IN THE MATTER OF

VON SCHRADER MANUFACTURING COMPANY 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 3924. Complaint, Oct. 12, 1939—Decision, June 11, 1941

Where two partners, successors to a discontinued corporate business, engaged in the competitive interstate sale and distribution of electrically operated portable rug and carpet washing machines, cleaning function of which involved the automatic application to, and removal from, the surface being cleaned, of soap solution fed to machines' oscillating rubber brushes; by advertisements in magazines and other publications of general circulation, circulars, other printed matter, and letters distributed to members of the purchasing public—

(*a*) Represented that their machine would restore the original color of rugs or carpets, destroy germs or other micro-organisms therein and sterilize or substantially sterilize the same, through such statements, among others, as "Let us restore the exquisite colorings in your rugs and carpets," "All the delicate colors, the beautiful shades that you have long forgotten were in your rug or carpet, are brought back * * *," and "* * * removes the deeply imbedded grime and the microbes of disease which are carried into the home by every shoe that crosses the threshold";

Facts being soap solution used therein was not a germicide, and would not "destroy every vestige of germs" or remove "the microbes of disease," the cleaning action of the machine being limited to the removal of such dirt and other foreign material as might be loosened by its scrubbing action and incorporated in the lather, and machine did not restore the original colors of carpets and rugs, except for any freshness of appearance which might result from such cleaning; and

(*b*) Represented that the profits of operators of their said machine averaged $200 or $400 a month, through such statements as "$200 to $400 a month is an easy average," and "$200 my first week";

Facts being business in question is a seasonal one and there are periods when little business is obtained by operators; $200 to $400 a month profit was not an easy average for operators nor an average of any kind of their earnings, and representations as to large gross amounts which had been earned by individual operators in their best day, week, or month, were false and misleading, in that they represented unusual and exceptional conditions and not the ordinary course of business under normal conditions;

With capacity and tendency to mislead and deceive members of the purchasing public as to the effectiveness of their machines and earnings which might be secured from operation thereof, with result that many members of such public were thereby induced to purchase their products under the erroneous belief that said representations were true, and trade was diverted to them from competitors, to the substantial injury of competition in interstate commerce:

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

Before *Mr. Lewis C. Russell*, trial examiner.
Mr. B. G. Wilson for the Commission.
Mayer, Meyer, Austrian & Platt, of Chicago, Ill., for respondents.

COMPLAINT [1]

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

PARAGRAPH 1. Respondent Von Schrader Manufacturing Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin and having its office and principal place of business at Sixteenth Street and Junction Avenue, Racine, Wis. Respondent is now, and for some time past has been, engaged in the business of selling an electric machine designated "Von Schrader Portable Carpet Washer." Respondent causes and has caused said machines, when sold, to be transported from its place of business in the State of Wisconsin to purchasers thereof at their respective points of location in various States of the United States other than the State of Wisconsin.

There is now, and has been during all the times mentioned herein, a course of trade by said respondent in said machines in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business, re-

[1] The evidence having disclosed at hearing before Trial Examiner Lewis C. Russell on June 4, 1940 that respondent corporation was dissolved on June 26, 1937, and was succeeded by a partnership which, subsequent to December 31, 1939, was composed of H. D. Rench and F. U. Von Schrader, trading as Von Schrader Manufacturing Co., it was agreed by W. T. Kelley, chief counsel for the Commission, and by said individuals, trading as aforesaid, through stipulation duly approved on October 2, 1940, "that the complaint in this cause be amended so as to include H. D. Rench and F. U. Von Schrader, trading as Von Schrader Manufacturing Co., as parties respondent in this proceeding for all purposes; that said H. D. Rench and F. U. Von Schrader waive issuance and service of such amended complaint naming them as additional respondents herein; and that all the testimony and other evidence heretofore taken at hearings before Lewis C. Russell, trial examiner, may be considered in connection with the amended complaint to the same extent and with the same effect as if such testimony and other evidence had been originally taken in connection with the proceedings under the amended complaint and may also be considered as being applicable to the activities of H. D. Rench and F. U. Von Schrader subsequent to the dissolution of the corporate respondent on January 26, 1937."

