(1) Entered into agreements and understandings with respondent Jobbers Association and certain of its members which had for their purpose and effect that respondents Jobbers Association members, in connection with their purchasing or securing of bicycle parts, accessories or equipment should differentiate between those manufacturers and assemblers who were members of respondent Parts Association and those manufacturers and assemblers who were not members of said Association by limiting and restricting their purchases of such equipment to those manufacturers or assemblers who were members of said association.

(2) Caused respondent Parts Association to accept, and caused respondents Parts Association members to accept, a resolution agreed to and adopted by respondent Jobbers Association in 1931, to compile and publish, in conjunction with respondent Parts Association, a directory of all jobbers whose reputation in the trade is such as to entitle them to recognition for carrying on their business according to the highest standards of commercial practice, with all members of both respondent associations being requested to actively cooperate in compiling such a directory.

(3) Received and accepted, and caused to be received and accepted, the lists of jobbers hereinbefore referred to in subparagraph (6) of paragraph 6, which respondent Jobbers Association, acting through and by means of certain of its officers and directors, have distributed, or caused to be distributed, as a guide to respondents Parts Association members, for the purpose, and with the intent and effect of having said respondent members confine their sales to jobbers of bicycle equipment to those jobbers appearing in such lists.

(4) In conjunction with respondent Jobbers Association and pursuant to a resolution adopted by said respondent Jobbers Association in 1931, agreed to, and to some extent have refrained from selling the bicycle equipment which they manufacture or sell, through channels of distribution other than respondents Jobbers Association members.

PAR. 8. The acts and things referred to in paragraphs 6 and 7 were performed and engaged in pursuant to, in furtherance of, and with the result of effectuating certain restricting, restraining, and unfair policies and trade practices. Those acts and things found to have been engaged in, in paragraph 6 hereof, were performed for the purpose of effectuating all of the objectives, policies, and trade practices set forth hereinafter, and the acts and things referred to in paragraph 7 were performed for the purpose of effectuating the objectives, policies, and trade practices set forth in subparagraphs (8) and (9) hereinafter as follows:

(1) A policy and practice which has tended to and has restricted and confined membership in respondent Jobbers Association by means of certain arbitrary rules and standards to such jobbers in bicycle equipment as those respondents Jobbers Association members comprising the membership thereof for some years prior to January 1, 1947, were willing to compete with in the sale and distribution of said bicycle equipment, and to prevent the acquisition of membership in said respondent Jobbers Association by those other jobbers with whom said respondent members did not desire such competition.

(2) A policy by respondent Jobbers Association and its officers and directors, and said respondents Jobbers Association members to compel all assemblers and manufacturers of bicycle parts and accessories to sell such equipment only through respondents Jobbers Association members.

(3) A policy and practice by respondent Jobbers Association and its officers and directors, and said respondents Jobbers Association members to prevent assemblers and manufacturers of bicycle equipment, parts, and accessories from selling said equipment to any jobbers in same who were not members of respondent Jobbers Association.

(4) A policy and practice by respondent Jobbers Association, and its officers and directors, and said respondents Jobbers Association members to prevent assemblers and manufacturers of completed cycles or of individual bicycle parts or accessories from selling same directly to mail order houses, chain stores, department stores, or to any other outlets unless such sales were made at the same or higher prices than those charged by said assemblers and manufacturers to said respondents Jobbers Association members.

(5) A policy and practice by respondent Jobbers Association, and its officers and directors, and said respondents Jobbers Association members to compel all assemblers and manufacturers of bicycles, parts, and accessories to refrain from selling such equipment directly to retail bicycle, parts, and accessory dealers, to bicycle repair shops and to ultimate users thereof.

(6) A policy and practice by respondent Jobbers Association, and its officers and directors, and said respondents Jobbers Association members to make their purchases of completed bicycles, and also of parts and accessories for bicycles, from those assemblers and manufacturers who cooperated with respondent Jobbers Association in carrying out the policies and practices herein enumerated.

(7) A policy and practice by respondent Jobbers Association, and its officers and directors, and said respondents Jobbers Association members to urge assemblers and manufacturers of bicycle equipment to fix and maintain resale prices for such equipment not only with respect

to sales by jobbers to the retail trade, but by the latter to the ultimate consumers.

(8) A policy and practice by respondent Jobbers Association and respondent Parts Association and their officers, and the respective respondent members comprising the membership of such associations for some years prior to January 1, 1947, which has tended to interfere with the sources of supply of nonmembers of respondent Jobbers Association.

(9) A policy and practice by the said respondents referred to in subparagraph (8) above to enter into and thereafter carry out agreements and understandings between and among themselves relating to bicycle parts, accessories, and equipment manufactured or sold by respondents Parts Association members to restrict the sale and distribution of same to respondents Jobbers Association members.

PAR. 9. Each of the acts and things referred to in paragraph 6 above has been engaged in and performance thereof was for the collective purposes designated in paragraph 8, and each of the acts and things referred to in paragraph 7 above has been engaged in and performance thereof was for the collective purposes designated in subparagraphs (8) and (9) of paragraph 8. The performance of the acts referred to in paragraph 6 by respondent Jobbers Association and certain of its former officers and former members in the aggregate for the purposes designated in paragraph 8 hereof has constituted the acts of said respondent Jobbers Association and of the respondents Jobbers Association members who were members of said association on January 1, 1947, and prior thereto; and the performance of the acts referred to in paragraph 7 by respondent Parts Association and certain of its former officers and certain of its members in the aggregate for the purposes designated in subparagraph (8) and subparagraph (9) of paragraph 8 has constituted the acts of said respondent Parts Association and of the respondents Parts Association members who were members of said association on January 1, 1947, and prior thereto. The Commission, therefore, finds that all of said respondents Jobbers Association members and said respondents Parts Association members have acted in concert and in cooperation in performing the respective acts and things as herein found in paragraphs 6 and 7, and in effectuating, furthering, and requiring compliance with the restraining, restricting, and unfair policies and trade practices by them pursued and adopted. Accordingly, the Commission finds that the respondent Jobbers Association and the aforesaid respondents Jobbers Association members, acting through and by means of respondent Jobbers Association and its officers and directors and between and among themselves, and respondent Parts Association and the aforesaid respondents

Parts Association members, acting through and by means of respondent Parts Association and its officers and between and among themselves, have conspired and combined together and among themselves to adopt, carry out, and to maintain in commerce between and among the several States of the United States, and in the District of Columbia, the respective unfair policies and trade practices, hereinbefore described in the manner and to the extent designated, which they have effectuated by coercion, compulsion, and by other unfair means and methods.

PAR. 10. The capacity and tendency and, in instances, the effect of the aforesaid agreements, combinations, policies, and practices, as well as the acts and things done and performed in pursuance thereof, have been:

(1) To give an illegal competitive advantage to said respondents Jobbers Association members in the sale and distribution of bicycles, parts, accessories, and equipment to retail bicycle parts and accessories dealers and other retail distributors of such equipment, throughout the United States, and in the District of Columbia.

(2) To give an illegal competitive advantage to said respondents Parts Association members in the manufacture and sale of such equipment throughout the United States and in the District of Columbia.

(3) To prevent in some instances jobbers in bicycle equipment throughout the United States and in the District of Columbia, not members of respondent Jobbers Association, from securing various types of bicycles, parts, accessories, and equipment from the manufacturers or distributors thereof.

(4) To discriminate against those who have been engaged in, or desired to engage in, the sale and distribution of bicycles, parts, accessories, and equipment, but who were not members of, or could not become members of, or who did not wish to become members of, respondent Jobbers Association.

(5) To unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in the sale and offering for sale of various types of bicycles, parts, accessories, and equipment throughout the United States, and in the District of Columbia.

(6) To prevent the establishment throughout the United States, and in the District of Columbia, of new jobbers in bicycles, parts, accessories, and equipment.

(7) To prevent direct sales throughout the United States, and in the District of Columbia, by manufacturers of various types of bicycles, parts, accessories, and equipment to mail order houses, chain stores, retail sellers, and dealers of bicycle parts and accessories, and to bicycle repair shops.

(8) To burden, hamper, and interfere with the normal and natural flow of trade in commerce of bicycles, parts, accessories, and equipment, into, through and from the various States of the United States and in the District of Columbia.

(9) To result to some extent in said respondents Parts Association members not selling to those jobbers and wholesalers throughout the United States, and in the District of Columbia, who were not members of respondent Jobbers Association, or who could not, or did not wish to, become members thereof.

(10) To divert business in various bicycle equipment from the manufacturers thereof who did not conform to the restricting, restraining, and unfair policies and practices of respondents hereinbefore set forth.

(11) To injure the competitors of respondents Jobbers Association members and Parts Association members by unfairly diverting business and trade in bicycles, parts, accessories, and equipment in commerce between and among the several States of the United States, and in the District of Columbia, to said respondents and from said competitors.

CONCLUSION

The acts and practices of the respondents as herein found have been to the prejudice of competitors of said respondents Jobbers Association members and Parts Association members and to the public; have had a dangerous tendency to hinder, and have actually hindered and prevented, competition in the sale of bicycles and various types of bicycle equipment in "commerce" within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in said products; have had a dangerous tendency to create in respondents Jobbers Association members a monopoly in the resale and distribution of such products, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The terms of the order to cease and desist which is being issued herein provide for appropriate disposition of this proceeding as to all the parties joined herein as respondents.

I. Under the terms thereof, service of the findings as to the facts, and conclusion of the Commission, and of such order to cease and desist shall be made upon respondent Jobbers Association and respondent Parts Association and upon those parties respondent in this proceeding who, on January 1, 1949, were the officers or directors of the aforesaid respondent associations, such service to have the same legal force and effect as though each of said respondent officers and

directors were specifically named therein. In addition to such other service as may be made upon them, therefore, as members respondent of either of said associations, service will be made upon Alexander Scaison, Robert B. Wilson, Cyril O. Ling, and Manny Beckwith, as officers of Cycle Jobbers Association of America, Inc., upon H. E. Short, Sr., Ben Boren, Howard R. Johnsen, Arthur O. Lemon, and M. C. Tower, as directors thereof, and upon R. M. Timms, John W. Wharton, Henry C. Bush, and Ernest A. Moller, as officers of Cycle Parts & Accessories Association.

II. The terms of said order to cease and desist, in effect, further provide for service thereof, together with the findings as to the facts and conclusion, upon each of the respondents Jobbers Association members; namely, those corporations, individuals, firms, and partnerships comprising the membership thereof on January 1, 1949, whose respective principal places of business are located in the continental United States, and upon each of the respondents Parts Association members comprising the membership thereof on January 1, 1949, said service to have the same legal force and effect as though each of said respondents were specifically named therein. Said respondents Jobbers Association members are set forth hereinafter in subsections (A) and (B), and the names of respondents Parts Association members are set forth in subsections (C) and (D).

(A) Those respondents Jobbers Association members holding membership in such association on January 1, 1947, were:

F. A. Baker Co., 129 Duane Street, New York, N. Y.
The Bean Son Co., 718 Mission Street, San Francisco, Calif.
John T. Bill & Co., Inc., 1042 South Grand Avenue, Los Angeles, Calif.
Boren Bicycle Co., 810 Main Street, Little Rock, Ark.
R. H. Brown Co., 502 First Avenue South, Seattle, Wash.
J. E. Bunker Co., Inc., 1520 Commerce Street, Tacoma, Wash.
Bullard Bicycle Co., 1311 Polk Avenue, Houston, Tex.
Chicago Cycle Supply Co., 224 North Desplaines Street, Chicago, Ill.
City Cycle Supply Co., 47 Murray Street, New York, N. Y.
Columbus Cycle & Sport Goods Co., 69 East Long Street, Columbus, Ohio.
Consolidated Bicycle & Toy Co., Inc., 94 Chambers Street, New York, N. Y.
Cowan-Boze Co., Inc., 244 Nelson Street SW., Atlanta, Ga.
Edwards & Crist, 1316 Girard Avenue, Philadelphia, Pa.
A. Ferri Co., 66 Main Street, Pawtucket, R. I.
Herbert L. Flake, 206 Milam Street, Houston, Tex.

Fridrich Bicycle & Auto Supply Co., 3800 Lorain Avenue, Cleveland, Ohio.

Geo. H. & Robert C. Greiss, 1341 Vine Street, Philadelphia, Pa.

W. H. Grover, 603 East City Hall Avenue, Norfolk, Va.

Guarantee Bicycle Co., 1164 North Kingshighway Street, St. Louis, Mo.

Gulf Supply Co., 1620 Melpomene Street, New Orleans, La.

The Jake Hayutin & Sons Co., 1421 Larimer Street, Denver, Colo.

Hub Cycle & Radio Co., Inc., 596 Commonwealth Avenue, Boston, Mass.

Hans Johnsen Co., 2106 Main Street, Dallas, Tex.

Island Cycle Supply Co., 9 East Hennepin Avenue, Minneapolis, Minn.

L. W. Keenen & Co., 604 Northwest Sixth Street, Portland, Oreg.

Keystone-Haverford Co., Inc., 6 North Fifth Street, Philadelphia, Pa.

Arthur O. Lemon, 237 Portage Street, Kalamazoo, Mich.

Lewis Supply Co., Inc., 98 Chambers Street, New York, N. Y.

Louisville Cycle & Supply Co., 220 West Market Street, Louisville, Ky.

The Merry Sales Co., 378 Seventh Street, San Francisco, Calif.

The Merry Co., Inc., 2440 East Twelfth Street, Los Angeles, Calif.

Midwest Bicycle & Toy Co., 520 West Fort Street, Detroit, Mich.

Nicetown Cycle Co., 4014 Germantown Avenue, Philadelphia, Pa.

Northwest Bicycle & Supply Co., 273 Cedar Avenue, Minneapolis, Minn.

Jonas B. Oglaend, Inc., 12 Warren Street, New York, N. Y.

Paramount Cycle & Supply Co., 64 Brookline Avenue, Boston, Mass.

Pinnell's, Inc., 701 West Broad Street, Richmond, Va.

Progressive Cycle & Auto Supply Co., Inc., 85 Chambers Street, New York, N. Y.

Rhode Island Cycle Co., 57 Washington Street, Providence, R. I.

Shannon Cycle Co., 2223 North Second Avenue, Birmingham, Ala.

Southern Hardware & Bicycle Co., 2336 Liberty Street, Jacksonville, Fla.

Standard Cycle Co., Inc., 1470 South Michigan Avenue, Chicago, Ill.

Cliff Stump Sporting Goods Co., 5 West Lawrence Street, Helena, Mont.

Walthour & Hood Co., Pryor Street and Auburn Avenue, Atlanta, Ga.

Harry Wilson Sales Co., 1136 South Olive Street, Los Angeles, Calif.

Joseph Woodwell Co., 201 Wood Street, Pittsburgh, Pa.

(B) Admitted to membership in respondent Jobbers Association subsequent to January 1, 1947, but who were members on or prior to January 1, 1949, were the following respondents Jobbers Association members:

Alexander Sales Co., 815 Trent Street, Spokane, Wash.

Case Cycle & Lawnmower Supply, P. O. Box 1143, Tulsa, Okla.

Finch Earnest Corp, Ninth Avenue and Speer Boulevard, Denver, Colo.

Indiana Cycle Supply Co., 534 Capital Avenue, Indianapolis, Ind.

Murphy Cycle Supply Co., 100 Mitchell Street SW., Atlanta, Ga.

Spring Hub Cycle Co., 512 East Grand Avenue, Des Moines, Iowa.

Wichita Cycle & Supply, 111 North Spruce Street, Wichita, Kans.

Mallett Supply Co., 1416 Polk Avenue, Houston, Tex.

Mead Cycle Co., 4520 West Madison Street, Chicago, Ill.

Pacific Cycle & Supply Co., 1900 Grove Street, Oakland, Calif.

M. Sharf & Co., Inc., 85 Portland Street, Boston, Mass.

Standard Cycle Co., 111 North Eleventh Street, Fort Smith, Ark.

(C) The respondents Parts Association members holding membership in such association on January 1, 1947, were:

The Ashtabulabow Socket Co., Ashtabula, Ohio.

Baldwin-Duckworth, Springfield 2, Mass.

Bearings Co. of America, Lancaster, Pa.

Bevin Bros. Manufacturing Co., East Hampton, Conn.

Columbia Steel & Brass Corp., New York 7, N. Y.

Delta Electric Co., Marion, Ind.

Diamond Chain Co., Inc., Indianapolis 7, Ind.

The Dill Manufacturing Co., Cleveland, Ohio.

Joseph Dixon Crucible Co., Jersey City 3, N. J.

Eclipse Machine Division, Bendix Aviation Corp, Elmira, N. Y.

The Faulhaber Co., Monroeville, Ohio.

The Goodyear Tire & Rubber Co., Inc., Akron, Ohio.

Greyhound Leather Sport Novelty Co., Inc., New York 1, N. Y.

D. P. Harris Hardware & Manufacturing Co., New York, N. Y.

Hartford Steel Ball Co., Hartford 6, Conn.

Liquid Veneer Corp., Buffalo 11, N. Y.

Lobdell-Emery Manufacturing Co., Alma, Mich.

H. & F. Mesinger Manufacturing Co., New York 55, N. Y.

McCauley Metal Products, Inc., Buffalo 13, N. Y.

Murray Ohio Manufacturing Co., Cleveland 10, Ohio (Musselman Brake Division).

National Screw & Manufacturing Co., Cleveland 4, Ohio.
New Departure (Division General Motors Corp.), Bristol, Conn.
Persons Majestic Manufacturing Co., Worcester 8, Mass.
A. Schrader's Son, Brooklyn, N. Y.
The Seiss Manufacturing Co., Toledo 12, Ohio.
Shepherd Products Co., Worcester, Mass.
Starr Bros. Bell Co., East Hampton, Conn.
Spradling's, St. Louis 4, Mo.
Stewart Warner Corp., Chicago 14, Ill.
W. J. Surre & Son, Erie, Pa.
The Torrington Co., Torrington, Conn.
The Troxel Manufacturing Co., Elyria, Ohio.
United States Rubber Co., New York, N. Y.
B. Urich Co., Milwaukee 3, Wis.
Wald Manufacturing Co., Inc., Maysville, Ky.
The Washburn Co., Rockford, Ill.
The Washburn Co., Worcester, Mass.
Williams Steel Wheel & Rim Co., Inc., Utica 4, N. Y.

(D) Admitted to membership in respondent Parts Association subsequent to January 1, 1947, but who were members on or prior to January 1, 1949, were the following respondents Parts Association members:

Dennis Mitchell Industries, Philadelphia 24, Pa.
E. A. Laboratories, Inc., Brooklyn, N. Y.
Fluhr Manufacturing Co., Milwaukee 4, Wis.
Charles Gulotta Co., Glendale 27, N. Y.
Musselman Corp., Santa Barbara, Calif.
H. D. Smith Manufacturing Corp., East Detroit, Mich.
Superior Parts Manufacturing Corp., Chicago 12, Ill.
Superior Plating Works, Chicago 39, Ill.
Textile Rubber Co., Akron, Ohio.
Young America Manufacturing Corp., New York, N. Y.
Textile Rubber Co., Bowden, Ga.
Cle-Van, Inc. (formerly Van Cleef Bros., Inc.), Chicago 19, Ill.
Young America Manufacturing Corp., New York, N. Y.

