote Perma-Seal does not harden and is not an effective waterproofer under all conditions of use; Plastic Floor Finish will not last for months under heavy usage; Plasti-Kote (Transparent) is not nonskid or slipproof; Plasti-Kote Exterior is not a modern product and is not superior to old-type house paints; Plasti-Kote Tile Finish does not create a smooth, dazzling, high-gloss tile enamel that endures through years of constant use, and it does not resist boiling water, nor afford a safeguard against grease, cosmetics, or alcohol and is not alcoholproof; Plasti-Kote cannot be used satisfactorily over damp surfaces; it does not harden and color cement floors; Plasti-Kote does not resist damage by fruit acid and stains; Plasti-Kote does not renew leaky roofs, is not fire-resistant and will not fireproof surfaces on which it is applied and will not withstand heat up to 800° F.; Plasti-Kote does not eliminate the use of wax on surfaces to which it is applied; it will not outwear wax surfaces 200 to 1 or any appreciable extent; Plasti-Kote is not a modern finish for all types of floors, nor are such products heat and alcohol proof.

PAR. 6. The use by the respondent of the statement "America's Largest Manufacturer of Plastic Paint" is misleading and deceptive, in that such representation imports and implies that the business of said respondent is that of a manufacturer, whereas in truth and in fact the respondent does not own, operate, or control a plant or factory wherein his paint or varnish is produced. He is not engaged in the manufacture, sale, or distribution of so-called plastic paint, and he is not the largest distributor of so-called plastic paint in America. The only operation performed by the respondent in connection with his products is the packaging of said products, which are manufactured by, and purchased from, others.

The use by the respondent of the words "Plastic" and "Plasti" in his trade name and in designating, describing, and referring to his said product, as aforesaid, is misleading and deceptive in that said products are not plastics as such term is understood by the trade and the purchasing public, but are ordinary paints and varnishes of a type sold by many competitors of the respondent at prices substantially less than the prices secured by respondent for his said products.

PAR. 7. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said products.

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 September 6, 1945, issued and subsequently served its complaint in this proceeding upon respondent Herbert D. Fine, individually and trading as H. D. Fine Co., Plasti-Kote Co., and Plastic Coating Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. Thereafter, pursuant to a stipulation entered into by counsel herein, the complaint was amended to include as a party in the proceeding the corporate respondent H. D. Fine Co. After the filing by respondent, Herbert D. Fine, of his answer to the complaint, hearings were held before a trial examiner of the Commis-

sion theretofore duly designated by it, during the course of which hearings testimony and other evidence were introduced in support of and in opposition to the charges in the complaint. At one of such hearings a stipulation was entered into between counsel supporting the complaint and counsel for respondents covering certain charges in the complaint, the stipulation providing in substance that it was to be considered in lieu of evidence with respect to such charges. Thereafter, further hearings were held at which further evidence in support of and in opposition to those charges not covered by the stipulation was introduced. All of the evidence introduced at all of the hearings was duly recorded and filed in the office of the Commission, along with stipulation referred to. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint as amended, answer, stipulation, testimony, and other evidence, recommended decision of the trial examiner and exceptions thereto, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Herbert D. Fine, is an individual trading as H. D. Fine Co., Plasti-Kote Co., and Plastic Coating Co., with his office and principal place of business located at 400 Lakeside Avenue NW., Cleveland, Ohio. The respondent, H. D. Fine Co., is a corporation organized under the laws of the State of Ohio. The corporation trades under the name Plasti-Kote Co., as well as under its corporate name, and has its office and principal place of business at 400 Lakeside Avenue NW., Cleveland, Ohio.

PAR. 2. Respondents are now and for several years last past have been engaged in the sale and distribution of paints and varnishes. These paints and varnishes are sold under the general trade name of Plasti-Kote and are also variously designated as Plasti-Kote Transparent, Plastic Floor Finish, Plasti-Kote Tile Floor Finish, Plasti-Kote Perma-Seal, Plasti-Kote Semi-Lustre, Plasti-Kote Tile Finish, Plasti-Kote Exterior, Plasti-Kote Texture Finish, and Plasti-Kote No Prime Flat.