spondent is in competition with other corporations and with partnerships and individuals also engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its aforesaid business, and in furtherance of the sale of its said machines, respondent has caused various false and misleading statements and representations relative to the effectiveness in use of said machines and relative to earnings made by purchasers of respondent's said machines to be inserted in magazines and other publications having a general circulation throughout the United States and in circulars and other printed matter distributed to members of the purchasing public situated in various States of the United States. Among and typical of said statements and representations are the following:

You may have a vacuum cleaner, but * * * you must have them washed to dissolve and destroy every vestige of germ and grime.

The Von Schrader carpet washer which we use removes the deeply imbedded grime and the microbes of disease which are carried into the home by every shoe that crosses the threshold.

Let us restore the exquisite colorings in your rugs and carpets.

Restores colors. All the delicate colors, the beautiful shades that you have long forgotten were in your rug or carpet, are brought back by the sanitary up-to-date method we employ.

Renews colors.

Thoroughly cleans carpets and rugs. Demoths and Sanitizes.

When you are getting started, naturally your profits depend on how diligently you go after business, but $200 to $400 a month is an easy average.

$200 my first week.

Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, the respondent represents directly, or by implication, that said carpet washers remove germs and microbes from carpets and rugs, that said carpet washers restore and renew the colors and shades of carpets and rugs, and that purchasers of respondent's carpet washers earn $200 a week, $400 a month and various other sums approximately equal thereto under normal conditions and circumstances and in the ordinary course of their business of washing rugs and carpets.

PAR. 3. The aforesaid statements and representations which respondent has made are false and misleading. In truth and in fact respondent's said carpet washers will not remove germs or microbes from carpets or rugs. Said carpet washers will not renew or restore the colors or shades of carpets or rugs. Purchasers of respondent's said carpet washers do not earn $200 a week or $400 per month or any other sums approximately equal thereto under normal conditions and circumstances and in the ordinary course of their business of

washing carpets and rugs. In fact, the earnings of said persons are substantially less than such amounts.

PAR. 4. The use by respondent of the aforesaid false and misleading statements and representations has the tendency and capacity to, and does, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true and into the purchase of substantial quantities of respondent's carpet washers because of such erroneous and mistaken belief. As a direct result thereof, trade in commerce among and between the various States of the United States and the District of Columbia, is being, and has been, diverted unfairly to the respondent from its said competitors who do not falsely represent the effectiveness in use of their respective products or the earnings of the users of their respective products. In consequence thereof, substantial injury is being, and has been, done by respondent to competition in commerce among and between the various States of the United States.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 12, 1939, issued and subsequently served its complaint upon respondent Von Schrader Manufacturing Co., a corporation, charging it with unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, testimony and other evidence in support of the allegations of said complaint were introduced by an attorney for the Commission and in opposition thereto by attorney for the respondents before Lewis D. Russell, an examiner of the Commission theretofore duly designated by it, the complaint was amended by stipulation, 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 hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, stipulation amending the complaint, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto (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 Von Schrader Manufacturing Co. was a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin and having its principal place of business at 1600 Junction Avenue, Racine, Wis. After the commencement of the present proceeding it was found that the respondent corporation was dissolved on June 26, 1937 (but was still in existence for purposes of suing or being sued), and was succeeded by a partnership which subsequent to December 31, 1939, was composed of H. D. Rench and Francis U. Von Schrader, trading as Von Schrader Manufacturing Co. and having their principal place of business at 1600 Junction Avenue, Racine, Wis. By stipulation the partners agreed to amendment of the complaint in this proceeding to include them as parties respondent and waived issuance and service of an amended complaint, and further agreed that all testimony and other evidence theretofore taken in this proceeding might be considered in connection with the amended complaint to the same extent and with the same effect as if such testimony and other evidence had been originally taken in connection with proceedings under the amended complaint and as applicable to the activities of the copartners subsequent to the dissolution of the corporate respondent. The partnership took over the assets and liabilities of the respondent corporation which had been engaged in the business of selling an electric machine designated as the "Von Schrader Portable Carpet Washer" and has continued such business to the present time.