III. Another of the terms of such order provides for dismissal of the amended complaint as to those respondents Jobbers Association members and respondents Parts Association members who became members of such associations subsequent to January 1, 1947, such dismissal being without prejudice, however, to the right of the Commission, should future conditions so warrant, to resume proceedings against said respondents in accordance with the regular procedure of the Commission. This provision for dismissal without prejudice

applies and refers to the respondents whose names appear in section II, subsections (B) and (D).

Service of the amended complaint was made on Chefford Master Manufacturing Co., Inc., and on Make-A-Lite, Inc., Division, Chefford Master Manufacturing Co., Inc. Separate answer to the amended complaint has been filed by said Make-A-Lite, Inc., Division of Chefford Master Manufacturing Co., Inc. There is no record basis upon which to base a determination that either of said respondents held membership in respondent Parts Association on January 1, 1947, or on January 1, 1949, or has participated in the practices referred to in the amended complaint. The provision for dismissal without prejudice of the amended complaint with reference to certain classes of respondent members of such association appearing in the order herein in effect applies also and refers to Chefford Master Manufacturing Co., Inc., and to Make-A-Lite, Inc., Division, Chefford Master Manufacturing Co., Inc.

Service of the amended complaint was made also upon Carlisle Tire and Rubber Division, Carlisle Corp., and upon the Carlisle Corp. It appears from the answer of Carlisle Corp. filed on behalf of itself and on behalf of Carlisle Tire and Rubber Division of said corporation that neither of said respondents have held membership as such in respondent Parts Association. Respondent, Carlisle Corp., prior to January 10, 1949, was a subsidiary of another corporation, which appears to have been a member at some period in respondent Parts Association. There is no record basis upon which to base a determination that either of said respondents has participated in the practices which are the subjects of this proceeding, and the provision for dismissal without prejudice of the amended complaint appearing in the order of the Commission herein in effect applies also and refers to Carlisle Corp. and to Carlisle Tire and Rubber Division, Carlisle Corp.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answers thereto and upon the record including the objections and requests for revision filed by certain of the respondents in reference to a tentative decision issued by the Commission on September 19, 1950; and the Commission having made its findings as to the facts and its conclusion that the respondents as designated have violated the provisions of the Federal Trade Commission Act:

I. *It is ordered*, That respondent Cycle Jobbers Association of America, Inc., hereinafter referred to as respondent Jobbers Association,

a nonprofit corporation, its successors, assigns, employees, agents, and representatives, each and every one of its respondent officers as of January 1949, as officers thereof and their successors, and each and every one of its respondent directors as of January 1949, as directors thereof and their successors, and each and every one of the respondents Jobbers Association members holding membership therein on January 1, 1947, and their successors and assigns, directly or indirectly, jointly or severally, or through any corporate or other means or device, in connection with the purchase, jobbing, offering for sale, sale, or distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of bicycles, bicycle parts, or equipment, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, agreement, understanding, combination, or conspiracy, whether express or implied, between any two or more of said respondents, or between any one or more of said respondents and any other respondents named or referred to in this order, or their successors or assigns, or with others not parties hereto, to do or perform any of the following acts, policies, or practices:

(1) Restricting or confining membership in respondent Jobbers Association, its successors or assigns, by any standards, rules, or regulations to such jobbers in bicycles, bicycle parts, or equipment, as the respondents Jobbers Association members, their successors or assigns, are willing to compete with in the sale or distribution of such products.

(2) Adopting or applying any standards, rules, or regulations for the respondent Jobbers Association which differentiate, or attempt to differentiate, between jobbers in bicycles, bicycle parts or equipment, who are members of said association, its successors or assigns, and other jobbers in such products, for the purpose, or with the intent, or effect, of thereby securing for said respondent members any status or advantage relating to offers, amounts, prices, discounts, or conditions of sale not granted to, or secured by, or for, any other jobbers in such products.

(3) Preparing, compiling, publishing, or distributing or attempting to prepare, compile, publish, or distribute, by any means or method, between or among themselves, or in conjunction or cooperation with respondent Cycle Parts & Accessories Association, hereinafter referred to as respondent Parts Association, its officers or members or their respective successors or assigns, or with others, any directory, list or compilation, regardless of form or designation, of jobbers in bicycles, bicycle parts or equipment, for the purpose, or with the intent, express or implied, or with the effect, of thereby

differentiating, or attempting to differentiate, as to standards or other qualifications or criteria of legitimacy in business, between such jobbers so named and other jobbers engaged in the resale of such merchandise.

(4) Distributing, or causing to be distributed, or attempting to distribute, or to cause to be distributed, by any means or method, to respondents Parts Association members, their successors, or assigns, or to any other manufacturer or assembler of bicycles, bicycle parts, or equipment, or to anyone else, any directory, list, or compilation, regardless of form or designation, of some or all of the members of respondent Jobbers Association or its successors or assigns, for the purpose, or with the intent, express or implied, or with the effect, of having such distributees in any way, confine, limit, or restrict their sales to jobbers of bicycles, bicycle parts, or equipment to those jobbers appearing in such directory, list or compilation.

(5) Distributing, or causing to be distributed, by any means or method, to any manufacturer or assembler of bicycles, bicycle parts, or equipment, who directly or indirectly seeks information or instructions of any nature or description, regarding jobbers in same, any directory, list or compilation, of some or all of the members of respondent Jobbers Association, their successors or assigns, for the purpose, or with the intent, express or implied, or with the effect, of having such directory, list or compilation utilized in any way as differentiating or attempting to differentiate as to standards or other qualifications or criteria of legitimacy in business between such jobbers so named and other jobbers.

(6) Compelling, or using any persuasion or influence, or attempting to compel or persuade or influence, by any means or method, assemblers or manufacturers of bicycles, bicycle parts, or equipment, to sell such products solely through members of the respondent Jobbers Association, its successors or assigns.

(7) Preventing, or attempting to prevent, manufacturers or assemblers of bicycles, bicycle parts, or equipment from selling such products to any jobbers in same because such jobbers are not members of respondent Jobbers Association, its successors or assigns.

(8) Adopting, enforcing, or utilizing any means or method which has as its purpose or effect interference or attempted interference, of any nature or description, with any source of supply of bicycles, bicycle parts, or equipment of nonmembers of respondent Jobbers Association, its successors or assigns because of such nonmembership.

(9) Adopting, enforcing, or utilizing any means or method which has as its purpose or effect the compelling or using of persuasion or influence, or the attempting to compel or persuade or influence, by any

means or method, any manufacturers or assemblers of bicycles, bicycle parts, or equipment to refrain from selling such products directly to retailers, bicycle parts and accessories dealers, bicycle repair shops, or the ultimate users thereof.

(10) Adopting, enforcing, or utilizing any means or method which has as its purpose, or effect, to prevent or seek to prevent assemblers or manufacturers of completed bicycles or individual bicycle parts or accessories, from selling or in anywise disposing of same, directly to mail-order houses, chain stores, department stores, or to any other means of distribution, or outlet, unless such sales or dispositions are made at the same or higher prices than those charged, levied, or assessed by said manufacturers or assemblers to respondents Jobbers Association members, their successors or assigns.

(11) Adopting, enforcing, or utilizing any means or method which has as its purpose or effect the designation or selection or attempted designation or selection of any particular manufacturers or assemblers of bicycles, bicycle parts, or equipment from whom respondents Jobbers Association members, their successors, or assigns, are solicited, encouraged or persuaded to make their purchases.

(12) Adopting, enforcing, or utilizing any means or method which has as its purpose or effect, the compelling, persuading, or influencing, or attempting to compel, persuade, or influence any manufacturers or assemblers of bicycles, bicycle parts, or equipment to fix or maintain resale or consumer prices for such products.

(13) Adopting, enforcing, or utilizing any means or method whereby respondents Jobbers Association members, their successors, or assigns, limit or restrict or attempt to limit or restrict, to any extent or degree, their purchase of bicycles, bicycle parts, or equipment, to any particular or designated manufacturers or assemblers of such products.

(14) Adopting, enforcing, or utilizing any means or method to have or attempting to have, manufacturers of bicycle tires not sell, or discontinue selling, their factory brand tires directly to bicycle dealers, or to limit such distribution, in any manner or fashion, to respondents Jobbers Association members, their successors, or assigns.

(15) Adopting, enforcing, or utilizing through respondent Jobbers Association, its successors or assigns, any means or method to compel or coerce, or to attempt to compel or coerce, in any manner, retail dealers in bicycles, bicycle parts, or equipment to confine their purchases of such products to respondents Jobbers Association members, their successors, or assigns.

(16) Adopting, enforcing, or utilizing any means or method to cause or prevent or to attempt to cause or prevent, sales of bicycles,

bicycle parts, or equipment to, or by any jobber or jobbers, at any specific, given or suggested price or prices, terms, or conditions of sale.

(17) Adopting, enforcing, or utilizing any means or method to fix or maintain or attempt to fix or maintain, the prices at which jobbers offer for sale, or sell, any bicycles, bicycle parts, or equipment.

(18) Adopting, enforcing, or utilizing any means or method to prevent, or to attempt to prevent, manufacturers of completed bicycles from selling such products directly to chain stores at the same prices or on the same terms or conditions of sale as said manufacturers offer or grant to jobbers, or to attempt, in any way, to cause said manufacturers to sell, offer, or grant such products to chain stores, at any specific price or prices, or according to any specific terms or conditions of sale.

(19) Supervising, or attempting to supervise, by any means or method, the policies or practices of jobbers not members of respondent Jobbers Association, its successors, or assigns, for the purpose, or with the intent, or effect, of having such nonmember jobbers recognize or conform to any of the policies, objectives, acts, or practices of said association, its successors or assigns.

II. *It is further ordered*, That nothing contained in this order shall be construed as prohibiting any respondent Jobber Association member, named or referred to herein, from independently negotiating or entering into any legal exclusive or other sales or representation agreement, or selecting its own source of supply or customers, where the effects are not such that they may substantially lessen competition or tend to create a monopoly in any line of commerce.

III. *It is further ordered*, That respondent Parts Association, an unincorporated trade association, its successors, assigns, employees, agents, and representatives, and each and every one of its respondent officers as of January 1, 1949, as officers thereof and their successors, and each and every one of the respondents Parts Association members holding membership therein on January 1, 1947, and their successors or assigns, directly or indirectly, jointly or severally, or through any corporate or other means or device, in connection with the offering for sale, sale, or distribution, in commerce, as commerce is defined in the Federal Trade Commission Act, of bicycles, bicycle parts, accessories, or equipment, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out, any planned common course of action, agreement, understanding, combination, or conspiracy, whether express or implied, between any two or more of said respondents or between any one or more of said respondents, and any other respondents named or referred to herein, or with others not

parties hereto, to do or perform any of the following acts, policies, or practices:

(1) Entering into or attempting to enter into, carrying out or attempting to carry out by any means or method, any agreement or understanding of any nature or description, which has for its purpose or intent or effect that respondents Jobbers Association members, their successors, or assigns, differentiate or attempt to differentiate between those manufacturers and assemblers who are members of respondent Parts Association, and those manufacturers and assemblers who are not members of respondent Parts Association, for the purpose or with the effect of limiting or restricting their purchases or procurement of bicycle parts, accessories, or equipment to those manufacturers and assemblers who are such members.

(2) Entering into or attempting to enter into, carrying out or attempting to carry out by any means or method, any agreement or understanding of any nature or description, which has for its purpose or intent or effect differentiating or attempting to differentiate between those jobbers who are members of respondent Jobbers Association, and those jobbers who are not such members, or between those jobbers who are designated by respondent Jobbers Association as complying with particular standards, qualifications or criteria of legitimacy in business and those jobbers not so designated, for the purpose or with the effect or limiting or restricting sales by respondents Parts Association members of bicycle parts, accessories or equipment to those jobbers who are members of respondent Jobbers Association, or to those jobbers who are so designated by said Jobbers Association.

(3) Preparing, distributing, employing, or utilizing in any manner, for either of the above purposes, any directory, list, or compilation of part or all of the membership of respondent Jobbers Association, its successors or assigns, or of those jobbers which respondent Jobber Association, its successors or assigns, select or designate as complying or qualifying with particular standards, qualifications, or criteria of legitimacy in business.

IV. *It is further ordered*, That nothing contained in this order shall be construed as prohibiting any respondent Parts Association member, named or referred to herein, from independently negotiating or entering into any legal exclusive or other sales or representation agreement, or selecting its own source of supply or customers, where the effects are not such that they may substantially lessen competition or tend to create a monopoly in any line of commerce.

V. *It is further ordered*, That in addition to the regular service of the findings as to the facts, conclusion, and order to cease and desist

herein, upon respondents Jobbers Association and Parts Association, a copy of said documents shall likewise be served upon all the parties whose names appear in section I and section II, subparagraphs (A), (B), (C), and (D) of the conclusion of the Commission; namely, each and every officer, director, and respondent member of respondent Jobbers Association, as of January 1, 1949, as shown by the answer of respondent Jobbers Association to the amended complaint herein, and upon each and every officer and respondent member of respondent Parts Association, as of January 1, 1949, as shown by the answer of respondent Parts Association, and it is further ordered, that the provisions of this order to cease and desist shall have the same legal force and effect as though each and every one of said respondents were specifically named herein.

VI. *It is further ordered*, That the amended complaint be, and the same hereby is, dismissed as to those respondents designated in section II, subparagraphs (B) and (D) of the aforesaid conclusion, which list includes, among others, those respondents, who, as shown by certain of the answers filed herein, became members of the respective respondent Associations subsequent to January 1, 1947, but without prejudice to the right of the Commission, should future facts so warrant, to resume prosecution against said respondents in accordance with the Commission's regular procedure.

It is further ordered, That all of the respondents herein except those as to whom the amended complaint has been dismissed, shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

BASIC FOOD MATERIALS, 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 5734. Complaint, Jan. 23, 1950—Decision, Jan. 26, 1951

Where a corporation and its president, who determined and controlled its policies and practices, engaged in the competitive interstate sale and distribution of soluble seasonings and spices designated as "D. F. M. Soluble Seasonings"; in advertising in newspapers and periodicals and through circulars, leaflets, pamphlets, and other literature—

(*a*) Represented and implied that their said soluble seasoning products were absolutely sterile; the facts being that while the bacteria count therein was negligible, they were not absolutely sterile;

(*b*) Represented and implied that their product was the natural spice flavor available in its purest form since it was produced from extracted flavoring substances of natural spices, which, in their natural state, are a filthy product, high in bacteria content, and contain insect fragments, rodent hair, and frequently rodent fecal matter;

The facts being that ground natural spices do not contain bacteria or foreign matter to such an extent as to be unsanitary, and are not filthy;

(*c*) Falsely represented that ground natural spices tend to acquire a musty or moldy flavor within a short period; and

(*d*) Falsely represented that use of their seasonings and spices would cause less gastric distress than would ground natural spices through the statement that gastric distress and unpleasantness attended the digestion of certain oils and other substances present in ground natural spices;

With effect of disparaging competitors and their products, and with tendency to divert trade from such competitors to themselves:

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

As respects charges of the complaint that former advertising statements of respondents falsely represented that greater uniformity of flavor and greater flavor retention would be afforded by the use of their soluble spice seasoning products than by products which contained ground natural spices, said charges were not supported by the record, in the opinion of the Commission, and were accordingly dismissed.

As regards statements, as alleged in the complaint, to the effect that ground natural spices will cause spoilage, undue discoloration or hasten putrefaction of pork products, and that bacteria are a causative factor in said conditions, and that use of natural seasoning is hazardous, the complaint did not expressly charge that false representations had been made that use of such seasonings entailed spoilage and the other adverse effects noted; and accordingly, no issue having been adequately presented with respect

to said matter, no determination specifically relating to the lawfulness of respondents' use of said particular advertising statement was made by the Commission.

Before *Mr. Frank Hier*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. Frank Leonetti, of Cleveland, Ohio, 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 Basic Food Materials, Inc., and Ray F. Beerend, 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, Basic Food Materials, Inc., is a corporation organized under the laws of the State of Ohio, with its principal office and place of business at 806–810 Broadway, in the city of Cleveland, and State of Ohio. Respondent Ray F. Beerend is president of said respondent corporation and, as such, determines and controls all of the policies and business practices of said corporation. His principal place of business is the same as that of respondent corporation.

PAR. 2. Respondents are now and have been for more than 5 years last past engaged in the business of selling and distributing soluble seasonings and spices designated as "B. F. M. Soluble Seasonings," which products are defined as food in the Federal Trade Commission Act.

Respondents are now and have been at all times hereinafter mentioned in competition with other manufacturers of spices and seasoning preparations in commerce as commerce is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning their said products by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning their said products, by various means, for the purpose of inducing, and which are likely to induce, directly

or indirectly, the purchase of their said products in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, by the United States mails, by advertisements in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

THE SANITARY WAY to Season Your Tomato Products!

BFM Soluble Spice Seasonings are absolutely sterile. No insect fragments, rodent hairs, mold, fungi, lead or tannins.

BASIC
Food Materials, Inc.,
806 Broadway, Cleveland 15, O.

You get perfect quality and flavor control with B. F. M. Soluble Seasonings. They contain all of the extracted flavor substances, without any of the objectionable ingredients, such as fibre, ash, foreign particles, specks and bacteria, found in old-fashioned, antiquated seasonings. * * *

WHY NATURAL GROUND SPICES CAUSE GASTRIC DISTRESS

The flavor ingredient of ground spices is contained in minute, tiny cells of oils and resinous substances, locked in fibrous particles. Part of these cells are crushed when the spice is milled and their flavor released. Other cells retain their flavor. This flavor is not released until the gastric juices of the stomach go to work on them. The stomach, in an effort to try and digest these indigestible fibrous spice particles, releases these flavor cells, causing gastric distress with all of its attendant unpleasantness.

Do not take our word for this. Convince yourself by making this simple test. Make a small batch of pork sausage with B. F. M. Seasoning. Fry the sausage and eat it. Note its clean, sweet pleasing and delicate flavor. Now make a small batch of pork sausage with natural ground spices. Fry and eat it. Get the harsh flavor, and then for hours after you have eaten it you will notice the unpleasant belching with its strong spicy character.

B. F. M. PORK SAUSAGE SEASONING is natural spice flavor, in its purest and most available form. It is produced from the extracted flavoring substances of natural spices. It is ground into a soluble carrier (salt or dextrose).