Respondents cause and have caused their products, 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

and in the District of Columbia. Respondents maintain and have maintained a course of trade in their products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their products, respondents have circulated among prospective purchasers various statements concerning their products, such statements being disseminated by means of advertising folders, pamphlets, circular letters and other advertising media. Among and typical of such statements are the following:

PLASTI-KOTE TRANSPARENT

Plasti-Kote TRANSPARENT, THE NEW CELLOPHANE-LIKE PLASTIC COATING.

. . . amazing new Liquid "CELLOPHANE-LIKE" Plastic Finish.

. . . radically new laboratory product.

PLASTI-KOTE is wholly different from any product being used today for maintenance of the types of floors mentioned above, . . .

Plasti-Kote will far outwear ordinary varnishes . . . perfect for exterior use where a weather-resistant finish is desired.

Plastic-Kote is a permanent glossy finish . . .

Plasti-Kote (Transparent) . . . NONSKID . . . It is slipproof.

ALCOHOLPROOF—Plasti-Kote transparent is widely used for bar and table tops. Heat or alcohol leaves no marks and it resists all fruit acids and stains.

PLASTI-KOTE TEXTURE FINISH

PLASTI-KOTE Texture Finish . . . Easily applied—can't wear out.

PLASTI-KOTE PERMA-SEAL

PLASTI-KOTE Perma-Seal . . . Hardens and waterproofs.

PLASTIC FLOOR FINISH

PLASTIC FLOOR FINISH . . . LASTS for MONTHS under heavy traffic, . . .

PLASTI-KOTE EXTERIOR

PLASTI-KOTE Exterior A thoroughly tested modern product that surpasses old type house paints.

PLASTI-KOTE TILE FINISH

PLASTI-KOTE Tile Finish A smooth, dazzling, high gloss Tile Enamel that endures through years of constant use.

RESISTS . . . Boiling Water

Dressing tables, trays and table tops need this safeguard against grease, cosmetics, alcohol and other liquids—

PLASTI-KOTE

Problems you can solve with Plasti-Kote:

1. Paint over damp surfaces without shut-down.
2. Harden and color cement floors.
3. Paint damp, rusty metal.
4. Paint over whitewash.
5. Resist damage by acids.
6. Renew leaky roofs.
7. Fireproof surfaces.
8. Withstand heat up to 800° F.

Plasti-Kote is a modern finish for linoleum finish and all types of floors. Plasti-Kote's put on like paint. Only $2.95 a quart at all drug stores. Nonskid—no falls or sprains. If you wives who'll modernize your home this attractive way, call up your dealer and simply say—Send me some Plasti-Kote today.

Now a nonskid plastic floor finish that outwears wax 200 to 1. PLASTI-KOTE eliminates the use of wax.

PLASTIC COATING COMPANY, America's Largest Manufacturer of Plastic Paint.

PAR. 4. Through the use of these statements respondents have represented, directly or by implication, that their products are radically new laboratory products and are wholly different from other products used for similar purposes; that said products create a permanent glossy finish; that the product Plasti-Kote Texture Finish will not wear out; that the product Plasti-Kote Perma-Seal hardens and waterproofs the surfaces to which it is applied; that the product Plasti-Kote Exterior is superior to old type house paints; that the product Plasti-Kote Tile Finish will last for years under constant use, that it resists boiling water, and is alcoholproof; that respondents' products renew leaky roofs; that they fireproof surfaces to which they are applied; that they will withstand heat up to 800° F.; that they outwear wax surfaces 200 to 1; that they are modern finishes for all types of floors; and that said products are manufactured by respondents.

PAR. 5. These representations were erroneous and misleading. Respondents' products are not radically new laboratory products and are not wholly different from other products used for similar purposes. The products do not create a permanent glossy finish. The product Plasti-Kote Texture Finish does wear out and is not permanent. The product Plasti-Kote Perma-Seal does not harden surfaces to which it is applied and is not an effective waterproofer under all conditions of use. The product Plasti-Kote Exterior is not superior to old type house paints. The product Plasti-Kote Tile Finish will not last for years under constant use. It does not resist all damage from boiling water, nor is it alcohol proof. Respondents' products do not renew leaky roofs. They are not fire-resistant, will not fireproof surfaces to which they are applied, and will not withstand heat up to 800° F. The

products will not outwear wax surfaces 200 to 1. They do not constitute modern finishes for all types of floors. Respondents do not manufacture any of the products sold by them but purchase the products from others, the only operation performed by respondents being that of packaging the products.