PAR. 2. Respondents at all times alleged in the complaint have been engaged in the sale and distribution of electrically operated portable carpet washing machines, and in the course and conduct of said business have caused said machines, when sold, to be transported from their place of business in the State of Wisconsin to purchasers located in various other States of the United States and in the District of Columbia. There is now, and has been during all times mentioned herein, a course of trade in said machines in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondents are in competition with other corporations and partnerships, and with individuals, also engaged in the sale and distribution of similar arti-

cles of merchandise between and among the various States of the United States.

PAR. 3. In the course and conduct of their business and in furtherance of the sale of said machines respondents have caused various statements and representations relative to the effectiveness in use of said machines and with respect to earnings made by purchasers of such machines to be inserted in magazines and other publications having general circulation throughout the United States, and in circulars, other printed matter, and letters distributed to members of the purchasing public in various States of the United States. Among and typical of said statements and representations are:

You may have a vacuum cleaner, but * * * you must have them washed, to dissolve and destroy every vestige of germ and grime.

The VON SCHRADER carpet washer which we use removes the deeply imbedded grime and the microbes of disease which are carried into the home by every shoe that crosses the threshold.

Let us restore the exquisite colorings in your rugs and carpets.

Restores Colors

All the delicate colors, the beautiful shades that you have long forgotten were in your rug or carpet, are brought back by the sanitary up-to-date method we employ.

When you are getting started, naturally your profits depend on how diligently you go after business, but $200 to $400 a month is an easy average. $200 my first week.

PAR. 4. In substance the machine sold by respondents performs its cleaning function by means of rapidly oscillating rubber brushes which are in contact with the rug or carpet to be cleaned and which create a lather from a soap solution automatically fed to them from a container carried on the machine, and when the machine is moved forward a suction fan removes the lather from the surface of the rug or carpet, with such dust and dirt as may have been incorporated therein, and deposits it in an appropriate container attached to the machine. The soap solution sold by respondents to operators of such machines for use therein is not a germicide and will not "destroy every vestige of germ" or remove "the microbes of disease which are carried into the home by every shoe that crosses the threshold." The cleaning action of said machine is limited to the removal from rugs and carpets of such dirt and other foreign material as may be loosened by the scrubbing action of the machine and incorporated in the lather which is then removed. The machine does not operate to restore in whole or in part the original colors of the carpets and rugs cleaned by it. If such colors have faded or bleached or been changed or destroyed in any way the operation of respondents' machine does not have any restorative effect whatsoever except

for any freshness of appearance as may result from such cleaning of the rug or carpet as is performed by said machine. Respondents conceded that their machine does not "restore" color to rugs or carpets but testified to a belief that the term used does not mislead or deceive and is understood to mean no more than such freshness of appearance as results from removal of dirt and grime from rugs and carpets.

In order to assist purchasers of their machines in establishing a business, respondents, among other things, advise such purchasers of methods which may be used to secure business, furnish suggested forms of sales letters to be used in soliciting cleaning work, suggest newspaper copy, furnish electrotypes for use in advertising, and supply advertising circulars for distribution to prospective customers.