Ground spices in their natural state are a filthy product. They are very high in bacteria content. They also contain insect fragments, rodent hair and many times rodent fecal matter as well as undesirable fibrous and insoluble substances containing chlorophyl, discoloring the sausage in which it is used.

The extraction process, by which the flavoring substances are removed from natural spices for the production of B. F. M. PORK SAUSAGE SEASONING, eliminates completely all of this objectionable material. All of the inert, fibrous matter and insoluble substances are discarded. Only the true, rich natural flavor is retained.

Pork itself is high in bacteria count. Why aggravate this condition by increasing the natural bacteria in the meat you have to contend with? Bacteria causes spoilage, discoloration, and hastens putrifaction. Every time you use natural ground spices in your pork sausage you hang out a "Welcome Danger" sign.

Do not take our word for this bacteria and filth content in ground spices. Put some under a strong microscope and see it with your own eyes.

We cannot get very excited, either, about so-called sterilized natural spice. All the foreign matter is still present, even if it is sterilized. I still do not relish sterilized rodent hair or fecal matter. Do you?

PAR. 4. By means of the foregoing representations and statements, and others similar thereto but not herein specifically set forth, respondents represent and imply that their soluble spice seasoning products are absolutely sterile, contain pure flavor extractions without the objectionable ingredients present in natural ground spices, such as fiber, foreign particles, bacteria, and similar adulterations; that by using the natural ground spices, the oils and other substances are contained and locked in fibrous particles and not dissolved until they reach the stomach; that in the process of digestion, the gastric juices release said flavoring extracts thereby causing gastric distress and attending unpleasantness; that respondents' product is the natural spice flavor available in its purest form for the reason that it is produced from extracted flavoring substances of natural spices and ground into a soluble carrier which may be either salt or be dextrose; that ground spices in their natural state are a filthy product, high in bacteria content, and containing insect fragments, rodent hair, and frequently rodent fecal matter; that greater uniformity of flavor can be obtained in products in which respondents' spice flavoring extracts are used than in those products in which ground natural spices are used, and that flavor retention is much greater in products in which respondents' flavoring extracts are employed than in those in which ground spices are used, and that ground natural spices have a tendency to acquire a musty or moldy flavor within a short period of time.

PAR. 5. In truth and in fact, all of the foregoing representations and statements, and many other similar thereto, are grossly exaggerated, false, and misleading. Respondents' B. F. M. soluble seasonings are not absolutely sterile and inevitably contain a certain amount of bacteria which, however, do not affect the health of the human being. Ground natural spices do not contain foreign matter, filth, or bacteria to such an extent or of such a nature as to be unsanitary or deleterious to the health; the use of respondents' B. F. M. soluble spice seasonings will not cause less gastric distress than ground natural spices. Ground natural spices will not cause spoilage, undue discoloration or hasten putrifaction of pork products. The use of respondents' soluble spice seasonings will not give greater uniformity of flavor nor have greater flavor retention than ground natural spices and ground natural spices will not cause or have a tendency to cause musty or moldy flavor. Moreover, the representations made in respondents' advertising material, as set forth in paragraph 3 herein, have a tendency to and do

disparage respondents' competitors and their products, and unfairly divert trade to respondents from said competitors.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on January 23, 1950, issued and subsequently served its complaint in this proceeding upon respondents, Basic Food Materials, Inc., a corporation, and Ray F. Beerend, individually and as an officer of such corporation, charging said respondents with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the provisions of that act. After the filing by respondents of their answer to the complaint, at a hearing held on May 15, 1950, before a trial examiner of the Commission theretofore duly designated by it, a stipulation containing a statement of facts was read into the record pursuant to agreement between respondents and counsel supporting the complaint, and respondents thereunder waived further intervening procedure including the submission of recommended decision by the trial examiner and the privilege of filing brief, and the proceeding, on May 17, 1950, was closed for the taking of testimony. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint, respondents' answer, and the evidence received into the record by stipulation; 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, Basic Food Materials, Inc., is a corporation organized under the laws of the State of Ohio, with its principal office and place of business at 845 State Street, in the town of Vermilion, and State of Ohio. Respondent Ray F. Beerend is president of said respondent corporation, and, as such, determines and controls all of the policies and business practices of said corporation. His principal place of business is the same as that of respondent corporation.

PAR. 2. Respondents are now and have been for more than 5 years last past engaged in the business of selling and distributing soluble seasonings and spices designated as "B. F. M. Soluble Seasonings," which products come within that category of products defined as "food" in the Federal Trade Commission Act.

Respondents are now and have been at all times hereinafter mentioned in competition with other manufacturers of spices and seasoning preparations in commerce, as "commerce" is defined by the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their aforesaid business, the respondents prior to 1946 disseminated and caused the dissemination of, advertisements concerning their said products by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents also disseminated and caused the dissemination of, advertisements concerning their said products, by various means, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said products in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, by the United States mails, by advertisements in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature, were the following:

THE SANITARY WAY to season your Tomato Products!

B. F. M. Soluble Spice Seasoning are absolutely sterile. No insect fragments, rodent hairs, mold, fungi, lead or annins.

BASIC Food Materials, Inc.,
806 Broadway,
Cleveland 15, O.

You get perfect quality and flavor control with B. F. M. Soluble Seasonings. They contain all of the extracted flavor substances, without any of the objectionable ingredients, such as fibre, ash, foreign particles, specks and bacteria, found in old-fashioned, antiquated seasonings. * * *

WHY NATURAL GROUND SPICES CAUSE GASTRIC DISTRESS.

The flavor ingredient of ground spices is contained in minute, tiny cells of oils and resinous substances, locked in fibrous particles. Part of these cells are crushed when the spice is milled and their flavor released. Other cells retain their flavor. This flavor is not released until the gastric juices of the stomach go to work on them. The stomach, in an effort to try and digest these indigestible fibrous spice particles, releases these flavor cells, causing gastric distress with all of its attendant unpleasantness.

Do not take our word for this. Convince yourself by making this simple test. Make a small batch of pork sausage with B. F. M. Seasoning. Fry the sausage and eat it. Note its clean, sweet pleasing and delicate flavor. Now make a small batch of pork sausage with natural ground spices. Fry and eat it. Get the

harsh flavor, and then for hours after you have eaten it, you will notice the unpleasant belching with its strong spicy character.

B. F. M. PORK SAUSAGE SEASONING is natural spice flavor, in its purest and most available form. It is produced from the extracted flavoring substances of natural spices. It is ground into a soluble carrier (salt or dextrose).

Ground spices in their natural state are a filthy product. They are very high in bacteria content. They also contain insect fragments, rodent hair and many times rodent fecal matter as well as undesirable fibrous and insoluble substances containing chlorophyl, discoloring the sausage in which it is used.

The extraction process, by which the flavoring substances are removed from natural spices for the production of B. F. M. PORK SAUSAGE SEASONING, eliminates completely all of this objectionable material. All of the inert, fibrous matter and insoluble substances are discarded. Only the true, rich natural flavor is retained.

Pork itself is high in bacteria count. Why aggravate this condition by increasing the natural bacteria in the meat you have to contend with? Bacteria causes spoilage, discoloration, and hastens putrefaction. Every time you use natural ground spices in your pork sausage you hang out a "Welcome Danger" sign.

Do not take our word for this bacteria and filth content in ground spices. Put some under a strong microscope and see it with your own eyes.

We cannot get very excited, either, about so-called sterilized natural spice. All the foreign matter is still present, even if it is sterilized. I still do not relish sterilized rodent hair or fecal matter. Do you?

PAR. 4. By means of the foregoing representations and statements and others similar thereto but not herein specifically set forth, respondents have represented and have implied that their soluable spice seasoning products are absolutely sterile and contain pure flavor extractions without the objectionable ingredients present in ground natural spices such as fiber, foreign particles, bacteria, and similar adulterations; that respondents' product is the natural spice flavor available in its purest form for the reason that it is produced from extracted flavoring substances of natural spices and that ground spices in their natural state are a filthy product, high in bacteria content, and containing insect fragments, rodent hair, and frequently rodent fecal matter; that ground natural spices have a tendency to acquire a musty or moldy flavor within a short period of time; and that gastric distress and unpleasantness attend the digestion of certain of the oils and other substances present in ground natural spices.

PAR. 5. The foregoing representations are false and misleading. Although the bacteria count in respondents' B. F. M. soluble seasonings is negligible, such spice seasonings are not absolutely sterile and in any event ground natural spices do not contain bacteria to such an extent or of such kind as to be unsanitary. Ground natural spices do not contain bacteria or foreign matter to such an extent or of such kind as to render them deleterious to health, or unsanitary, and in their natural state ground spices are not a filthy product. They do not cause and have no tendency to cause a musty or moldy

flavor. The representation that the use of ground natural spices will cause gastric distress and attending unpleasantness, together with other statements appearing in the advertising, constitutes a representation also that the use of respondents' seasonings and spices will cause less gastric distress than will ground natural spices. Such representation is misleading and deceptive for the reason that respondents' B. F. M. souble seasonings will not cause less gastric distress than ground natural spices.

PAR. 6. The false and misleading representations formerly used by respondents which pertained to ground natural spices, as referred to in paragraph 4 above, had a tendency to disparage and did disparage respondents' competitors and their products and had the tendency and capacity to divert trade to respondents from said competitors.

CONCLUSION

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

Additional charges of the complaint relate to other advertising statements formerly used by respondents which represent that greater uniformity of flavor and greater flavor retention will be afforded by use of their soluble spice seasoning products than by those products which contain ground natural spices, it being alleged that the advertising statements relating to superiority in these respects are false. In the opinion of the Commission, the charges as they relate to the falsity of these representations are not supported by the record and they are accordingly being dismissed.

A statement appears in paragraph 5 of the complaint to the effect that ground natural spices will not cause spoilage, undue discoloration, or hasten putrefaction of pork products. In this connection, the complaint has alleged that statements to the effect that bacteria is a causative factor in spoilage, discoloration, and putrefaction of pork products have been disseminated by respondents in their advertising, together with other statements that use of natural seasonings is hazardous, but the complaint does not charge expressly that false representations, in fact, have been made that use of such seasonings entails spoilage and the other adverse effects noted. Inasmuch as an issue does not appear to be adequately presented in respect thereto, no determination specifically relating to the lawfulness of respondents' use of these particular advertising statements is being made by the Commission.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, and a stipulation containing a statement of facts entered into between respondents and counsel supporting the complaint; and the Commission having made its findings as to the facts and its conclusion that respondents have violated the Federal Trade Commission Act:

It is ordered, That respondent, Basic Food Materials, Inc., a corporation, and its officers, agents, representatives, and employees, and respondent, Ray F. Beerend, individually and as an officer of said corporation, and his 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 seasonings and spices, do forthwith cease and desist from:

1. Representing in any maner that respondents' B. F. M. soluble seasonings or any other products of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, are sterile or entirely free from bacteria.

2. Representing that ground natural spices are filthy products or representing in any other manner that they are unsanitary or that their use is deleterious to health.

3. Representing in any manner that the use of ground natural spices will cause or tend to cause a musty or moldy flavor.

4. Representing in any manner that respondents' B. F. M. soluble seasonings or any other products of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, will cause less gastric distress than ground natural spices.

It is further ordered, That the charges of the complaint directed to use by respondents of advertising statements attributing greater uniformity and retention of flavor to their soluble seasonings and spices in comparison to those products which contain ground natural spices be, and the same hereby are, dismissed.

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 maner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

CARBOLA CHEMICAL COMPANY, INC., ET AL.

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

Docket 5742. Complaint, Mar. 1, 1950—Decision, Jan. 26, 1951

Where a corporation engaged in the interstate sale and distribution of a rodenticide designated as "CCC Rat and Mouse Destroyer" and "CCC Liquid Rat and Mouse Destroyer"; and its officers, who directed and controlled it; in advertising in newspapers and by other means—

(*a*) Represented that said product was an effective killing agent for mice and rats and that use thereof would kill all mice and rats on the premises; and

(*b*) Represented that mice and rats, after eating the product would go outdoors to die;

The facts being the product would not kill mice; and while it would, under certain circumstances, kill rats, it could not be relied upon to kill all rats on the premises, nor was there any assurance that after eating the product they would go outdoors to die;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby cause it to purchase substantial quantities of their said product:

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 acts and practices in commerce.

In said proceeding in which complaint issued on March 1, 1950, and respondents contended that their said CCC Rat and Mice Destroyer or CCC Liquid Rat and Mice Destroyer had not been sold since December 15, 1948, or advertised since April 20, 1949, and that therefore no cease and desist order should issue against them;

It appearing, however, that on November 18, 1940, 31 F T. C. 1791, the corporate respondent entered into a stipulation with the Commission under which it agreed to cease and desist from making, in connection with the sale of a substantially similar rodenticide, substantially similar representations to those herein concerned; and that while they had stopped selling the product thus designated on the aforesaid date, they had continued to sell a rodenticide designated as "CCC Rat Destroyer":

The Commission concluded and found that there was no assurance that they might not in the future make the same or similar false and misleading representations in connection with the offer or sale of the same or substantially similar products, unless ordered by the Commission to cease and desist therefrom; and that, therefore, there was no merit in the contention that the complaint in the instant proceedings should be dismissed.

Before *Mr. William L. Pack*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Isseks, Meyers & Verdon and *Mr. John J. Verdon*, 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 Carbola Chemical Co., Inc., a corporation, and Carl J. Zimmerman, Gladys G. Zimmerman, and Henry T. Koenig, individually and as officers of Carbola Chemical Co., Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Carbola Chemical 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 Natural Bridge, N. Y. Respondents, Carl J. Zimmerman, Gladys G. Zimmerman, and Henry T. Koenig are president, vice president, secretary and treasurer, respectively, of corporate respondent. The post-office address of Carl J. Zimmerman and Gladys G. Zimmerman is Clayton, N. Y., and that of Henry T. Koenig is Carthage, N. Y. The individual respondents directed, dominated, and controlled the acts and practices of corporate respondent at all times mentioned herein.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of a product designated as "CCC Rat and Mouse Destroyer" and as "CCC Liquid Rat and Mouse Destroyer." The formula for said product is as follows:

	Percent
Extractives of Red Squill	24
Inert Ingredients	76

Respondents cause said product when sold to be transported from their place of business in New York to purchasers thereof located in the various other States of the United States and in the District of Columbia, and at all times mentioned herein have maintained a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia. Respondents' volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said product in commerce, respondents have made certain statements and representations with respect to the nature and efficacy of their said product by means of advertisements inserted in newspapers and by other means. Among and typical of such statements and representations are the following:

CCC

RAT AND MOUSE DESTROYER

(An Extract of Red Squill)

In 2-ounce jars

Recognized as the safest mouse and rat killer of all for use around four-footed animals, poultry and humans. Contents of jar, properly distributed, is sufficient to kill 50 rats or 100 mice. Rodents go out to die in air. Easy to use. In liquid form, ready to apply on bait. Spreads like molasses. Odor and flavor attracts the rodents. Very economical way to save your grain and poultry.

KILL THOSE RATS AND MICE TODAY WITH

"CCC"

Liquid RAT and MOUSE Destroyer

Do rats and mice menace your farm and home? Use "CCC" Rat Killer to get rid of them. The flavor and odor attracts them. "CCC" spreads like molasses on any bait; after eating, rats and mice rush for open air and water. Seldom die indoors.

Ask us for "CCC" today, and save grain and poultry losses.

PAR. 4. Through the use of the aforesaid statements and representations, and others of the same import but not specifically set out herein, respondents represented that their said product is an effective killing agent for mice and rats; that its use will kill all mice and rats on the premises and that mice and rats after eating the product will go outdoors to die.

PAR. 5. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact respondents' product will not kill mice. While said product will kill rats, it will not kill all rats on the premises. There is no assurance that rats, after eating the product, will go outdoors to die.

PAR. 6. The use by the respondents 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 such portion of the purchasing public, because of said erroneous and mistaken belief, to purchase said product.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 1, 1950, issued and subsequently served its complaint in this proceeding upon the respondents, Carbola Chemical Co., Inc., a corporation, and Carl J. Zimmermann, Gladys G. Zimmermann, and Henry T. Koenig, 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 that act. After the filing by respondents of their answer to the complaint, a hearing was held before a trial examiner of the Commission theretofore duly designated by it, at which hearing evidence was introduced and a stipulation of facts, entered into between counsel for the Commission and counsel for respondents, was likewise made a part of the record. Subsequently, the matter regularly came on for final consideration by the Commission upon the complaint, answer, evidence, stipulation, and recommended decision of the trial examiner (briefs in support of and in opposition to the complaint having been waived and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Carbola Chemical 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 Natural Bridge, N. Y. Respondents, Carl J. Zimmermann (erroneously named in the complaint as Carl J. Zimmerman), Gladys G. Zimmermann (erroneously named in the complaint as Gladys G. Zimmerman), and Henry T. Koenig are president, vice president, and secretary and treasurer, respectively, of the corporation. The post-office address of respondents Carl J. Zimmermann and Gladys G. Zimmermann is Clayton, N. Y., and that of Henry T. Koenig is Carthage, N. Y. Respondent, Henry T. Koenig, has at all times mentioned herein directed and controlled the acts of the corporate respondent with respect to the advertising and sale of the product here involved.

The record fails to establish that the other two individual respondents, Carl J. Zimmermann and Gladys G. Zimmermann, have participated actively in the management and control of the respondent corporation insofar as the product here involved is concerned, and the Commission is of the opinion that the complaint should be dismissed

as to these two respondents as individuals, but not in their official capacities as officers of the respondent Carbola Chemical Co., Inc. The term "respondents" as used hereinafter will therefore not include these two individuals unless the contrary is indicated.

PAR. 2. For several years immediately preceding December 15, 1948, the corporate respondent was engaged in the sale and distribution of a rodenticide product designated as "CCC Rat and Mouse Destroyer" and "CCC Liquid Rat and Mouse Destroyer." The formula for the product was as follows:

	Percent
Extractives of Red Squill	24
Inert Ingredients	76

The corporation caused this product, 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. Prior to December 15, 1948, the corporation maintained a course of trade in said product under said name in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its CCC Rat and Mouse Destroyer or CCC Liquid Rat and Mouse Destroyer, the respondent corporation made certain statements with respect to the nature and efficacy of the said product, such statements being made by advertisements inserted in newspapers and by other means. Among and typical of such statements were the following:

CCC

RAT AND MOUSE DESTROYER

(An Extract of Red Squill)

In 2-ounce jars

Recognized as the safest mouse and rat killer of all for use around four-footed animals, poultry and humans. Contents of jar, properly distributed, is sufficient to kill 50 rats or 100 mice. Rodents go out to die in air. Easy to use. In liquid form, ready to apply on bait. Spreads like molasses. Odor and flavor attract the rodents. Very economical way to save your grain and poultry.