PAR. 6. (*a*) The complaint herein charged that a number of other advertising statements used by respondents were false and misleading. The Commission is of the opinion, however, and finds that such charges have not been sustained by the greater weight of the evidence.

(*b*) The complaint also attacked the use by respondents of the words "Plastic" and "Plasti" in their trade names and in designating and referring to their products, the complaint charging that respondents' products are not plastics as that term is understood by the trade and the purchasing public. This issue was regarded by both counsel and the trial examiner as the paramount issue in the proceeding, and a considerable volume of testimony and other evidence were introduced on both sides of the question. The evidence, however, fails to afford an adequate basis for a satisfactory disposition of the issue by the Commission and the Commission therefore makes no finding on the question of whether or not respondents' products may or may not properly be referred to as plastic paints.

PAR. 7. The use by the respondents of the erroneous and misleading representations referred to in paragraphs 3, 4, and 5 has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' products, and the tendency and capacity to cause such portion of the public to purchase such products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents as herein found (excluding those referred to in par. 6) 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 TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer thereto, a stipulation entered into by counsel, testimony, and other evidence introduced before a trial examiner of the Commission, recommended decision of the trial examiner and exceptions thereto, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings

as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Herbert D. Fine, individually and trading under the names H. D. Fine Co., Plasti-Kote Co. and Plastic Coating Co., or trading under any other name, and H. D. Fine Co., a corporation, trading under its corporate name and also under the name Plasti-Kote Co., or trading under any other name, and its officers, and respondents' 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 respondents' paint and varnish products designated Plasti-Kote, Plasti-Kote Transparent, Plastic Floor Finish, Plasti-Kote Tile Floor Finish, Plasti-Kote Perma-Seal, Plasti-Kote Semi-Lustre, Plasti-Kote Tile Finish, Plasti-Kote Exterior, Plasti-Kote Texture Finish, and Plasti-Kote No Prime Flat, or any products of substantially similar composition, whether sold under the same names or under any other names, do forthwith cease and desist from representing, directly or by implication:

1. That respondents' products are radically new laboratory products or that they are wholly different from other products used for similar purposes.

2. That said products create a permanent glossy finish.

3. That said products renew leaky roofs.

4. That said products fireproof surfaces to which they are applied.

5. That said products will withstand heat up to 800° F., or otherwise misrepresenting the ability of said products to withstand heat.

6. That said products will outwear wax surfaces 200 to 1, or otherwise representing the superiority of said products over wax.

7. That said products are modern finishes for all types of floors.

8. That said product, Plasti-Kote Texture Finish, will not wear out.

9. That said product, Plasti-Kote Perma-Seal, hardens surfaces to which it is applied, or that it is an effective waterproofer under all conditions of use.

10. That said product, Plasti-Kote Exterior, is superior to old-type house paints.

11. That said product, Plasti-Kote Tile Finish, will last for years under constant use; that it resists all damage from boiling water; or that it is alcoholproof.

12. That respondents manufacture any of the products sold by them.

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.

Syllabus

IN THE MATTER OF

CENTRAL SOYA CO., INC., ET AL.

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

Docket 5696. Complaint, Sept. 1, 1949—Decision, Jan. 11, 1951

Where a corporation and its two subsidiaries, engaged in the manufacture and competitive interstate sale and distribution of animal feed products under the brand name of "Master Mix" to retail dealer purchasers;

In selling their said products under their "Master Mix Patronage Dividend Plan," under which (1) dividend point values were determined by specified annual quantity purchases; dividends or rebates, paid annually to dealers entitled thereto, were determined by said values which ranged in seven steps from 6 cents per point for 1,000 to 1,999 points, to 20 cents for 10,000 points and over, and dealers who failed to receive the aforesaid minimum points, received no rebates; and (2) its "franchise dealers," given exclusive sales areas, had their patronage dividend point values determined by the aggregate of their own sales and those of their associate dealers, subject to deduction for amounts paid the latter at their respective rates—

(*a*) Discriminated in price between different dealer purchasers of their animal feed products of like grade and quality, in that the rates of the dividends or discounts paid at the close of each fiscal year varied with the quantity of feed purchased, with the result that the net prices paid by some of their dealer purchasers were higher than the net prices paid by others, some of whom were competitively engaged one with the other in the sale of said products; and