PAR. 5. The representations by respondents with respect to amounts earned by operators of their machines, including those specifically set out in the complaint—"$200 to $400 a month is an easy average" and "$200 my first week"—are false and misleading in that respondents have no knowledge of what the actual average profits or earnings of purchasers of their machines may be, and such knowledge as they do have with respect thereto is limited to verbal and written statements made to them or their representatives by a limited number of purchasers of the machines sold by them. Individual witnesses produced by respondents to testify with respect to their profits and earnings from the operation of the rug cleaning machines sold by respondent stated that the business of rug and carpet cleaning is a seasonal one and the time of largest earnings is usually in the spring of the year. There are periods during the year when relatively little business is obtained by them. Among the witnesses who testified as to earnings during their best week the amounts ranged from about $135 to $411 " or something." The witness who named the maximum amount of gross income in his best week stated that his yearly average gross income was about $2,000. Testifying to the gross earnings in their best month, the range shown was from about $340 to $779.81. The witnesses as a group, in selecting their respective best weeks and best months, covered the years 1936 to 1940, inclusive, although all of them did not testify as to each of the five years in the period named. The annual gross income among operators who testified on behalf of respondents with respect thereto ranged from $1,593.68 to about $3,000. In the case of the witness testifying as to an annual gross income of $1,593.68 his expenses of operation during that year were stated to be $869.21. It is concluded that $200 to $400 a month profit is not an "easy average" for operators of respondents' machines, nor in fact an average of any

kind of the earnings of such operators. Because of the seasonal nature of the business, representations as to large gross amounts which may have been earned by individual operators in their best day, week, or month are false and misleading in that they represent unusual and exceptional conditions and not the ordinary course of business under normal conditions.

PAR. 6. On February 2, 1937, a stipulation as to the facts and an agreement to cease and desist from certain representations was entered into between the Federal Trade Commission and respondent Von Schrader Manufacturing Co., by its president, Francis U. Von Schrader. By this stipulation it was admitted that it is impossible for the Von Schrader carpet washer to restore colors or shades when faded, or to remove all microbes or germs of disease from carpets and rugs, and that in the operation of said machine success is not assured, and it was agreed that the corporation would cease and desist from representing that said machine restores colors or shades to carpets or rugs or that it removes microbes or germs from carpets or rugs, and that owning and operating such a machine assures one of success.

PAR. 7. The false and misleading representations made by respondents and circulated as aforesaid have the capacity and tendency to mislead and deceive members of the purchasing public as to the effectiveness in use of respondents' machines and the earnings which may be secured from the operation thereof, and many members of such public have thereby been induced to purchase respondents' products under the erroneous belief that such representations were true. The aforesaid practices are to the detriment and injury of competitors of respondents and have the capacity and tendency to divert to respondents the trade of competitors selling in interstate commerce products of the nature of those sold by respondents, and thereby substantial injury is done, and has been done, by respondents to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices have been, and are, all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

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

spondent, Von Schrader Manufacturing Co., a corporation, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before an examiner of the Commission theretofore duly designated by it, stipulation amending the complaint, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto (oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondent and respondents included by said stipulation amending the complaint have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents H. D. Rench and Francis U. Von Schrader, copartners trading as Von Schrader Manufacturing Co., or under any other trade name or style, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of rug and carpet cleaning machines, do forthwith cease and desist from representing or implying:

1. That the Von Schrader rug and carpet washer, or any substantially similar machine, will in any way or to any degree restore the original color or colors of rugs or carpets;

2. That the Von Schrader rug and carpet washer, or any substantially similar machine, will destroy germs or other microorganisms in, or otherwise, sterilize or substantially sterilize, rugs and carpets;

3. That the profits of operators of the Von Schrader rug and carpet washer, or any substantially similar machine, average $200 or $400 per month, or any other sum in excess of the actual average net profits of such operators over a sufficient period of time to give effect to the seasonal nature of such business, or using statements of specific sums earned by any particular operator or operators in any stated periods of time in a manner which imports or implies that any unusual or exceptional earnings represent the usual and ordinary course of business.

It is further ordered, That respondents shall, within 60 days after the services 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 in view of the dissolution of respondent Von Schrader Manufacturing Co., a corporation, the complaint against said corporation be, and the same is, hereby dismissed.