KILL THOSE RATS AND MICE TODAY WITH

"CCC"

Liquid RAT and MOUSE Destroyer

Do rats and mice menace your farm and home?" Use "CCC" Rat Killer and get rid of them. The flavor and odor attracts them. "CCC" spreads like molasses on any bait; after eating, rats and mice rush for open air and water. Seldom die indoors.

Ask us for "CCC" today, and save grain and poultry losses.

PAR. 4. Through the use of these statements and others of the same import, the corporate respondent represented that its product designated as "CCC Rat and Mouse Destroyer" or "CCC Liquid Rat and Mouse Destroyer" was an effective killing agent for mice and rats; that the use of said product would kill all mice and rats on the premises; and that mice and rats, after eating the product, would go outdoors to die.

PAR. 5. These representations were erroneous and misleading. In truth and in fact, the product designated as "CCC Rat and Mouse Destroyer" or "CCC Liquid Rat and Mouse Destroyer" would not kill mice. The product would, under certain circumstances, kill rats, but it could not be relied upon to kill all rats on the premises. There was no assurrance that any rats, after eating the product, would go outdoors to die.

PAR. 6. The respondents contend that the product designated as "CCC Rat and Mouse Destroyer" or "CCC Liquid Rat and Mouse Destroyer" has not been sold since December 15, 1948; that it has not been advertised since April 20, 1949, approximately 10 months prior to the date on which the complaint in this proceeding was issued; and that therefore no order to cease and desist should be issued against any of the respondents. It appears, however, that on November 18, 1940, the corporate respondents entered into a stipulation with the Federal Trade Commission under which it agreed to cease and desist from making, in connection with the sale of a rodenticide substantially similar to the product designated as "CCC Rat and Mouse Destroyer" or "CCC Liquid Rat and Mouse Destroyer," substantially the same representations herein found to be false and misleading in connection with the designated product; and that while respondents stopped selling the product designated as "CCC Rat and Mouse Destroyer" or "CCC Liquid Rat and Mouse Destroyer" on December 15, 1948, they have continued to sell a rodenticide designated as "CCC Rat Destroyer."

From these facts the Commission concludes, and therefore finds, that there is no assurance that respondents might not in the future make the same or similar false and misleading representations in connection with the offering for sale or sale of the same or substantially similar products, unless they are ordered by this Commission to cease and desist from such representations; and that, therefore, there is no merit in respondents' contention that the complaint in these proceedings should be dismissed.

PAR. 7. The use by respondents 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 respondents' product, and the tendency and capacity to

cause such portion of the public to purchase substantial quantities of the product as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents as herein found 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 of respondents, evidence, a stipulation of facts, and recommended decision of the trial examiner (briefs in support of and in opposition to the complaint having been waived and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondents (except the respondents Carl J. Zimmermann and Gladys G. Zimmermann in their individual capacities) have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Carbola Chemical Co., Inc., a corporation, and its officers, and Henry T. Koenig, individually and as an officer of said corporation, and said 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 said respondents' product designated as "CCC Rat and Mouse Destroyer" and "CCC Liquid Mouse and Rat Destroyer," or any 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 representing, directly or by implication:

1. That said product is an effective killing agent for mice.
2. That said product will kill all rats on infested premises.
3. That rats, after eating said product, go outdoors to die.

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

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondents Carl J. Zimmermann and Gladys G. Zimmermann as individuals, but not in their official capacities as officers of the respondent Carbola Chemical Co., Inc.

IN THE MATTER OF

ARNOLD COAT CO., INC., ET AL.

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

Docket 5818. Complaint Oct. 16, 1950—Decision, Jan. 27, 1951

Where a corporate manufacturer of coats and other wool products as defined in the Wool Products Labeling Act, and three individuals, officers, and stockholders, who formulated, controlled, and directed its policies and practices, engaged in the introduction and manufacture for introduction into commerce, and in the interstate offer, sale, transportation, and distribution of such wool products—

Misbranded the same in violation of the provisions of the Wool Products Labeling Act and the rules and regulations promulgated thereunder by failing to affix thereto the required stamps, tags, labels, or other means of identification showing the percentage of the fiber weight of wool and other fiber, and other information required thereby including the name of the manufacturer or that of one or more persons subject to section 3 of said act, or the registered identification number of such person or persons as provided for in rule 4 of said regulations as amended:

Held, That such acts and practices, under the circumstances set forth, were in violation of said act and the rules and regulations promulgated thereunder, were 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.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Alexander Rothstein, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Arnold Coat Co., Inc., and Harry J. Malasky, Irving Borman, and Leonard H. Ravitch, individually and as officers of Arnold Coat Co., Inc., hereinafter referred to as respondents, have violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Arnold Coat Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Its principal office and place of busi-

ness is located at 261 West Thirty-fifth Street, New York, N. Y. The respondents, Harry J. Malasky, Irving Borman, and Leonard H. Ravitch, are officers and stockholders of the respondent Arnold Coat Co., Inc., and as such they formulate, control and direct its policies and practices.

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

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported, and distributed in said commerce as aforesaid, were coats and other products. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid products in violation of the provisions of said act and 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 5 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 fibers was 5 percentum or more, and (5) the aggregate of all other fibers; (*b*) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling, or adulterating matter; (*c*) the percentages in words and figures plainly legible by weight of the wool contents of such wool product where said wool product contains a fiber other than wool; (*d*) the name of the manufacturer of the wool product or the name of one or more persons subject to section 3 of said act with respect to such wool product, or the registered identification number of such person or persons as provided for in rule 4 of the regulations as amended.

PAR. 4. The aforesaid acts, practices, and methods of respondents as alleged were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated January 27, 1951, the initial decision in the instant matter of trial examiner Webster Ballinger, as set-out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WEBSTER BALLINGER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission on October 16, 1950, issued and subsequently served its complaint in this proceeding upon the respondents Arnold Coat Co., Inc, a corporation, and Harry J. Malasky, Irving Borman, and Leonard H. Ravitch, individually and as officers of Arnold Coat Co., Inc., charging them, and each of them, with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. On December 7, 1950, respondents filed a joint answer in which they admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to said facts on the condition that all admissions of fact were made solely for the purposes of this proceeding, the enforcement or review thereof in the circuit court of appeals, and for any review thereof in the Supreme Court of the United States, or for any other court proceedings in connection therewith which may be brought or instituted by virtue of the authority contained in the Federal Trade Commission Act as amended by the act of March 21, 1938. Thereafter this proceeding regularly came on for final hearing before the trial examiner upon the complaint, and the admission answer of all the respondents and the trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Arnold Coat Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Its principal office and place of business is located at 261 West Thirty-fifth Street, New York, N. Y.

The respondents, Harry J. Malasky, Irving Borman, and Leonard H. Ravitch, are officers and stockholders of the respondent Arnold Coat Co., Inc., and as such they formulate, control, and direct its policies and practices.

PAR. 2. The respondents are engaged in the introduction and manufacture for introduction into commerce and in offering for sale, sale, transportation, and distribution of wool products, as such products are defined in the Wool Products Labeling Act of 1939. They cause their said products, when sold, to be shipped from their place of business in New York to purchasers thereof in various other States of the United States. Many of respondents' said products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since July 15, 1941, respondents have violated the provisions of said act and the 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 by failing to affix to said garments a stamp, tag, label, or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (*a*) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers; (*b*) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling, or adulterating matter; (*c*) the percentages in words and figures plainly legible by weight of the wool contents of such wool product where said wool product contains a fiber other than wool; (*d*) the name of the manufacturer of the wool product or the name of one or more persons subject to section 3 of said act with respect to such wool product, or the registered identification number of such person or persons as provided for in rule 4 of the regulations as amended.

CONCLUSION

The acts and practices of the respondents as herein found were in violation of the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, were 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, Arnold Coat Co., Inc., a corporation, and Harry J. Malasky, Irving Borman, and Leonard H. Ravitch, individually and as officers of Arnold Coat Co., Inc., directly or through any corporate or other device, in connection with the manufacture for introduction, or introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as commerce is defined in the aforesaid acts, of coats and other wool products which contain, or in any way are represented as containing wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding said products by failing to securely affix to or place on each of such products a stamp, tag, label, or other means of identification, or a substitute therefor, showing in clear and coonspicuous manner:

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

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

(C) In the case of a wool product containing a fiber other than wool, the percentages by weight, in words and figures plainly legible, of the wool contents thereof.

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

Provided, That the foregoing shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939: *And provided further*, That nothing contained in this order shall be construed as limiting any applicable provision of said act or the rules and regulations promulgated thereunder.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order [as required by said declaratory decision and order of January 27, 1951].

Syllabus

IN THE MATTER OF

MILLS SALES COMPANY OF NEW YORK, INC., ET AL.

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

Docket 5775. Complaint, May 9, 1950—Decision, Feb. 23, 1951

Where a corporation and two officers who directed and controlled it, engaged in the interstate sale to retailers of such merchandise as toys, jewelry, cosmetics, gift items, drugs, etc.;

In soliciting orders by mail through catalogs and accompanying order blanks, upon the reverse of which latter and following other matter they stated that, "Infrequently we are forced to substitute, in which event utmost care will be exercised," and "if no substitutions are wanted state so on order," a notice not included in catalogs until 1949—

(*a*) Represented through statements in catalogs, newspapers, magazines, and on letterheads, order blanks, and in other ways, that said company had twelve subsidiaries or divisions, and that its customers were afforded the many advantages provided by a company of such nature, and that it was the world's lowest priced wholesaler and was never undersold;

The facts being it had no subsidiaries or divisions whatsoever and the names assigned to so-called subsidiaries or divisions in said statements were fictitious, and other wholesalers sold at prices as low as or lower than said corporation's; and

(*b*) In their offer of designated and described commodities, implicitly and misleadingly represented that the prospect would receive the merchandise ordered by him;

The facts being their cautionary statements were inefficient adequately to warn the prospect that he might not receive the merchandise ordered by him or to affect the representation that he would; the cautionary statement on the order blanks was neither clear nor conspicuous, and those at pages 11 and 39 in their 1949, 48-page catalog, while stating in bold, plain type, that "on occasion substitutions are necessary, in which event utmost care will be exercised," did not state "if no substitutions are wanted, please so state on order"; and appeared in a mass of merchandise listings;

With tendency and capacity to mislead and deceive a substantial number of retail merchants into the erroneous belief that said representations were true and thereby into the purchase of substantial quantities of their said products:

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

Before *Mr. Frank Hier*, trial examiner.

Mr. George M. Martin for the Commission.

Mr. Samuel J. Ernstoff, of New York City, for respondents.

COMPLAINT

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

PARAGRAPH 1. Respondent, Mills Sales Co. of New York, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 901 Broadway, New York 3, N. Y. The corporation trades as Mills Sales Co. Individual respondent David Jacoby is president and individual respondent Evelyn Jacoby is vice president of respondent, Mills Sales Co. of New York, Inc. Acting individually and in their official capacity, said respondents direct, control, and dominate the policies, acts, practices, and business affairs of said respondent corporation.

PAR. 2. Respondent, Mills Sales Co. of New York, Inc., and individual respondents David Jacoby and Evelyn Jacoby are now and have been for more than 1 year last past engaged in the sale of various articles of merchandise such as toys, jewelry, cosmetics, gift items, drugs, and other merchandise of a similar nature to retailers who order said merchandise through the mail. The respondents cause and have caused their said products when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States and maintain and at all times mentioned herein have maintained a course of trade in said merchandise in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their products, respondents have made certain statements and representations concerning their products and the nature of their business, in catalogs, newspapers, magazines, and on letterheads, order blanks, and in other ways. Among and typical, but not inclusive, of the statements and representations so made are the following:

SUBSIDIARIES

Singer Blade Co.
De Jay Rx Pharmacal Co.
Priscilla Scientific Products
Best Value Sales Co.

Best Aspirin Co. of America
Pilgrim Needle Co.
Mills Razor Blade Co.
Best Latex Co. of America
Best Products Co. of America
Monarch Import Co.
Tru-Art Novelty Co.
Mills Needle Co.

HERE ARE REASONS WHY—"WE ARE NEVER UNDERSOLD"

OUR DIVISIONS—TRADE NAMES

Singer Blade Co.
De Jay Rx Pharmacal Co.
Best Aspirin Co. of America
Priscilla Scientific Products
Best Value Sales Co.
Pilgrim Needle Co.
Mills Razor Blade Co.
Best Latex Co. of America
Best Products Co. of America
Monarch Import Co.
Tru-Art Novelty Co.
Mills Needle Co.

12 Subsidiaries at your service
We guarantee "never to be undersold"
You take no chance in buying quantities

WORLD'S "LOWEST PRICED" WHOLESALERS

NOBODY ANYWHERE UNDERSELLS US

PAR. 4. By means of the aforesaid statements and representations, respondents represented that Mills Sales Co. of New York, Inc., has 12 subsidiaries or divisions and in dealing with said company customers are afforded the many advantages provided by a company of this nature and that Mills Sales Co. of New York, Inc., is the world's lowest priced wholesaler and is never undersold.

PAR. 5. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, the respondent, Mills Sales Co. of New York, Inc., has no subsidiaries or divisions whatsoever, and the names assigned to said so-called subsidiaries or divisions are fictitious, and the companies listed in respondent's advertising matter do not in fact exist. There are other wholesalers who sell at prices as low or lower than those at which the corporate respondent sells its merchandise.

PAR. 6. Furthermore, respondents have represented, directly and by implication, in their advertising matter hereinbefore mentioned that they will ship the identical commodities listed in said catalogs and advertising matter according to the orders received.

PAR. 7. In truth and in fact, respondents, in many instances, have substituted merchandise in the place of that ordered without an agreement on the part of the customers that substitutions might be made.

PAR. 8. The use by the respondents of the aforesaid false, misleading, and deceptive representations, statements and unfair and deceptive acts and practices in connection with the sale and offering for sale of their products in commerce has had and now has the

tendency and capacity to mislead and deceive a substantial number of retail merchants into the erroneous and mistaken belief that said representations and statements are and were true and into the purchase of substantial quantities of respondent's products because of said erroneous and mistaken belief.

PAR. 9. 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 February 23, 1951, the initial decision in the instant matter of trial examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 9, 1950, issued and subsequently served its complaint in this proceeding upon respondents Mills Sales Co. of New York, Inc., a corporation, and David and Evelyn Jacoby, individually and as officers thereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After respondents filed their answer in this proceeding and at the first and only hearing herein, counsel in support of the allegations of the complaint and counsel for respondents joined in a stipulation dictated by them into the record herein, wherein it was agreed that such stipulation may be taken as the facts in this proceeding and in lieu of testimony in support of and in opposition to the charges stated in the complaint, and that the said stipulation of facts may serve as the basis for findings as to the facts and conclusion based thereon and order disposing of the proceeding, without presentation of proposed findings and conclusions. Thereafter, this proceeding regularly came on for final consideration by said trial examiner upon the complaint, answer, and stipulation, said stipulation having been approved by the trial examiner, who, after duly considering the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Mills Sales Co. of New York, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 901 Broadway, New York 3, N. Y. The corporation trades as Mills Sales Co. Individual respondent David Jacoby is president and individual respondent Evelyn Jacoby is vice president of respondent Mills Sales Co. of New York, Inc. Acting individually and in their official capacity, said respondents direct, control, and dominate the policies, acts, practices, and business affairs of said respondent corporation.

PAR. 2. Respondent Mills Sales Co. of New York, Inc., and individual respondents David Jacoby and Evelyn Jacoby are now and have been for more than 1 year last past engaged in the sale of various articles of merchandise such as toys, jewelry, cosmetics, gift items, drugs, and other merchandise of a similar nature to retailers who order said merchandise through the mail. The respondents cause and have caused their said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States and maintain and at all times mentioned herein have maintained a course of trade in said merchandise in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their products, respondents have made certain statements and representations concerning their products and the nature of their business, in catalogs, newspapers, magazines, and on letterheads, order blanks, and in other ways. Among and typical, but not inclusive, of the statements and representations so made are the following:

SUBSIDIARIES

Singer Blade Co.	Mills Razor Blade Co.
De Jay Rx Pharmacal Co.	Best Latex Co. of America
Best Aspirin Co. of America	Best Products Co. of America
Priscilla Scientific Products	Monarch Import Co.
Best Value Sales Co.	Tru-Art Novelty Co.
Pilgrim Needle Co.	Mills Needle Co.

HERE ARE REASONS WHY—"WE ARE NEVER UNDERSOLD"

OUR DIVISIONS—TRADE NAMES

Singer Blade Co.	Best Aspirin Co. of America
De Jay Rx Pharmacal Co.	Priscilla Scientific Products

Best Value Sales Co.
Pilgrim Needle Co.
Mills Razor Blade Co.
Best Latex Co. of America
Best Products Co. of America
Monarch Import Co.
Tru-Art Novelty Co.
Mills Needle Co.

12 Subsidiaries at your service
We guarantee "never to be undersold"
You take no chance in buying quantities

WORLD'S "LOWEST PRICED" WHOLESALERS

NOBODY ANYWHERE UNDERSELLS US

PAR. 4. By means of the aforesaid statements and representations, respondents represented that Mills Sales Co., of New York, Inc., has 12 subsidiaries or divisions and in dealing with said company customers are afforded the many advantages provided by a company of this nature and that Mills Sales Co. of New York, Inc., is the world's lowest priced wholesaler and is never undersold. The last two representations ceased in 1948 and in 1950, respectively.

PAR. 5. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, the respondent, Mills Sales Co. of New York, Inc., has no subsidiaries or divisions whatsoever, and the names assigned to said so-called subsidiaries or divisions are fictitious, and the companies listed in respondent's advertising matter do not, in fact, exist. There are other wholesalers who sell at prices as low or lower than those at which the corporate respondent sells its merchandise.

PAR. 6. Respondents, in the conduct of their business, solicit orders through catalogs entirely by mail. Order blanks accompanying such catalogs contain on the reverse side thereof under the heading "SAMPLES," the following:

All Sample Orders MUST be paid for in advance in U. S. Postage Stamps or Coin (rater firms included), regardless of how trivial the value, based at wholesale sample price plus postage, and 25¢ handling charge, if order is below $5.00. We do not break cartons on low priced goods. Infrequently we are forced to substitute, in which event utmost care will be exercised. If no substitutions are wanted state so on order.

The last two sentences do not appear on the face of the order blank, and were not contained in respondents' catalog or in any other material distributed by them until 1949. In that year respondents' 48-page catalog contained on pages 11 and 39 the statement: "On occasion substitutions are necessary, in which event utmost care will be exercised."

PAR. 7. The statements as to substitutions on respondents' order blanks are neither clear nor conspicuous, are not under a separate

heading and not printed in an eye-arresting manner. The cautions in respondents' 1949 catalog do not state, "If no substitutions are wanted, please so state on order." Furthermore, these cautions appear in a mass of merchandise listings, although in bold, plain type. It is concluded that these cautions are insufficient adequately to warn the prospect that he may not receive the merchandise he orders or to affect the representation that he will, which is implied in respondents' offer of designated and described commodities.