(*b*) Discriminated also through the aforesaid classification, whereby dealer purchasers received different rates of discounts or rebates depending upon their classification as "franchise dealers" or "associate dealers" or, simply, "dealers," who received their discounts directly from said corporation and did not have their purchases aggregated, and under which, in some instances, an associate dealer was paid at a lower rate than his franchise dealer although individually he might have purchased more feed during the period;

The effect of which discriminations in price might be substantially to lessen competition in the line of commerce in which said corporations and their competitors were engaged; to tend to create a monopoly in the former in said line of commerce; and to injure, destroy or prevent competition between dealer purchasers who received the benefits of said discriminations and competing dealer purchasers who did not or could not receive such benefits:

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

Before *Mr. James A. Purcell*, trial examiner.

Mr. Fletcher G. Cohn and *Mr. Robert F. Quinn* for the Commission.

Shoaff, Keegan & Baird, of Fort Wayne, Ind., and *Goodwin, Rosenbaum, Meacham & Bailen*, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Antitrust Act), as amended by an act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, having reason to believe that the respondents named in the caption hereof, and hereinafter more particularly described, have violated and are now violating the provisions of section 2 (a) of said act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Central Soya Co., Inc., hereinafter referred to as respondent Central Soya, is a corporation organized and existing under and by virtue of the laws of the State of Indiana with its office and principal place of business located at 300 Fort Wayne National Bank Building, city of Fort Wayne, State of Indiana.

Respondent, McMillen Feed Mills, Inc., of Tennessee, hereinafter referred to as respondent Tennessee Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located in the city of Memphis, State of Tennessee, which corporation is a subsidiary of respondent Central Soya with 98 percent of its stock being owned by said respondent, which controls and directs its operations.

Respondent, McMillen Feed Mills, Inc., of Ohio, hereinafter referred to as respondent Ohio Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Ohio with its office and principal place of business located in the city of Marion, State of Ohio, which corporation is a wholly owned and controlled subsidiary of respondent Central Soya.

PAR. 2. McMillen Feed Mills Division, hereinafter referred to as the Division is an unincorporated operating division of respondents and is engaged in selling and distributing, or assisting in the selling and distributing of animal feeds produced by all the aforesaid respondents.

PAR. 3. The respondent, Central Soya, together with its subsidiaries, respondents Tennessee Corporation and Ohio Corporation, for several years and more particularly since June 19, 1936, have been engaged in the manufacture of animal-feed products of various types, including both concentrate and complete feeds. The animal-feed products, including both concentrate and complete feeds, manufactured, offered for sale, and sold by the respondents are known as Master Mix feeds.

During the year ending September 30, 1948, the aforesaid Division of the respondents sold approximately 390,000 tons of such feed to retail dealers which amounted to gross sales of $40,012,200.

The said respondents, acting through and by means of the aforesaid Division, sell and distribute, in commerce, as commerce is defined by the Federal Trade Commission Act, such animal feeds to retail feed dealers throughout the United States and in the District of Columbia. Respondents cause said animal-feed products, when sold, to be transported and shipped from their respective manufacturing plants and warehouses located in various States throughout the United States, across State lines, to their respective dealers and purchasers thereof, located in various States of the United States other than where such shipments originate, and in the District of Columbia. Respondents maintain, and have maintained, a course of trade in said products, in commerce, among and between the several States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents, particularly since June 19, 1936, have been engaged in substantial competition with other persons, partnerships, firms, or corporations which are likewise employed in the manufacture of animal-feed products and which sell and seek to sell and distribute or cause to be sold and distributed, such products in commerce between and among the several States of the United States and in the District of Columbia, to retail feed dealers.

PAR. 5. In the course and conduct of their business, as aforesaid, since June 19, 1936, respondents have been, and are now, discriminating in price between different purchasers of its animal-feed products, including both concentrate and complete feeds, of like grade and quality, by selling such products to some of its purchasers at higher prices than it sells these said products of like grade and quality to others of its purchasers who are competitively engaged one with the other in the sale of said products within the United States.

One or more of the purchases, which were the subject of such discriminations, were in commerce and such products were sold for use, consumption, or resale within the United States and in the District of Columbia.