PAR. 8. The use by the respondents of the aforesaid false, misleading, and deceptive representations, statements and unfair and deceptive acts and practices in connection with the sale and offering for sale of their products in commerce has had and now has the tendency and capacity to mislead and deceive a substantial number of retail merchants into the erroneous and mistaken belief that said representations and statements are and were true and into the purchase of substantial quantities of respondents' products because of said erroneous and mistaken belief.

CONCLUSION

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

ORDER

It is ordered, That respondent Mills Sales Co. of New York, Inc., a corporation, its officers, directors, employees, and representatives, and respondents David Jacoby and Evelyn Jacoby, individually and as officers of such corporation, their employees and representatives, directly or indirectly, or 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 toys, jewelry, cosmetics, gift items, drugs, or any other merchandise, do forthwith cease and desist from:

1. Representing directly or by implication that Mills Sales Co. of New York, Inc., owns or controls any subsidiary, firm, company, or corporation.

2. Representing directly or by implication that Mills Sales Co. of New York, Inc., is the world's lowest priced wholesaler, or is never undersold.

3. Shipping any merchandise not identical in all respects with the merchandise ordered by any customer, except with the express consent of the latter.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of February 23, 1951].

IN THE MATTER OF

JOELLE COATS, 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, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5749. Complaint, Mar. 9, 1950—Decision, Feb. 26, 1951

Where a corporation, and three partner manufacturers, engaged in the introduction and manufacture for introduction and in the sale and distribution in commerce, of wool products as defined in the Wool Products Labeling Act, under arrangements whereby said partners manufactured garments from fabrics supplied by said corporation and labeled and shipped them thereto—

Misbranded coats and other wool products subject to said act and rules and regulations, in violation of the provisions thereof, in that certain coats which were labeled as 100 percent wool and were made by said partners and bore fabric content tags of said corporate concern, actually contained 10 percent wool and 90 percent reprocessed wool, and thus did not have affixed thereto a stamp, tag, label, etc., giving the information required by said act:

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

Before *Mr. Henry P. Alden*, trial examiner.

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

Reit & Reit, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Joelle Coats, Inc., a corporation, and Nat Propos, individually and as president of Joelle Coats, Inc.; William Varacska, Julia Varacska, and Gertrude Obropta, individually and as copartners trading and doing business as Ridgeley Sportswear Manufacturing Co., hereinafter referred to as respondents, have violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Joelle Coats, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws

of the State of New York. Its principal office and place of business are located at 265 West Thirty-seventh Street, New York, N. Y.

The respondent Nat Propos is president of the respondent Joelle Coats, Inc.

The respondents, William Varacska, Julia Varacska, and Gertrude Obropta, are copartners trading and doing business as Ridgeley Sportswear Manufacturing Co. Their factory and place of business is located in Perth Amboy, N. J.

All of the respondents act in concert in performing and carrying out the acts and practices hereinafter set forth and described.

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

PAR. 3. Among the wool products introduced and manufactured for introdution into commerce, and sold, transported, and distributed in said commerce as aforesaid, were coats and other products. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid products in violation of the provisions of said act and 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 5 per centum of said total fiber weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers; (*b*) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling, or adulterating matter; (*c*) the percentages in words and figures plainly legible by weight of the wool con-

tents of such wool product where said wool product contains a fiber other than wool; (*d*) the name of the manufacturer of the wool product or the name of one or more persons subject to section 3 of said act with respect to such wool product, or the registered identification number of such person or persons as provided for in rule 4 of the regulations as amended.

PAR. 4 The aforesaid acts, practices, the methods of respondents as alleged were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, on March 9, 1950, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. After the filing of respondents' answer, a heading was held before a trial examiner of the Commission theretofore duly designated by it, at which hearing there was read into the record a stipulation as to the facts by and between counsel supporting the complaint and counsel for the respondents, in lieu of all other evidence. On October 26, 1950, the trial examiner filed his initial decision, which was served on the respondents on November 7, 1950.

The Commission, having reason to believe that the initial decision was deficient in certain material respects, subsequently placed this case on its own docket for review, and on December 6, 1950, it issued, and thereafter served upon the parties, its order affording the respondents an opportunity to show cause why said initial decision should not be altered in the manner and to the extent shown in a tentative decision of the Commission attached to said order. Respondents, not having appeared in response to the leave to show cause, this proceeding regularly came on for final consideration by the Commission upon the record herein on review; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its 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. The respondent Joelle Coats, Inc., as a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 265 West Thirty-seventh Street, New York, N. Y.

The respondent Nat Propos is president of the respondent Joelle Coats, Inc.

The respondents William Varacska, Julia Varacska, and Gertrude Obropta are copartners trading and doing business as Ridgeley Sportswear Manufacturing Co., with their factory and place of business located in Perth Amboy, N. J.

All of the respondents have acted in concert in performing and carrying out the acts and practices hereinafter set forth and described.

PAR. 2. The respondents are now, and since 1947 have been, engaged in the introduction and manufacture for introduction into commerce as "commerce" is defined in the Wool Products Labeling Act of 1939 and in the Federal Trade Commission Act, and in the offering for sale, sale, transportation, and distribution in said commerce, of wool products, as such products are defined in the said Wool Products Labeling Act of 1939. The respondents William Varacska, Julia Varacska, and Gertrude Obropta, copartners trading as Ridgeley Sportswear Manufacturing Co., receive fabrics used in the manufacture of the garments involved in this proceeding from the respondent Joelle Coats, Inc., and manufacture the garments therefrom, label them, and ship them to Joelle Coats, Inc. Many of respondents' said products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since September 19, 1947, respondents have violated the provisions of said act and rules and regulations in the introduction and manufacture for introduction into commerce, and in the sale, transportation, and distribution in commerce, of said wool products 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 coats and other products. Among such coats were a number of coats, carrying style No. 702, which were labeled as 100 percent wool. Such coats, which were manufactured by Ridgeley Sportswear Manufacturing Co. and which bore fabric content tags of Joelle Coats, Inc., actually contained 10 percent wool

and 90 percent reprocessed wool. Said coats were thus misbranded in that they did not have affixed 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 and the rules and regulations promulgated thereunder.

CONCLUSION

The acts and practices of the respondents, as hereinabove found, were in violation of the Wool Products Labeling Act of 1939 and the rules and regulations thereunder, and constituted 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, Joelle Coats, Inc., a corporation, and its officers, Nat Propos, individually, and William Varacska, Julia Varacska, and Gertrude Obropta, individually and as copartners trading as Ridgeley Sportswear Manufacturing Co. or under any other name, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid acts, of coats or other wool products, as such products are defined in any subject to the Wool Products Labeling Act of 1939, which products 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, do forthwith cease and desist from misbranding such coats or other products by failing to affix securely 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 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 5 percentum or more, and (5) the aggregate of all other fibers.

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

(*c*) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, or distribution thereof in commerce, as

"commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939.

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

IN THE MATTER OF

LASSER GARMENT 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, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5756. Complaint, Mar. 22, 1950—Decision, Feb. 26, 1951

Where a corporation and three officers thereof, engaged in the introduction and manufacture for introduction into commerce, and in the sale and distribution therein, of wool products as defined in the Wool Products Labeling Act—

Misbranded certain coats in violation of said act and the rules and regulations promulgated thereunder in that, labeled by them as 100 percent wool, they were made wholly or in part of processed wool, and the labels in some instances failed also to disclose the fiber content of the interlinings; and they thus did not have affixed to them the required stamp, tag, label, etc., giving the information called for:

Held, That such acts and practices, under the circumstances set forth, were in violation of the provisions of said act and rules and regulations, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Henry P. Alden*, trial examiner.

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

Mr. Martin H. Young, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Lasser Garment Co., Inc., a corporation, Joseph C. Lasser, Kenneth J. Lasser, and Sidney Locks, individually and as officers of Lasser Garment Co., Inc., a corporation hereinafter referred to as respondents, have violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Lasser Garment Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York. Its principal office and place of business are located at 247 West Thirty-seventh Street, New York, N. Y.

Respondents Joseph C. Lasser, Kenneth J. Lasser, and Sidney Locks are officers of the respondent Lasser Garment Co., Inc.

PAR. 2. The respondents are engaged in the introduction and manufacture for introduction into commerce, and in offering for sale, sale, transportation and distribution, of wool products, as such products are defined in the Wool Products Labeling Act of 1939, in commerce as "commerce" is defined in said act and in the Federal Trade Commission Act. Many of respondents' said products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and rules and regulations promulgated thereunder. For more than 3 years last past respondents have violated the provisions of said act and said rules and regulations in the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said act and the rules and regulations.

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported, and distributed in said commerce as aforesaid, were coats, suits, and other products. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid products in violation of the provisions of said act and 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 5 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 5 percentum or more, and (5) the aggregate of all other fibers; (*b*) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling, or adulterating matter; (*c*) the percentages in words and figures plainly legible by weight of the wool contents of such wool product where said wool product contains a fiber other than wool, (*d*) the name of the manufacturer of the wool product or the name of one or more persons subject to section 3 of said act with respect to such wool products, or the registered identification number of such person or persons as provided for in rule 4 of the regulations as amended.

PAR. 4. The aforesaid acts, practices, and methods of respondents as alleged were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission on March 22, 1950, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. Said respondents not having filed an answer to the complaint, a trial examiner of the Commission was duly designated by it and a hearing was subsequently held at which there was read into the record a stipulation as to the facts by and between counsel supporting the complaint and counsel for the respondents, in lieu of all other evidence. On October 26, 1950, the trial examiner filed his initial decision, which was served on the respondents on November 7, 1950.

The Commission, having reason to believe that the initial decision was deficient in certain material respects, subsequently placed this case on its own docket for review, and on December 8, 1950, it issued, and thereafter served upon the parties, its order affording the respondents an opportunity to show cause why said initial decision should not be altered in the manner and to the extent shown in a tentative decision of the Commission attached to said order. Respondents having appeared in response to the leave to show cause and having filed certain objections to the proposed alterations in said initial decision, which objections were answered by counsel in support of the complaint, this proceeding regularly came on for final consideration by the Commission upon the record on review; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its 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. The respondent, Lasser Garment 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 principal office and place of business located at 247 West Thirty-seventh Street, in the city of New York, State of New York.

The respondents, Joseph C. Lasser, Kenneth J. Lasser, and Sidney Locks are officers of the respondent, Lasser Garment Co.

PAR. 2. The respondents are now, and for a number of years last past have been, engaged in the introduction and manufacture for

introduction into commerce, and in the offering for sale, sale, transportation, and distribution in said commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939 and in the Federal Trade Commission Act, of wool products, as such products are defined in said Wool Products Labeling Act of 1939. Many of respondents' said products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. In the course and conduct of their business, respondents have violated the provisions of the aforesaid Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder in the introduction into commerce and manufacture for introduction into commerce, and in the sale, transportation, and distribution in commerce of their wool products, 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 commerce, as aforesaid, have been coats which were made wholly or in part of reprocessed wool but which were labeled by the respondents as 100 percent wool. Said coats 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 thereunder. In some instances the labels on the coats also failed to disclose the fiber content of the interlinings of said coats.

CONCLUSION

The acts and practices of the respondents, as hereinabove found, were in violation of the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations thereunder, and constituted 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, Lasser Garment Co., Inc., a corporation, and its officers, and Joseph C. Lasser, Kenneth J. Lasser, and Sidney Locks, individually, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation,

or distribution in commerce, as "commerce" is defined in the aforesaid acts, of coats or other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products 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, do forthwith cease and desist from misbranding such coats or other products by failing to affix securely 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 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 5 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 or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permittted 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 respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

SALABLE COAT 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, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5760. Complaint, Apr. 4, 1950—Decision, Feb. 26, 1951

Where a corporation and its three officers, engaged in the introduction and manufacture for introduction into commerce, and in the sale and distribution in commerce, of wool products as defined in the Wool Products Labeling Act—

Misbranded girls' coats and legging sets in that, composed of 8 percent rayon, they were labeled 100 percent wool, and in that pieces thereof in some instances bore no statement of fiber content at all, and they thus did not have affixed thereto the required stamp, tag, label, etc., or other means of identification showing the constituent fibers and percentage thereof, source, etc.:

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.

Before *Mr. Henry P. Alden*, trial examiner.

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

Mr. Martin H. Young, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Salable Coat Co., Inc., and Sol Karesh, Sam Karesh, and Hannah Karesh, individually and as officers of Salable Coat Co., Inc., hereinafter referred to as respondents, have violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Salable Coat Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York. Its principal office and place of business are located at 520 Eighth Avenue, New York, N. Y.

The respondents Sol Karesh, Sam Karesh, and Hannah Karesh are president, vice president, and secretary-treasurer, respectively, of respondent Salable Coat Co., Inc.

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

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported, and distributed in said commerce as aforesaid, were coats and other products. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid products in violation of the provisions of said act and 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 5 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 5 percentum or more, and (5) the aggregate of all other fibers; (*b*) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling or adulterating matter; (*c*) the percentages in words and figures plainly legible by weight of the wool contents of such wool product where said wool product contains a fiber other than wool; (*d*) the name of the manufacturer of the wool product or the name of one or more persons subject to section 3 of said act with respect to such wool product, or the registered identification number of such person or persons as provided for in rule 4 of the regulations as amended.

PAR. 4. The aforesaid acts, practices, and methods of respondents as alleged were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Decision of the Commission and Order to File Report of Compliance

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission on April 4, 1950, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. Said respondents not having filed an answer to the complaint, a trial examiner of the Commission was duly designated by it and a hearing was subsequently held at which there was read into the record a stipulation as to the facts by and between counsel supporting the complaint and counsel for the respondents, in lieu of all other evidence. On October 26, 1950, the trial examiner filed his initial decision, which was served on the respondents on November 7, 1950.

The Commission, having reason to believe that the initial decision was deficient in certain material respects, subsequently placed this case on its own docket for review, and on December 8, 1950, it issued, and thereafter served upon the parties, its order affording the respondents an opportunity to show cause why said initial decision should not be altered in the manner and to the extent shown in a tentative decision of the Commission attached to said order. Respondents having appeared in response to the leave to show cause and having filed certain objections to the proposed alterations in said initial decision, which objections were answered by counsel in support of the complaint, this proceeding regularly came on for final consideration by the Commission upon the record on review; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its 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. The respondent, Salable Coat Co., Inc. (incorrectly designated in the complaint as Salable Coat Company, Inc.) is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 520 Eighth Avenue, in the city of New York, State of New York.

The respondents, Sol Karesh, Sam Karash (incorrectly designated in the complaint as Sam Karesh), and Hannah Karesh, are president, vice president, and secretary-treasurer, respectively, of the respondent Salable Coat Co., Inc.

PAR. 2. The respondents are now, and for a number of years past have been, engaged in the introduction and manufacture for introduction into commerce, and in the offering for sale, sale, transportation, and distribution in said commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939 and in the Federal Trade Commission Act, of wool products, as such products are defined in said Wool Products Labeling Act of 1939. Many of respondents' said products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. In the course and conduct of their business, respondents have violated the provisions of the aforesaid Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder in the introduction and manufacture for introduction into commerce and in the sale, transportation, and distribution in commerce of their wool products, 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, have been coats and other products made wholly or in part of reprocessed wool which were labeled 100 percent wool, girls' coats and legging sets composed of 8 percent rayon and the balance of wool which were labeled 100 percent wool, and outfits or suits of two or more pieces, each piece of which, in some instances, did not bear any statement of fiber content at all. Said products 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 and practices of the respondents, as hereinabove found, were in violation of the Wool Products Labeling Act of 1939 and the rules and regulations thereunder and constituted 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, Salable Coat Co., Inc., a corporation, and its officers, and Sol Karesh, Sam Karash, and Hannah Karesh, individually, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid acts, of coats or other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products 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, do forthwith cease and desist from misbranding such coats or other products by failing to affix securely 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 or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939.

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

IN THE MATTER OF

EMERSON COAT COMPANY, INC., ET AL.

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

Docket 5761. Complaint, Apr. 4, 1950—Decision, Feb. 26, 1951

Where a corporation and the individual who was its president and treasurer, engaged in the introduction and manufacture for introduction into commerce, and in the sale and distribution in commerce of wool products as defined in the Wool Products Labeling Act—

Misbranded certain coats in violation of said act and the rules and regulations promulgated thereunder in that, labeled as "100% all wool," some contained 100% reprocessed wool, and they thus did not have affixed thereto the required tag, label, or other means of identification showing the constituent fiber percentages:

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

Before *Mr. Henry P. Alden*, trial examiner.

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

Mr. Julius Reinlieb, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Emerson Coat Co., Inc., a corporation, and Abraham Mink, individually and as an officer of Emerson Coat Co., Inc., hereinafter referred to as respondents, have violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Emerson Coat Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York. Its principal office and place of business are located at 247 West Thirty-seventh Street, New York, N. Y.

The respondent Abraham Mink is president and treasurer of the respondent Emerson Coat Co., Inc.

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

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported, and distributed in said commerce as aforesaid, were coats and other products. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid products in violation of the provisions of said act and 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 5 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 5 percentum or more, and (5) the aggregate of all other fibers; (*b*) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling or adulterating matter; (*c*) the percentages in words and figures plainly legible by weight of the wool contents of such wool product where said wool product contains a fiber other than wool; (*d*) the name of the manufacturer of the wool product or the name of one or more persons subject to section 3 of said act with respect to such wool product, or the registered identification number of such person or persons as provided for in rule 4 of the regulations as amended.

PAR. 4. The aforesaid acts, practices, and methods of respondents as alleged were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, on April 4, 1950, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. After the filing of respondents' answer, a hearing was held before a trial examiner of the Commission theretofore duly designated by it, at which hearing there was read into the record a stipulation as to the facts by and between counsel supporting the complaint and counsel for the respondents, in lieu of all other evidence. On October 26, 1950, the trial examiner filed his initial decision, which was served on the respondents on November 7, 1950.

The Commission, having reason to believe that the initial decision was deficient in certain material respects, subsequently placed this case on its own docket for review, and on December 8, 1950, it issued, and thereafter served upon the parties, its order affording the respondents an opportunity to show cause why said initial decision should not be altered in the manner and to the extent shown in a tentative decision of the Commission attached to said order. Respondents not having appeared in response to the leave to show cause, this proceeding regularly came on for final consideration by the Commission upon the record herein on review; and the Commission, having duly considered the matter and being now fully advised in the premises, find that this proceeding is in the interest of the public and makes this its 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. The respondent Emerson Coat 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 principal office and place of business located at 247 West Thirty-seventh Street, New York, N. Y.

The respondent Abraham Mink is president and treasurer of the respondent Emerson Coat Co., Inc.

PAR. 2. The respondents are engaged in the introduction and manufacture for introduction into commerce as "commerce" is defined in the Wool Products Labeling Act of 1939 and in the Federal Trade Commission Act, and in the offering for sale, sale, transportation, and distribution in said commerce, of wool products, as such products are

defined in the said Wool Products Labeling Act of 1939. Many of respondents' said products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since July 15, 1941, respondents have violated the provisions of said act and rules and regulations in the introduction and manufacture for introduction into commerce, and in the sale, transportation, and distribution in commerce, of said wool products 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 coats which were labeled as "100% All Wool." Some of the coats so labeled actually contained 100 percent reprocessed wool. The coats which contained 100 percent reprocessed wool and which were labeled as "100% All Wool" were thus misbranded in that they did not have affixed 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 and the rules and regulations promulgated thereunder.

CONCLUSION

The acts and practices of the respondents, as hereinabove found, were in violation of the Wool Products Labeling Act of 1939 and the rules and regulations thereunder, and constituted 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, Emerson Coat Co., Inc., a corporation, and its officers, and Abraham Mink, individually, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid acts, of coats or other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products 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, do forthwith cease and desist from misbranding such coats or other products by failing to

affix securely 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 or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939.

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 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

ELECTROVOX CO., INC., ET AL.

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

Docket 5781. Complaint, May 26, 1950—Decision, Feb. 26, 1951

The number of times any phonograph needle may normally be used with satisfaction in playing records cannot be forecast with any degree of accuracy, since it depends upon diverse factors, including the material of which the needle point is made, the amount of pressure on the record, its angle in relation to the record, the size, condition, quality, and composition of the record being played, and other possible factors.

Where a corporation and its two officers, engaged in the manufacture and interstate sale and distribution of phonograph needles; in advertising through nationally circulated newspapers and magazines and advertising media disseminated among jobbers, wholesalers and retailers, directly and by inference—

(*a*) Represented that their "Walco '400' Floating Jewel Sapphire Needle" had a point or tip made of sapphire, a precious stone, and might be used on phonograph records for as many as 10,000 perfect plays;

(*b*) Represented that their "Walco '400' Ruby Jewel Needle" had a point or tip made of ruby, a precious stone, and might be used with satisfaction on phonograph records for as many as 6,000 plays; and

(*c*) Represented that their "Walco '400' Precision Metal Needle" would last satisfactorily for 4,000 plays;

The facts being that the points or tips of said "Floating Jewel" and "Jewel Tipped" needles were neither sapphires nor rubies, as represented, but were composed of synthetic material, and their claims as to their performance properties were grossly exaggerated and without basis in fact;

With capacity and tendency to mislead and deceive a substantial number of retail dealers and the purchasing public as to the composition of such needle tips or points and the number of times said needles might be acceptably used on records, and thereby induce the purchase thereof; and with the result of placing in the hands of jobbers, wholesalers, and retailers, an insurmentality whereby the purchasing public might be misled to its injury:

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

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

Mr. Joseph Callaway for the Commission.

Paul, Weiss, Rifkind, Wharton & Garrison, of New York City, and *Mr. John M. Mason*, of Washington, D. C., 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 Electrovox Co., Inc., a corporation, and Lowell Walcutt and Robert G. Walcutt, individuals, 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. Electrovox Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 66 Franklin Street, East Orange, N. J.

The individual respondents Lowell Walcutt and Robert G. Walcutt are respectively the president and vice president-secretary of the corporate respondent. These individual respondents also have their offices at 66 Franklin Street, East Orange, N. J., and at all times hereinafter mentioned formulated, directed, and controlled the acts, policies, and business affairs of the corporate respondent.

PAR. 2. The respondents are now, and have been for the past several years, engaged in the business of manufacturing, selling, and distributing phonograph needles. Respondents cause their phonograph needles when sold to be transported from their place of business in the State of New Jersey 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 their said business in commerce among and between the various States of the United States. Respondents' volume of business in said commerce is substantial.

PAR. 3. In the course and conduct of their said business and for the purpose of inducing the purchase of their said phonograph needles in commerce, respondents have made many representations as to the materials used in making their phonograph needles and as to the wearing qualities of said needles. These representations were made by means of advertisements inserted in newspapers, magazines, and other periodicals having a general circulation in the United States, and also by means of advertising media circulated among jobbers, wholesalers, and retailers. Among such representations are the following:

WALCO "400"
Floating Jewel
Sapphire Needle
Up to 10,000 perfect plays
X X X X X X X X X X X X

provides up to 10,000 perfect
playings with utmost protection
to records

Up to 6,000 playings
Another of the jewel-tipped "400"
series this WALCO needle is made of
ruby

X X X X X X X X X X X X

Hard and durable, the RUBY is precision
ground and highly polished. X X X X X
Ask your dealer to demonstrate the
WALCO RUBY—it's a gem.

WALCO "400"
RUBY JEWEL NEEDLE

WALCO "400"
Precision Metal Needle
long lasting to 4,000 plays

PAR. 4. Through the use of the foregoing statements and others of similar import, not specifically set out herein, respondents have represented directly and by inference that the phonograph needles designated as Walco "400" Floating Jewel Sapphire needles have points or tips made of sapphire, one of the precious stones, and that each of said needles may ordinarily be used 10,000 times, with satisfaction, in playing phonograph records; that the phonograph needles designated as Walco "400" Ruby Jewel needles have points or tips made of ruby also one of the precious stones, and that each of said needles may ordinarily be used 6,000 times, with satisfaction, in playing phonograph records; that the phonograph needles designated as Walco "400" Precious Metal needles may ordinarily be used 4,000 times with satisfaction, in playing phonograph records.

PAR. 5. The said representations are false, deceptive, and misleading. In truth and in fact the points or tips of the needles designated as Walco "400" Floating Jewel Sapphire needles, are not made of the precious stones known as sapphires, nor are the points or tips of the needles designated as Walco "400" Ruby Jewel Needles made of the precious stones known as rubies, but the tips or points of the needles of both types are made of synthetic materials. The number of times any phonograph needle may be used with satisfaction in playing phonograph records is variable, depending upon various factors including the material of which the needle point is made, the amount of

pressure of the needle on the record, angle of the needle in relation to the record, size conditions, quality and composition of the record being played and possibly other factors. It is therefore impossible to forecast with any degree of accuracy the number of times any phonograph needle may be used with satisfaction in playing records. Under conditions of normal use, none of respondent's phonograph needles of the types mentioned above, can be used with satisfaction for anything like the number of times represented.

PAR. 6. The use by the respondents of the false, deceptive, and misleading representations herein set forth has had and now has the capacity and tendency to mislead and deceive a substantial number of retail dealers and members of the purchasing public with respect to the material of which the tips or points of respondents' said needles are made, and with respect to the number of times the said needles may be used, with satisfaction, in playing phonograph records, and to cause the purchase of substantial quantities of such phonograph needles in commerce as a result thereof. Furthermore, the use by the respondents of said representations in advertisements circulated among jobbers, wholesalers, and retailers serves to place in their hands an instrumentality through which the purchasing public may be misled as to the material used in making the points or tips of respondents' phonograph needles and as to the number of times said needles may satisfactorily be used in playing phonograph records.

PAR. 7. The aforesaid acts and practices of said respondents as alleged herein 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 February 26, 1951, the initial decision in the instant matter of trial examiner Clyde M. Hadley, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY CLYDE M. HADLEY, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 26, 1950, issued and subsequently served its complaint in this proceeding upon the respondents Electrovox Co., Inc., a corporation, and Lowell Walcutt and Robert G. Walcutt, individually and as officers of said Electrovox Co., Inc.,

charging them with the use of unfair and deceptive acts and practices in commerce in violation of said act. On January 11, 1951, the joint answer of respondents was filed, in which answer they admitted all of the material allegations of facts set forth in said complaint and waived all intervening procedure and further hearing as to the said facts, but reserved the right to a hearing upon proposed conclusions of fact or law, which reservation, as pertaining to any hearings before the trial examiner, was duly waived by respondents' counsel. Thereafter, the proceeding regularly came on for final consideration by the above-named trial examiner theretofore duly designated by the Commission upon said complaint and answer thereto, all intervening procedure having been waived, no proposed findings and conclusions having been submitted by counsel, and no oral argument requested; 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, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Electrovox Co., Inc., is a New Jersey corporation with its office and principal place of business located in East Orange, N. J.

Respondents Lowell Walcutt and Robert G. Walcutt, individuals, are the officers of said corporate respondent, at the same address, and at all times herein mentioned have formulated, directed, and controlled its acts, policies, and business affairs.

PAR. 2. The respondents are now and for some years past have been engaged in the manufacture, sale, and distribution of phonograph needles; causing the same, when sold, to be transported from their place of business in the State of New Jersey to purchasers thereof in other States; maintaining at all times mentioned herein a course of trade and commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business and to induce the purchase of their phonograph needles in commerce, respondents have made various representations, by means of newspaper and magazine advertisements, nationally circulated, and through advertising media disseminated among jobbers, wholesalers and retailers, such as the following:

WALCO "400"
Floating Jewel
Sapphire Needle
Up to 10,000 perfect plays

Provides up to 10,000 perfect playings with utmost protection to records.

Up to 6,000 playings.

Another of the jewel-tipped "400" series of this WALCO needle is made of ruby . . . Hard and durable, the RUBY is precision ground and highly polished . . . Ask your dealer to demonstrate the WALCO RUBY—it's a gem.

WALCO "400"
RUBY JEWEL NEEDLE

WALCO "400"
Precision Metal Needle
long lasting to 4,000 plays.

PAR. 4. Through the use of said statements and other of like import, respondents having represented directly and by inference that their product designated "Walco '400' Floating Jewel Sapphire Needle" has a point or tip made of sapphire, a precious stone, and may be used on phonographic records for as many as 10,000 perfect plays; that their product designated "Walco' '400' Ruby Jewel Needle" has a point or tip made of ruby, also a precious stone, and may be used with satisfaction on phonographic records for as many as 6,000 playings; and that their product designated "Walco '400' Precision Metal Needle" will last satisfactorily for 4,000 plays.

PAR. 5. In truth and in fact, the points or tips of said "floating jewel and "jewel tipped" needles are neither sapphires nor rubies, as represented, but are composed of synthetic materials; and the number of times that these or any other phonograph needle may be used with satisfaction for the playing of records is variable, depending upon divers factors, including the material of which the needle point is made, the amount of pressure of the needle on the record, its angle in relation to the record, the size, condition, quality, and composition of the record being played, and other possible factors. The number of times any phonograph needle may normally be used with satisfaction in playing records cannot be forecast with any degree of accuracy; and respondents' explicit claims as to the performance properties of their various needles are grossly exaggerated, speculative, and have no basis in fact.

PAR. 6. The use of said untruthful and unwarranted representations by these respondents has the capacity and tendency to mislead and deceive a substantial number of retail dealers and the purchasing

public as to the composition of such needle tips or points, and concerning the number of times said needles may be acceptably used on phonograph records; and to cause the purchase thereof in commerce as a result of such mistaken impression. The circulating of said advertisements among jobbers, wholesalers, and retailers serves, moreover, to place in their hands an instrumentality through which the purchasing public may be misled to its injury.

CONCLUSION

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

ORDER

It is ordered, That the respondents Electrovox Co., Inc., a corporation, and Lowell Walcutt and Robert G. Walcutt, individually and as officers thereof, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the sale and distribution of phonograph needles in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That their phonograph needles made with synthetic points or tips contain sapphire, ruby, or other gem or jewel as generally understood by the trade and the consuming public.

2. That their phonograph needles will play, or may be relied upon or depended upon to play, satisfactorily up to 10,000, 6,000, or 4,000 records, or any other specified number thereof not definitely proven under the varied conditions of normal use.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the corporate respondent, Electrovox Co., Inc., and the individual respondents, Lowell Walcutt and Robert G. Walcutt, 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 February 26, 1951].

Complaint

IN THE MATTER OF

NATIONAL TOILET CO.

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

Docket 5342. Complaint, June 27, 1945—Decision, Feb. 27, 1951

Where a corporation engaged in the interstate sale and distribution of two cosmetic preparations, namely, its "Nadinola Bleaching Cream" and its "Nadinola Freckle Cream"; in advertising in newspapers and magazines and by other means—

(*a*) Falsely represented that the use of their preparations would clear up externally caused pimples and other types of skin blemishes and constituted an effective treatment therefor; the facts being that while the preparation might afford some temporary protection to, and thus facilitate the skin's normal processes in clearing up minor externally caused skin blemishes, they would not have any other beneficial effect; and

(*b*) Falsely represented that their use would improve the texture of the skin; the facts being that while they might smooth and soften the skin and thus temporarily improve its appearance, they would not improve its actual texture;

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

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 also charged that respondent's advertisements were false for the further reason that they represented that said preparations would remove blackheads, the facts being that while their use might facilitate their removal by mechanical means, they would not in themselves remove blackheads: The record showed that respondent had not represented that the preparations would remove blackheads but only that they would loosen them, and the Commission was of the opinion and found that said allegation was not substantiated by the evidence.

Before *Mr. John W. Addison*, trial examiner.
Mr. B. G. Wilson for the Commission.
Rogers, Hoge & Hills, 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 National Toilet Co., a corporation, hereinafter referred to as respondent, has violated the

provisions of said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent National Toilet Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business at Paris, Tenn.

PAR. 2. Respondent is now and for more than 2 years last past has been engaged in the sale and distribution of two cosmetic preparations designated as "Nadinola Bleaching Cream" and "Nadinola Freckle Cream" in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes its said preparations, when sold, to be shipped from its aforesaid place of business in Paris, Tenn., 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 its said preparations in commerce between and among the various States of the United States and in the District of Columbia.

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

Among and typical of the false and misleading statements contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements inserted in newspapers and magazines and by various other means, are the following:

Nadinola . . . clears up surface pimples and other externally caused blemishes.

Nadinola is a 3-way treatment that acts to . . . clear up externally caused pimples.

Does your mirror . . . reveal a complexion that's dull and drab and exhausted looking? Is it pitted with blackheads and dotted with freckles? Then you want to know about Nadinola Cream.

When the treatments ended . . . skin texture had been smoothed and softened. What Nadinola did for them it should do for you.

Rough spots were smoothed and softened to a new texture.

PAR. 4. Through the use of the aforesaid statements and representations and others of the same import and meaning, not specifically set out herein, respondent represents and has represented directly and by implication that the use of its said preparations constitutes a competent and adequate treatment for externally caused pimples and for various other types of skin blemishes; that said preparations will remove blackheads and will improve the texture of the skin.

PAR. 5. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact the said cosmetic preparations do not constitute a competent and effective treatment for pimples and other types of skin blemishes externally, or otherwise, caused. While the use of said preparations may facilitate the removal of blackheads by mechanical means, they will not in themselves remove blackheads. Said preparations will not exert any beneficial effect upon the texture of the skin.

PAR. 6. The use by the respondent of the foregoing false and misleading statements has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true and to induce the purchasing public to purchase substantial quantities of said preparations as a result of such erroneous and mistaken belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 27, 1945, issued and subsequently served its complaint in this proceeding upon the respondent, National Toilet 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 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 came on for final consideration by the Commission on the complaint, answer thereto, testimony and other evidence, recommended decision of the trial examiner and exceptions thereto by counsel for respondent, briefs in support of and in opposition to the

allegations of the complaint and oral argument of counsel; and the Commission, having duly considered the matter and having entered its order disposing of the exceptions to the recommended decision of the trial examiner, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, National Toilet Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business in Paris, Tenn.

PAR. 2. Respondent is now and for several years last past has been engaged in the sale and distribution of two cosmetic preparations. The designations used by respondent for said products and their formula are as follows:

Designation: Nadinola Bleaching Cream.
Formula:

Ammoniated Mercury U. S. P	1½%
Bismuth Subnitrate U. S. P	2%
Zinc Oxide U. S. P	4%
Petrolatum Base	91%

Suitably perfumed.

Designation: Nadinola Freckle Cream.
Formula:

Ammoniated Mercury U. S. P	1%
Zinc Oxide U. S. P	6%
Petrolatum Base	91%

Suitably perfumed.

PAR. 3. Respondent causes and has caused its said cosmetic preparations, when sold, to be shipped from its place of business in Paris, Tenn., 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 its said preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business, the respondent has disseminated and has caused the dissemination of false advertisements concerning said cosmetic preparations, 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 has caused the dissemination of false advertisements concerning said cosmetic preparations, by various means, for the purpose of inducing and which are likely to induce, directly

or indirectly, the purchase of such cosmetic preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in the false advertisements disseminated and caused to be disseminated as hereinabove set forth, in newspapers and magazines distributed throughout the United States, by the United States mails, and by other means in commerce, are the following:

Unlike most creams, Nadinola . . . loosens blackheads, clears up surface pimples and other externally caused blemishes.

Let Nadinola's 3-way action help you clear up externally caused pimples, gently loosen blackheads, lighten, brighten dull, dark skin. Don't give in to unlovely skin! Try famous Nadinola Cream, used and praised by thousands of lovely women. Nadinola is a 3-way treatment cream that acts to lighten and brighten dull skin—clear up externally caused pimples—fade freckles—loosen blackheads.

Into Nadinola's complexion clinic came nearly two hundred women, picked for their ordinary, average complexions. For six weeks they were given the recommended Nadinola treatment. Scientists observed and recorded every step. And when the treatments ended complexions were lighter and brighter, blackheads had been loosened and easily removed, skin texture had been smoothed and softened. What Nadinola did for them, it should do for you.

Yes, 187 women completed a six weeks beauty treatment in Nadinola's scientific, fact finding clinic. They were all types of women with all types of ordinary complexion faults. But six weeks later you should have seen them—and heard them! Dark dull complexions were *lighter* and *brighter*. Rough spots were smoothed and softened to a new texture. Blackheads had been loosened and easily removed.

PAR. 5. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic and cosmetic values and properties of respondent's said preparations, respondent has represented that the use of either Nadinola Bleaching Cream or Nadinola Freckle Cream constitutes a competent and effective treatment for and will clear up externally caused pimples and other types of skin blemishes and will improve the texture of the skin.

PAR. 6. The aforesaid statements and representations are false, misleading, and deceptive. Respondent's said preparations do not constitute an adequate or competent treatment for and will not clear up pimples, externally or otherwise caused. Said preparations, while they are on the skin, may afford some temporary protection to the skin, thus facilitating the normal processes of the skin in clearing up minor externally caused blemishes, but they will not have any other beneficial effect upon skin blemishes and their use does not constitute an adequate or competent treatment for skin blemishes. The preparations, while on the skin, also may temporarily soothe, smoothen, and soften

the skin and in this way temporarily improve its outward appearance and feel, but said preparations will not improve the actual texture of the skin.

PAR. 7. The complaint in this proceeding also charged that the respondent's advertisements concerning the said cosmetic preparations constituted false advertisements for the further reason that they represented that the said preparations will remove blackheads and that while the use of the preparations may facilitate the removal of blackheads by mechanical means, they will not in themselves remove blackheads. The record shows that respondent has not represented that the said preparations will remove blackheads, but has represented that they will loosen blackheads. The Commission is of the opinion, and finds, that the allegation of the complaint that respondent has represented its said preparations will remove blackheads has not been sustained by the evidence.