PAR. 6. Among the aforesaid price discriminations are those which were, and are, accomplished by a plan which was adopted, devised, and utilized by the respondents soon after said respondent Central Soya entered into the feed production and distribution business in 1935. This plan, known as the Master Mix Patronage Dividend Plan, has been in effect continuously since it was inaugurated.

This plan is that some of respondents' dealers are paid an annual

rebate for the period beginning October 1 of each respective year and ending September 30 of such year, which rebate is computed on the basis of points awarded for each ton of Master Mix feed purchased by such dealers. Under this system, there is a sliding scale of discounts or rebates, whereby different point values are allocated on purchases of each of the varieties or types of such products. Any dealer who accumulates a minimum of 1,000 points during the aforesaid annual period is the recipient of the minimum discount or rebate of 6 cents per point on his purchases from the respondents during this period. If a dealer fails to accumulate this minimum, he receives no discount or rebate on his purchases. Respondents' dealers, who earn greater numbers of points, are credited with, and paid, discounts or rebates which are computed at a higher rate per point, based on the following schedule:

Points per year:	*Dividend per point*
1,000 to 1,999	$0.06
2,000 to 2,999	.08
3,000 to 3,999	.10
4,000 to 4,999	.125
5,000 to 7,499	.15
7,500 to 9,999	.175
10,000 and over	.20

The so-called patronage dividend discounts or rebates are paid automatically, according to the aforesaid schedule, to those dealers who qualify under such plan, on or before November 1 of each annual period, without any further obligation or action by, or on behalf of, such dealers.

During such specific annual period from October 1, 1947, to September 30, 1948, the Division, acting for and on behalf of the respondents, granted discounts or rebates and paid out, directly by check, to dealers who accumulated credits and thereby earned such discounts or rebates, an amount which totaled approximately $361,520.

PAR. 7. Also among the aforesaid price discriminations are those which were, and are, accomplished through the utilization by the respondents, of a method of classifying their dealers, who often are in competition with each other, which method results in such dealers receiving different rates of discounts or rebates depending on their classification.

Master Mix dealers are classified either as franchise dealers or nonfranchise subdealers. The franchise Master Mix dealer enters into a written agreement with the respondents, through and by means of the Division, whereby there is allocated to such franchise dealer a fixed and exclusive trading or sales area or areas. A franchise dealer,

subject to the prior written approval of respondents, may appoint nonfranchise subdealers within such area or areas.

The said agreement, which in some instances is unknown to the nonfranchise dealers, provides further, that in determining the patronage dividends to which the franchise dealer is entitled, the aggregate of sales of Master Mix animal feeds to the dealer and his nonfranchise subdealer shall be combined and the franchise dealer paid a patronage dividend based on the total of such sales of feeds, with the nonfranchise dealers patronage dividend being determined on his separate purchases. This has resulted at times in a nonfranchise dealer being paid at a lower rate of patronage dividend than his franchise dealer, although individually he may have purchased during the period more of the feed than his franchise dealer.

PAR. 8. The effect of the discriminations in price, as alleged, herein, may be substantially to lessen competition and tend to create a monopoly in respondents in the line of commerce in which they were and are engaged, which is the manufacture and sale to retailers of animal feed products, including both concentrate and complete feeds, since there are in this line of commerce, manufacturers and sellers of such products to retail dealers thereof who do not, will not, or are unable to, grant or allow such retail dealers the discounts or rebates granted or allowed by respondents in the manner hereinabove described; also, such effect may be, to injure, destroy or prevent competition between those purchasers of respondents' products who, directly or indirectly, receive the benefits of said discriminations, as hereinabove set forth, and those competing purchasers of said products who do not receive said benefits or who did not have the opportunity of participating in the receipt of said benefits.

Furthermore, respondents' direct and indirect discriminations in price tend to create a monopoly in respondents in the development, manufacture, ownership, sale and distribution of animal feed products in the United States.

PAR. 9. The foregoing plan, acts, and practices of respondents are in violation of the provisions of subsection (a) of section 2 of the Clayton Antitrust Act, as amended by the Robinson-Patman Act, approved June 19, 1936.

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 January 11, 1951, the initial decision in the instant matter of trial examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.