PAR. 8. The use by the respondent of the false, misleading, and deceptive statements and representations with respect to their cosmetic preparations referred to in paragraphs 4, 5, and 6 hereof, disseminated as aforesaid, 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 all of such statements, representations, and advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said cosmetic preparations.

CONCLUSION

The acts and practices of respondent as herein found (excluding those referred to in Par. 7) are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision and the respondent's exceptions thereto, and briefs and oral argument of counsel; 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:

It is ordered, That the respondent, National Toilet 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, or distribution of their cosmetic preparations designated "Nadinola Bleaching Cream," "Nadinola Freckle Cream," or any other preparation or preparations of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name or names, do forthwith cease and desist from, directly or indirectly:

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

(*a*) That any such preparation constitutes an adequate or competent treatment for or will clear up pimples.

(*b*) That any such preparation constitutes an adequate or competent treatment for skin blemishes; or that the use of such preparation will have any beneficial effect upon skin blemishes except to the extent that it may temporarily protect the skin, while the preparation is on the skin, and thus facilitate the normal processes of the skin in clearing up minor externally caused blemishes.

(*c*) That any such preparation will improve the texture of the skin: *Provided, however*, That this shall not be construed to prevent the dissemination of representations that such preparations while on the skin may temporarily soothe, smoothen, and soften the skin and in this way temporarily improve its outward appearance and feel.

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

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

IDEAL CEMENT CO., COLORADO PORTLAND DIVISION ET AL.

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

Docket 5670. Complaint, July 1, 1949—Decision, Mar. 8, 1951 [1]

Where a corporation engaged in the interstate sale and distribution of Portland cement produced at manufacturing plants owned and operated by it, to customers who purchased either for resale or for use in the manufacture and sale of ready-mixed concrete, concrete building blocks, and other concrete products, and were engaged in competition with each other and with the customers of other cement producers within their respective trading areas—

Discriminated between purchasers transporting such cement by rail and those using motor carrier, during a certain period, through offering and selling cement at its plants located at Portland and Boettcher, Colo., to purchasers transporting cement from those points by motor trucks or motor carriers, at prices 20 cents per barrel higher than it sold said product of like grade and quality to purchasers who transported it from the same points by rail freight;

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

Held, That said acts and practices of said corporation in selling cement for motor carrier transportation at a price higher than for rail transport under the circumstances set forth, constituted violations of Section 2 (a) of the Clayton Act as amended.

In said proceeding in which the respondent in its amended answer stated, among other things, that on or about July 1, 1948, it abandoned the pricing policy herein concerned, and on or about December 10 thereafter established and since maintained the practice of selling cement only in carload lots in one

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[1] See, for findings as originally made, and order to cease and desist, on September 28, 1950, 47 F. T. C. 221.

delivery operation and without regard to the method of transporting employed by the purchaser; that since July 1, 1948, the method of transporting had in no way varied the price charged; that such action was taken by it voluntarily prior to the institution of the instant proceeding and without knowledge that the complaint would be issued; and by way of seeking to defend its price policy from January 1, 1947, until about July 1, 1948, herein concerned, that it did not at any time believe that it was unlawfully discriminating; that it believed that the price differential was justified by reason of differences in costs; that ascertainment of the exact amount by which said differential in fact exceeded differences in costs, involved in the differing nature of the transaction, would necessitate a costly and long analysis and breakdown of its accounting records and procedures, and involve conflicting theories of cost accounting, practice and procedure, particularly with respect to indirect cost factors; and that in view of such circumstances and the fact that the practice complained of had been abandoned by it, it expressly waived its right to offer or adduce any testimony or evidence relating to cost justification: the Commission, in view of such waiver, made no finding with respect thereto.

In said proceeding in which it appeared as respects various individuals joined as respondents, that the former president had died on or about the expiration of the period concerned, that the vice president had retired thereafter and was no longer active in its affairs, that the secretary did not participate in the formulation, control, or direction of the practices concerned, and that two others, following the demise of the president, thereafter formulated or participated in the formulation, control, and direction of the practice with respect to such sale of cement as revised and established after said period; the Commission was of the opinion that as to said individual respondents the complaint should be dismissed.

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

Mr. James I. Rooney and *Mr. James S. Kelaher* for the Commission.

Lewis, Grant, Newton, Davis & Henry, of Denver, Colo., for respondents.

Clifford & Miller, of Washington, D. C., also represented Ideal Cement Co.

COMPLAINT

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

PARAGRAPH 1. Respondent, Ideal Cement Co., is a Colorado corporation with offices and principal place of business located at Denver National Building, Denver, Colo., and is doing business under the

trade name and style of Ideal Cement Co., Colorado Portland Division.

Respondents, Charles Boettcher, C. K. Boettcher, Chris Dobbins, H. O. Warner, and G. W. Ballantyne, are individuals and are president, vice president and treasurer, vice president, vice president, and secretary, respectively, of the corporate respondent.

These individual respondents formulate, control, and direct the policies, practices, and methods of the corporate respondent.

PAR. 2. Respondents, through their wholly owned subsidiary, the Colorado Portland Cement Co., and since said subsidiary's dissolution on or about December 31, 1947, through their Colorado Portland Division, are now and have been since June 19, 1936, engaged in the business of selling and distributing portland cement, hereinafter referred to as cement, produced at manufacturing plants located at Portland and Boettcher, Colo.

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

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

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

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

cents per barrel lower than they sell or offer for sale said cement to purchasers who transport said cement therefrom by motortruck or other means of motor transportation.

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

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

REPORT AND MODIFIED FINDINGS AS TO THE FACTS

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act), 15 U. S. C., section 13, the Federal Trade Commission on July 1, 1949, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof (except Charles Boettcher (who was not served and is deceased), charging said respondents with having violated the provisions of subsection (a) of section 2 of said Clayton Act, as amended. After the filing of the respondents' answer to the complaint and the designation of a trial examiner by the Commission, all of said respondents, except Charles Boettcher, deceased, upon leave granted by the trial examiner withdrew their original answer to the complaint and in lieu thereof filed an amended answer in which, solely for the purposes of this proceeding, they admitted all of the material allegations of fact set forth in the complaint and waived all hearings and further procedure, including the filing of a recommended decision by the trial examiner. In said answer the respondents expressly consented for the Commission to proceed upon the complaint and admission answer to make its report, stating its findings as to the facts, including inferences which it may draw therefrom, and its conclusion based thereon, and enter its order requiring the corporate respondent to cease and desist from the discriminations charged in the complaint. Subsequently, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondents' amended

answer thereto, and certain memoranda of counsel in support of the complaint and of counsel for the respondents proposing disposition of the case; and the Commission, having duly considered the matter, on September 28, 1950, 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, on December 19, 1950, the corporate respondent, Ideal Cement Co., filed with the Commission a motion requesting that the aforesaid findings as to the facts be modified in certain respects (which motion, after leave first obtained, said respondent withdrew and in lieu thereof filed a substitute motion to modify said findings as to the facts); and the Commission, having duly considered the substitute motion and the entire record (no opposition to the motion having been interposed by counsel in support of the complaint) and having entered its order granting said motion, now makes this its modified findings as to the facts and its conclusion drawn therefrom, the same to be in lieu of said findings as to the facts and conclusion issued on September 28, 1950.

MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Ideal Cement Co., hereinafter referred to as respondent, is a corporation organized and existing under the laws of the State of Colorado, with offices and its principal place of business located in the Denver National Building, in the city of Denver, State of Colorado.

PAR. 2. The aforesaid respondent, through its wholly owned subsidiary, the Colorado Portland Co., and since the dissolution of said subsidiary on or about December 31, 1947, through its Colorado Portland Division, was, at the time of the issuance of the complaint, and since June 19, 1936, it has been engaged in the business of selling and transporting portland cement produced at manufacturing plants now owned and operated by said respondent located at Portland and Boettcher, Colo. Said cement, when sold, is transported either by the respondent or by its purchasers from the places of manufacture at Portland and Boettcher, Colo., to the respective locations of the purchasers thereof both in Colorado and in States other than Colorado. There is now, and at all times mentioned in the complaint there has been, a continuous current of trade and commerce in said product by the respondent across State lines between the respondent's manufacturing plants and purchasers of such product. Said product is sold and

distributed for use, consumption, and resale in various States of the United States.

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

PAR. 4. In the course and conduct of its business, as aforesaid, the respondent from January 1, 1947, until approximately July 1, 1948, offered for sale and sold cement at its plants located at Portland and Boettcher, Colo., to purchasers transporting said cement from said points of sale by motortruck or motor carrier at a price 20 cents per barrel higher than it offered for sale or sold cement of like grade and quality to purchasers transporting the same from said points of sale by rail freight. In so doing the respondent discriminated in favor of purchasers transporting such cement by rail freight and against purchasers transporting their cement by motortruck or motor carrier.

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

PAR. 6. In its amended answer to the complaint, the respondent stated that on or about the aforesaid date of July 1, 1948, the pricing policy above described was abandoned and that thereafter, and on approximately December 10, 1948, the respondent established, and has since maintained, the practice of selling cement only in carload

lots in one-delivery operations and without regard to the method of transportation employed by the purchaser; that, accordingly, all purchasers of cement from the respondent at either of its plants at Portland or Boettcher, Colo., are now, and since approximately December 10, 1948, they have been, subject to the like requirement of purchasing in not less than carload lots in one loading operation (but more than one vehicle permitted) and at the like price, and that since July 1, 1948, the method of transportation employed by the buyer has in no way varied the price charged; and further that such action was taken by the respondent voluntarily prior to the institution of this proceeding and without knowledge that the complaint herein would be issued. The respondent stated further that, under its present policy, if any purchaser desires delivery of cement to a carrier other than rail and does not have a vehicle or a series of vehicles capable of receiving at least a carload quantity lot in a single or connected loading operation, the respondent will arrange for delivery of a railroad carload lot of cement on a public team track within or near the railroad station at which the mill is located, and without any differential in the respondent's price therefor; and that such purchaser may thereupon remove such cement therefrom in any manner and at any time it may desire.

PAR. 7. In seeking to defend its pricing policy admitted to have been followed from January 1, 1947, until approximately July 1, 1948, the respondent states that it did not at any time believe that it was unlawfully discriminating in price in favor of or against any particular type of transportation and that while the price differential was in effect it believed that the same was justified by reason of differences in costs. In support of this position, the respondent further states that an additional cost is involved in the sale and delivery of cement to carriers by motortrucks at the two plants of said respondent as compared with the sale and delivery of cement to carriers at Portland and Boettcher, Colo., by rail; that ascertainment of the exact amount by which the 20-cent-differential charge involved in fact exceeded differences in costs involved in the differing nature of the transactions would necessitate a costly and lengthy analysis and breakdown of the accounting records and procedures of the respondent and would involve conflicting theories of cost accounting, practice, and procedure, particularly with respect to the matter of indirect cost factors; and that in view of such circumstances and the fact that the practice complained of has been abandoned by the respondent, it expressly waived its right to offer or adduce any testimony or evidence relating to cost justification. The respondent having ex-

pressly waived its right to offer or adduce testimony or evidence relating to cost justification, the Commission, of course, makes no finding with respect thereto.

PAR. 8. The complaint in this proceeding named as respondents, in addition to Ideal Cement Co., Charles Boettcher, C. K. Boettcher, Chris Dobbins, H. O. Warner, and G. W. Ballantyne, as president, vice president and treasurer, vice president, vice president, and secretary, respectively, of said Ideal Cement Co. The record discloses that the respondent Charles Boettcher died on or about July 2, 1948; that the respondent H. O. Warner retired as vice president of the respondent Ideal Cement Co. on or about August 15, 1948, and is no longer an officer of said respondent or active in its affairs, although still a member of its board of directors; that the respondent G. W. Ballantyne did not participate in the formulation, control, or direction of the policies of the respondent Ideal Cement Co. with respect to the practices herein described; and that upon the death of Charles Boettcher, the respondent C. K. Boettcher became president of the respondent Ideal Cement Co.; and that C. K. Boettcher and Chris Dobbins thereafter formulated or participated in the formulation, control, and direction of the practices of said respondent with respect to the sale of cement to persons removing the same by rail or by motortruck as established from and after approximately July 1, 1948. In view of these circumstances, the Commission is of the opinion that as to all of the respondents except the respondent Ideal Cement Co. the complaint should be dismissed.

CONCLUSION

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

NOTE.—Order to cease and desist issued September 28, 1950, follows:

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' amended answer thereto, and certain memoranda of counsel in support of the

complaint and of counsel for the respondents proposing disposition of the case, and the Commission having made its findings as to the facts and its conclusion that the respondent, Ideal Cement Co., has violated the provisions of subsection (a) of section 2 of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act):

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

It is further ordered, For reasons appearing in the Commission's findings as to the facts in this proceeding, that the complaint herein be, and it hereby is, dismissed as to the respondents, Charles Boettcher, C. K. Boettcher, Chris Dobbins, H. O. Warner, and G. W. Ballantyne.

It is further ordered, That the respondent, Ideal Cement Co., 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

GRIFFON CUTLERY 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 5816. Complaint, Oct. 11, 1950—Decision, Mar. 9, 1951

Where a corporation engaged in the interstate sale and distribution to retailers and others of cutlery consisting of cuticle and nail scissors, pinking and household shears, tweezers, nippers, and manicure sets, which it manufactured or caused to be manufactured for it; and two individuals, officers, and directors who controlled and directed its policies—

(*a*) For more than 15 years deceptively represented that they were "Makers of World Famous Carbo-Magnetic Insured Cutlery Scissors—Shears—Manicure Implements—Manicure Sets—Cutlery Sets—Scissor Sets," through display of said statement on the letterheads used by them and transmitted through the mail;

The facts being that while prior to 1929 their predecessors in interest did make and sell carbo-magnetic implements under an assignment of a registered trade-mark issued by the Patent Office in 1906, neither they nor their predecessors had done so during the last 15 years or more, and their said statement was merely a continuation of one which was true when adopted and first used, but substantially became deceptive;

(*b*) Since 1945 represented to the public that they maintained a factory in which their cutlery products were repaired, through a representation to said effect on a tag attached to each pair of pinking shears and advertising matter placed in each package containing a pair;

The facts being that they owned no factory prior to 1949, and that since 1946 all their pinking shears constituting nearly four-fifths of the value of their entire business and amounting to about $1,000,000 a year, were made for them by a concern in which they had no interest;

(*c*) Represented for about 3 years prior to 1949, through inclusion of the word "works" in their corporate name and through its display on their letterheads and in their advertising matter, together with such words as "Cutlers," and "Cutlery Works," that they maintained "works" in which their said products were made; and after the discontinuance of said word continued to use the word "factory" in their advertisements:

The facts being that while in 1949 they did acquire and subsequently own a factory in which they made about four-fifths of their cutlery products other than pinking shears, prior thereto neither they nor their predecessors owned any factory;

With tendency and capacity to convey to the public the erroneous and mistaken belief that they owned and maintained a factory in which their pinking shears were made and repaired, and works in which all their other cutlery products were made;

Tendency and capacity of which misleading and deceptive representations were to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that they were true, and effect of which was thereby to induce a part of such public to purchase their said products:

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

As respects charges in the complaint that respondents also falsely represented (*a*) that they had been in the cutlery business since 1888 and (*b*) that all Griffon cutlery was hand-made, said allegations were not sustained by the greater weight of the evidence.

Before *Mr. Webster Ballinger*, trial examiner.
Mr. John W. Brookfield, Jr. for the Commission.
Mr. Alexander Bicks, 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 Griffon Cutlery Corp., a corporation, and Alfred L. Griffon and Herman L. Kaplan, individually and as officers and directors of said corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission, that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Griffon Cutlery Corp. 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 151 West Nineteenth Street, New York, N. Y. Respondent Alfred L. Griffon is president, secretary, and director of the corporate respondent Griffon Cutlery Corp., and respondent Herman L. Kaplan is vice president, treasurer, and director of respondent corporation Griffon Cutlery Corp., and both individual respondents have their place of business at the above address.

The respondents Alfred L. Griffon and Herman L. Kaplan dominate, control, and direct the policies of the said corporate respondent, and all of said respondents cooperate and act together in the performance of the acts and practices hereinafter set out. Prior to April 1949, the name of corporate respondent was Griffon Cutlery Works, Inc.

PAR. 2. Respondents are now, and for more than 3 years last past have been, engaged in the sale and distribution of scissors, shears, and other cutlery. In the course and conduct of their business respondents sell said products to retail dealers and others. Respondents cause their said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in

the various States of the United States, other than the State of New York, and in the District of Columbia.

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

PAR. 3. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their products, respondents, through advertisements in periodicals having a general circulation, and through circulars, tags, letterheads, and billheads distributed throughout the United States, have made certain representations concerning their business status, and the products sold by them. Among and typical of said representations are the following:

Quality cutlery since 1888.
Cutlers since 1888.
Makers of the world famous Carbo-Magnetic insured cutlery.
Guarantee void if repaired anywhere than at our factory.
All Griffon cutlery is hand created.

PAR. 4. Through the use of the aforesaid representations, and others of the same import but not specifically set out herein, respondents represented that they have been engaged in the cutlery business since 1888; that they manufacture the cutlery designated by them as "Carbo-Magnetic"; that all of their cutlery is hand-made or hand-created; and that all of their cutlery is manufactured in their own factory.

PAR. 5. Said representations are false, misleading, and deceptive. In truth and in fact, respondents have not been engaged in the cutlery business since 1888, the corporate respondent not having been incorporated until 1946. Respondents do not manufacture the cutlery designated as "Carbo-Magnetic." The cutlery sold by them is not hand-made or hand-created. The corporate respondent does not own, operate, or control a factory in which the cutlery advertised and sold by it is manufactured and the individual respondents do not own, operate, or control a factory in which all of the cutlery advertised and sold by them and the corporate respondent is manufactured.

PAR. 6. The use by respondents of the said representations, in connection with the offering for sale and selling of their said products, has had and now has the tendency and capacity to and does mislead purchasers and prospective purchasers into the erroneous and mistaken belief that such representations are true and to induce the purchase, in commerce, of said products on account thereof.

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

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's rules of practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated March 9, 1951, the initial decision in the instant matter of trial examiner Webster Ballinger, as set out as follows, became on that date the decision of the Commission.[1]

INITIAL DECISION BY WEBSTER BALLINGER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 11, 1950, issued and subsequently served its complaint in this proceeding upon respondents Griffon Cutlery Corp., a corporation, and Alfred L. Griffon and Herman L. Kaplan, individually and as officers and directors of Griffon Cutlery Corp., charging respondents with the use of unfair or deceptive acts or 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 said 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 complaint, the answer thereto, testimony, and other evidence, proposed findings as to the facts and conclusions presented by respective counsel, oral argument not having been requested; and said trial examiner, having duly considered

[1] Said decision, etc., was as follows:

Service of the initial decision of the trial examiner in this proceeding having been completed on February 6, 1951 (the document entitled 'Amended Initial Decision,' filed February 7, 1951, being of no effect for the reason that the Commission's rules of practice contain no provision for the filing of such a document), and no notice of an appeal from such decision having been filed; and

The Commission being of the opinion that said initial decision constitutes an adequate disposition of the proceeding:

It is ordered, Pursuant to rule XXII of the Commission's rules of practice, that the attached decision of the trial examiner shall, on the 9th day of March 1951, become the decision of the Commission.

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

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, Griffon Cutlery Corp. 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 151 West Nineteenth Street, New York, N. Y. It manufactures, or causes to be manufactured for it, and sells cutlery comprising scissors (cuticle and nail), shears (pinking and household), tweezers, nippers, and manicure sets. Respondent Alfred L. Griffon is president, secretary, and director, and respondent Herman L. Kaplan is vice president, treasurer, and director of respondent corporation, Griffon Cutlery Corp., and both individual respondents have their place of business at the above address.

The respondents Alfred L. Griffon and Herman L. Kaplan dominate, control, and direct the policies of the said corporate respondent, and all of said respondents cooperate and act together in the performance of the acts and practices hereinafter set out. Prior to April 1949 the name of corporate respondent was Griffon Cutlery Works, Inc.

PAR. 2. Respondents are now, and for more than 3 years last past have been, engaged in the sale and distribution of cutlery products to retail dealers and others. Respondents cause their said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various States of the United States, other than the State of New York, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia. The volume of trade in said commerce is and has been substantial.

PAR. 3. In the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their cutlery products, respondents deceptively represent and have for more than 15 years deceptively represented to the public on letterheads used by them and transmitted through the United States mails that they are,

Makers of World Famous
CARBO-MAGNETIC INSURED CUTLERY
Scissors—Shears—Manicure Implements
Manicure Sets—Cutlery Sets—Scissors Sets

The corporate respondent is the assignee of a registered trade-mark "Carbo-Magnetic" issued by the United States Patent Office to Albert L. Silberstein, August 18, 1906, a predecessor in interest, and father of respondent, Alfred L. Griffon, which had then been in use by Silverstein since May 1895. Prior to about 1929, respondents' predecessors in interest made and sold Carbo-Magnetic implements but neither the respondents nor their predecessors in interest have either manufactured or sold any Carbo-Magnetic cutlery since about 1929 and certainly not during the last 15 years. Respondents admit in their joint answer that they make and have continued to make the above statement "for the purpose of inducing the purchase of their products." They have offered to stipulate that they will henceforth cease to use the first two words "Makers of" but desire to continue to use on their letterheads the words "World Famous Carbo-Magnetic Cutlery." Such a change, if allowed, would import substantially the same deceptive meaning.

The above statement appearing on respondents' letterheads was merely a continuation of a statement which was true when adopted and first used but became deceptive after respondents or their predecessors in interest ceased manufacturing and selling Carbo-Magnetic implements.

PAR. 4. In the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their products, respondents have at all times since 1945, through literature disseminated in commerce as commerce is defined in the Federal Trade Commission Act, deceptively represented to the public that they maintain a factory in which their cutlery products are repaired; said deceptive representation appearing on a small, oval, red tag attached to each pair of pinking shears and in advertising matter placed in each package containing a pair of pinking shears sold by them, and being in the following words:

> These pinking shears are guaranteed against any defects in materials or workmanship, or a new pair free, providing shears have not been repaired or resharpened elsewhere than at our factory.

For 3 years prior to 1949 respondents, on letterheads and advertising matter, disseminated by various means in commerce, as commerce is defined in the Federal Trade Commission Act, deceptively represented that they maintained works, meaning a plant or factory, in which their cutlery products were made, said deceptive representation being in the following words:

On their letterheads:

"Griffon" Cutlery Works, Inc.
Cutlers * * *

In their advertising matter:

"Griffon" Cutlery Works, Inc.
Quality Cutlery * * * or
Quality Cutlers

For approximately 3 years prior to 1949 the corporate name of the respondent was " 'Griffon' Cutlery Works, Inc." but during that year it was changed to " 'Griffon' Cutlery Corp."

For many years prior to 1949 respondents and their predecessors in interest owned no factory. In 1946, the corporate respondent, being the sole licensee under a patent, arranged with the United Tool & Die Co. of Hartford, Conn., in which neither the corporate nor individual respondents had any interest, to manufacture exclusively for it pinking shears according to specifications furnished by it. This marked the beginning of the sale of pinking shears by the respondents and the United Tool & Die Co. has ever since made all pinking shears sold by the corporate respondent, its total sales in recent years of pinking shears annually approximately $1,100,000, or nearly four-fifths of the dollar value of its entire business. Sometime in 1949 respondents acquired, and have ever since owned, a factory in Fort Smith, Ark., in which they make and have made approximately four-fifths of the cutlery products, other than pinking shears, sold by them, the remaining approximate one-fifth being made under contracts with other manufacturers. The use by respondents of the first representation above set forth has the tendency and capacity to convey to the public the erroneous and mistaken belief that respondents own and maintain a factory in which the pinking shears sold by them are made and repaired. The second representation above set forth had the tendency and capacity to convey to the public the erroneous and mistaken belief that respondents owned and maintained works in which all other cutlery products sold by them were made. Although the word "works" was, in 1949, eliminated from the corporate name and from all advertisements, respondents have ever since continued to use the word "factory" in their advertisements which imports an identical meaning.

PAR. 5. The complaint in this proceeding also charged that the respondents had falsely represented (*a*) that they had been in the

cutlery business since 1888; and (*b*) that all Griffon cutlery is handmade. The Examiner is of the opinion, and so finds, that the allegations of the complaint with respect to the falsity of these representations have not been sustained by the greater weight of the evidence.

PAR. 6. The use by the respondents of the false, misleading, and deceptive representations referred to in paragraphs 3 and 4, disseminated as aforesaid, has had 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 were true and has induced a part of the purchasing public, because of such erroneous and mistaken belief, to purchase said respondents' cutlery products.

CONCLUSION

The acts and practices of the respondents as herein found (excluding those referred to in par. 5) were all to the prejudice and injury of the public and constitued unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent, Griffon Cutlery Corp., a corporation, its officers, agents, representatives, and employees, and respondents Alfred L. Griffon, and Herman L. Kaplan, individually, 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 its cutlery products, including pinking and other shears, do forthwith cease and desist from representing, directly or by implication:

(1) That they or any of them manufacture or make Carbo-Magnetic cutlery unless or until respondents do in fact manufacture or make Carbo-Magnetic cutlery.

(2) That the corporate or individual respondents own or operate a factory in which pinking or any other shears or cutlery sold by them are repaired or made, or that they or any of them maintain works in which the cutlery products sold by them are made, unless or until they actually own and operate, or directly and wholly control the factory or works wherein the products sold by them are in fact made.

(3) Disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of such prod-

ucts, which advertisement contains any of the representations prohibited in the preceding paragraphs 1 and 2.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That the respondents herein shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of March 9, 1951].

IN THE MATTER OF

RALPH DWECK ET AL. DOING BUSINESS AS BERKSHIRE MANUFACTURING CO.

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

Docket 5801. Complaint, Aug. 29, 1950—Decision, Mar. 10, 1951

In the handkerchief trade, before one may be properly designated a manufacturer he must actually operate his own plant where handkerchiefs are cut from the cloth and sewed and otherwise finished and prepared for market.

There is a marked preference on the part of jobbers and retailers for purchasing handkerchiefs from the manufacturers thereof, due in part to their belief that by dealing directly with the manufacturer lower prices may be obtained.

Where five partners engaged in the competitive interstate sale and distribution to jobbers and retailers of handkerchiefs which they obtained through (1) purchasing from textile mills the unfinished "gray goods," much of it made to their specifications; (2) sending said "gray goods" to a bleaching and printing plant (not operated by them) for bleaching, and, in the case of fancy or printed handkerchiefs for printing, with their own exclusively owned designs or styles as produced upon copper rollers or silk screens; and (3) turning over the bleached and printed cloth to contractors who cut and finished handkerchiefs therefrom, and delivered them to said partners, and who, paid an agreed price for the completed job, operated their own plants, and employed and supervised their own labor—

(*a*) Falsely represented that they manufactured the handkerchiefs sold by them, through the use of the word "manufacturing" in their trade name and the use therewith of a photograph of a factory or manufacturing plant in advertising their products in trade journals or magazines which had wide distribution among wholesalers, jobbers, and retailers of handkerchiefs as well as among manufacturers thereof;

The facts being that each stage of manufacture was performed by others; while they paid for the particular functions performed, they had no control over the operation of the plant which performed the work; the large manufacturing plant depicted by them was a plant of a bleaching and printing concern which did some of their work; and aside from their office and showroom and certain storage or warehouse space they maintained no business facilities whatever;

With tendency and capacity to mislead and deceive a substantial number of jobbers and retailers into the erroneous belief that they manufactured the handkerchiefs they sold, and thereby cause them to purchase substantial quantities of said products; whereby substantial trade was or might be diverted to them from their competitors:

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

Before *Mr. William L. Pack*, trial examiner.
Mr. William L. Taggart for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Ralph Dweck, Bert Dweck, Isaac Dweck, Jack Dweck, David Levy, and Solomon Levy, doing business as a partnership under the name of Berkshire Manufacturing Co., 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. Respondents, Ralph Dweck, Bert Dweck, Isaac Dweck, Jack Dweck, David Levy, and Solomon Levy, do business as a partnership under the name of Berkshire Manufacturing Co., with their principal place of business located at 1 West Thirty-seventh Street, New York, N. Y.

PAR. 2. The respondents are now and have been for more than 3 years last past engaged in the sale and distribution of handkerchiefs to wholesalers, jobbers, and retailers. Respondents cause their products, 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 handkerchiefs in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business and for the purpose of inducing the sale of their said products in commerce, respondents have made certain statements and representations concerning said products in advertisements inserted in newspapers and publications and by means of other advertising media. Among and typical of said statements and representations are the following:

Berkshire accepts the CHALLENGE!

Now that the free competitive market is back, BERKSHIRE continues to produce QUALITY HANDKERCHIEFS at the usual LOW PRICES. A visit to our showroom will prove to the alert buyer that NO better values can be found in ladies' handkerchiefs, retailing at 10 cents, 15 cents, 25 cents and up . . . men's handkerchiefs, 15 cents, 20 cents, 25 cents and up.

Berkshire Manufacturing Co.
HANDKERCHIEFS
320 Fifth Avenue, New York 1, N. Y.

Photograph of
a large factory

PAR. 4. Respondents, through the use of the word "manufacturing" in their trade name and through pictorial representations of a factory building and such representations as "Berkshire continues to produce quality handkerchiefs at the usual low prices," represented that the handkerchiefs offered for sale were manufactured in a factory owned, operated, or controlled by them and that the picture of the building shown in their advertisement was the factory in which their handkerchiefs were manufactured.

PAR. 5. The said representations were false, misleading, and deceptive. In truth and in fact, respondents do not own, operate, or control a factory in which their handkerchiefs are manufactured. The building pictured in said advertisements is not owned, operated, or controlled by them.

PAR. 6. There is a preference on the part of wholesalers, jobbers, and retailers to purchase products from the manufacturers thereof believing that in so doing, better prices, services, and other advantages are afforded.

PAR. 7. Respondents in the operation of their business are in substantial competition in commerce with other partnerships and corporations and individuals who actually manufacture the handkerchiefs sold by them.

PAR. 8. The use by the respondents of the aforesaid false, misleading, and deceptive statements and pictorial representations has had and now has the tendency and capacity to mislead and deceive a substantial number of wholesalers, jobbers, and retailers into the erroneous and mistaken belief that the said statements and representations are true and into the purchase of substantial quantities of respondents' products. As a consequence thereof, substantial trade in commerce has been diverted to respondents from their competitors and injury has been and is being done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 March 10, 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 August 29, 1950, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' answer to the complaint, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final consideration by the trial examiner on the complaint, the answer thereto, and testimony and other evidence (the filing of proposed findings and conclusions having been waived), and the trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Ralph Dweck, Bert Dweck, Isaac Dweck, Jack Dweck, and David Levy, are copartners trading under the name Berkshire Manufacturing Co., with their office and principal place of business located at 1 West Thirty-seventh Street, New York, N. Y. These respondents are now, and for a number of years last past have been, engaged in the sale and distribution of handkerchiefs to jobbers and retailers.

While respondent Solomon Levy was formerly a member of the copartnership, he severed his connection with it some 3 years ago and since that time has had nothing to do with the business. In the circumstances it is concluded that no useful purpose would be served by retaining this respondent in the proceeding and that the complaint should be dismissed as to him, without prejudice to the right of the Commission to institute any further action against him in the future which might be warranted by the then existing circumstances. The term respondents as used hereinafter will therefore not include respondent, Solomon Levy, unless the contrary is indicated.

PAR. 2. Respondents cause and have caused their handkerchiefs, 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 have maintained a course of trade in their handkerchiefs in commerce between and among the various States of the United States.

PAR. 3. In the operation of their business respondents are in substantial competition with other individuals and partnerships and with corporations engaged in the sale and distribution of handkerchiefs in commerce as aforesaid. Some of such competitors manufacture the handkerchiefs sold by them.

PAR. 4. Respondents advertise their products in trade journals or magazines which have wide distribution among wholesalers, jobbers, and retailers of handkerchiefs, as well as among handkerchief manufacturers. One of respondents' advertisements read as follows:

Berkshire accepts the CHALLENGE!

Now that the free competitive market is back, BERKSHIRE continues to produce QUALITY HANDKERCHIEFS at the usual LOW PRICES. A visit to our show room will prove to the alert buyer that NO better values can be found in ladies' handkerchiefs, retailing at 10 cents, 15 cents, 25 cents and up . . . men's handkerchiefs 15 cents, 20 cents, 25 cents and up.

Berkshire Manufacturing Co.
HANDKERCHIEFS
320 Fifth Avenue, New York 1, N. Y.

In the lower right-hand corner of the advertisement there appeared, in close proximity to respondents' trade name "Berkshire Manufacturing Co.," a photograph of a large manufacturing plant.

PAR. 5 (*a*) Through the use of such advertisements as the foregoing, and specifically through the use of the word "manufacturing" in their trade name and the use in connection with their trade name of the photograph of a factory or manufacturing plant, respondents have represented that they are manufacturers; that is, that they manufacture the handkerchiefs sold by them. The issue presented by the present proceeding is whether this representation is true.

(*b*) Respondents purchase no handkerchiefs in the finished state. They obtain their handkerchiefs in substantially the following manner. They purchase from textile mills the cloth out of which their handkerchiefs are to be made, much of the cloth being made by the mills to respondents' specifications. When purchased, the cloth is in the unfinished or gray stage and is commonly known as gray goods. The cloth is then sent by respondents to a bleaching and printing plant (not operated by respondents) to be bleached and, in the case of fancy or printed handkerchiefs, to be printed. Respondents have their own designs or styles for printed handkerchiefs and they have

such designs reproduced by engraving companies or others upon copper rollers or silk screens. These rollers and screens are used by the printing company in printing the cloth, and the rollers and screens, or at least the designs thereon, are the exclusive property of respondents and cannot properly be used for any cloth other than respondents'.

(*c*) After the cloth has been bleached and printed, respondents turn it over to contractors who cut handkerchefs from the cloth and then finish the handkerchiefs by putting them through the various processes of sewing, hemming, pressing, folding, packaging, etc. Some of these contractors are located in the United States and others in the Philippines, Puerto Rico, and other countries. While some of the persons and firms doing this work were referred to by one of the respondents in his testimony as "agents" or "commission agents," it appears from the record as a whole that respondents' relations with all of them are on essentially the same basis and that all of them are in fact contractors. Respondents pay them an agreed price for the completed job, the contractor operating his own plant and employing and supervising his own labor. Occasionally respondent is called upon by a contractor to pay an additional amount for labor when it becomes necessary for the contractor's employees to work overtime. Such payments by respondents for overtime work are usually a part of the agreement or understanding between respondents and the contractor. When the handkerchiefs are completed they are delivered to respondents who proceed to sell them.

(*d*) It is concluded from these facts that respondents are not manufacturers, certainly not in the sense in which the term is used in the handkerchief trade. In the trade, before one may properly be designated a manufacturer he must actually operate his own plant wherein handkerchiefs are cut from the cloth and then sewed and otherwise finished and prepared for marketing. While very few, if any, firms in the industry weave the cloth or operate bleaching, engraving, or printing plants, many do operate plants performing the functions referred to above. Respondents, on the other hand, own or operate no plant of any kind. Aside from their office and showroom and certain storage or warehouse space, respondents maintain no business facilities whatever. At each stage in the manufacture of their handkerchiefs the work is performed by others, respondents paying for the particular function performed but having no control over the actual operation of the plant performing the work.

PAR. 6. It is therefore found that respondents' use of the word "manufacturing" in their trade name was erroneous and misleading.

And the effect of the representation was doubtless greatly accentuated by reason of the use, in connection with the trade name, of the photograph of a large manufacturing plant. The plant in question is not respondents', but is that of a bleaching and printing concern which does some of respondents' work.

PAR. 7. There is a marked preference on the part of jobbers and retailers for purchasing handkerchiefs from the manufacturers thereof, such preference being due, in part, to a belief on the part of such purchasers that by dealing directly with the manufacturer lower prices may be obtained.

PAR. 8. The acts and practices of the respondents as herein set forth have the tendency and capacity to mislead and deceive a substantial number of jobbers and retailers into the erroneous and mistaken belief that respondents manufacture the handkerchiefs sold by them, and the tendency and capacity to cause such jobbers and retailers to purchase substantial quantities of respondents' products as a result of the erroneous and mistaken belief so engendered. In consequence thereof, substantial trade is or may be diverted unfairly to respondents from their competitors.

CONCLUSION

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

ORDER

It is ordered, That respondents, Ralph Dweck, Bert Dweck, Isaac Dweck, Jack Dweck, and David Levy, individually and as copartners trading under the name Berkshire Manufacturing Co., or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of handkerchiefs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "manufacturing" or any other word of similar import in respondents' trade name; or otherwise representing, directly or by implication, that respondents manufacture the handkerchiefs sold by them.

2. Using in advertisements or otherwise any photograph or picturization of a manufacturing plant in such manner as to represent or imply that such plant is owned or operated by respondents.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Solomon Levy, without prejudice to the right of the Commission to institute further proceedings against said respondent should future facts warrant such action.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That respondents, Ralph Dweck, Bert Dweck, Isaac Dweck, Jack Dweck, and David Levy 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 March 10, 1951].

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