ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

HOOD RUBBER CO., INC. Complaint, May 28, 1943. Order, July 8, 1949. (Docket 4971.)

Charge: Discriminating in price between different purchasers of respondent's rubber and canvas footwear of like grade and quality by selling said products to some of its customers at higher prices than it sells such products to other of its customers, in violation of subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

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

PARAGRAPH 1. Respondent, Hood Rubber Co., Inc., is a wholly owned subsidiary of the Goodrich Tire & Rubber Co., of Akron, Ohio, and is a Massachusetts corporation with its principal office and place of business located at Watertown, Mass.

PAR. 2. Respondent is now, and has been since June 19, 1936, principally engaged in the manufacture and sale of rubber and canvas footwear which it sells to jobbers or wholesalers, national retail chain organizations, mail-order houses, and other retail customers, located in States other than the State of Massachusetts.

Respondent causes said rubber and canvas footwear, when sold, to be transported from the place of manufacture within said State of Massachusetts to the purchasers thereof located in States other than the State of Massachuetts, and there is and has been at all times herein mentioned a continuous current of trade and commerce in said products across State lines between respondent's factory or warehouses and the purchasers of such products. Said products are sold and distributed for use, consumption, and resale within the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid respondent is now, and during the time herein mentioned has been, in substantial competition with other corporations engaged in the business of manufacturing and selling rubber and canvas footwear in commerce between and among the various States of the United States and in the District of Columbia.

Respondent has annual dollar sales of rubber and canvas footwear of approximately $16,500,000, sells approximately 8,250,000 units of rubber footwear and 6,250,000 units of canvas footwear annually, and is the second largest factor in the rubber and canvas footwear industry. Respondent in the maintenance of its national distribution of said products maintains 21 stocking points and 11 branch sales headquarters, located throughout the various States of the United States.

Many of respondent's retail customers are competitively engaged with each other and with the customers of the respondent's competitors in the resale of said products within the several trade areas in which the respondent's said customers, respectively, offer for sale and sell the said products purchased from respondent.

Respondent's first-grade rubber and canvas footwear is made up of its nationally advertised Hood and Goodrich brands, its unadvertised Shawmut brand, and private brands or special specification products privately branded or carrying no brand. Respondent's nationally advertised brands are sold principally to small retailers, although its Hood brand is sold by its branches to department stores and small local chains designated as "House Accounts." Moreover, some Hood brand canvas footwear is sold to large chains and mail-order houses designated as "National Accounts," but no Hood brand rubber footwear is so sold to such accounts. Respondent's Shawmut brand and private brand or special specification products are sold exclusively to large retail chains and mail-order houses. All of said first grade rubber and canvas rubber footwear of respondent, regardless of the various brand names as above described, are of like grade and quality. Large retailers and small local chain customers of respondent designated by it as "House Accounts" and mail-order houses and large chain customers designated by it as "National Accounts" which purchase rubber and canvas footwear of respondent, under the Shawmut brand or private brands or no brands, resell such products in many parts of the United States in competition with other retail customers of respondent selling respondent's regular advertised brands. Such private brands or special specification products are of like grade and quality to respondent's nationally advertised brands, Hood and Good-

rich, sold by respondent's small retail customers in competition with said private brands or special specification products.

Respondent's second-grade rubber and canvas footwear is sold by it to the same classes of retailers as are its first-grade products, and under various brand names. Such second-grade rubber and canvas footwear, regardless of the brand name under which same is sold, and regardless of the class or type of retailer to whom such products are sold, is of like grade and quality, and the various classes of respondent's customer-purchasers resell said products in competition with each other in many parts of the United States.

PAR. 4. Respondent in the course and conduct of its business, as hereinbefore set forth, has been since June 19, 1936, and is now, discriminating in price between different purchasers of its rubber and canvas footwear of like grade and quality by selling said products to some of its customers at higher prices than it sells such products of like grade and quality to other of its customers who are competitively engaged one with the other in the resale of said products within the United States.

PAR. 5. The discriminations in price referred to in paragraph 4 hereof have been effectuated through the use by respondent in its pricing plan of a schedule of discounts from list prices, described in general terms as follows:

Discounts allowed by respondent on sales of its advertised Goodrich and Hood brands of both canvas and rubber footwear to small retailers are—

On single shipments of—	Branch sales and shipments	Branch sales shipped by factory	
		Stock	Make-up
	Percent	*Percent*	*Percent*
(1) Less than 144 pairs	None	None	None
(2) 145–479 pairs	3	3	3
(3) 480 pairs or more	3	3	8

Thus, a differential of 3 percent is allowed on single shipments in excess of 144 pairs, packed in standard case lots, and an extra 5 percent differential for make-up orders if shipped in lots of 480 pairs or more. "Make-up" orders are those placed far enough in advance to allow for orderly manufacture and shipment from factory to customers.

To the extent that respondent's advertised brands of rubber and canvas footwear are sold by its branches to department stores and

small local chains designated as "House Accounts" and to large chains and mail-order houses designated as "National Accounts" the discounts received by said accounts on such advertised brands are—

On single shipments of—	Branch sales and shipments	Branch sales shipped by factory		Factory sales and shipments	
		Stock	Make-up	Stock	Make-up
	Percent	*Percent*	*Percent*	*Percent*	*Percent*
(1) Less than 144 pairs	5	5	5	5	5
(2) 145-479 pairs	8	8	8	8	8
(3) 480 pairs or more	8	8	13	8	13

Discounts allowed by respondent to its "House" and "National Accounts" on its unadvertised Shawmut brand or rubber and canvas footwear of like grade and quality to its advertised brands aforesaid, and which the small retailers are not accorded the privilege of purchasing, are—

On single shipments of—	Branch sales and shipments	Branch sales shipped by factory		Factory sales and shipments	
		Stock	Make-up	Stock	Make-up
	Percent	*Percent*	*Percent*	*Percent*	*Percent*
(1) Less than 144 pairs	10	10	10	10	10
(2) 147-479 pairs	13	13	13	13	13
(3) 480 pairs or more	13	13	18	13	(1) (2)

[1] 18 percent on canvas.
[2] 18 and 5 percent on rubber (maximum to "House" accounts is 18 percent; the extra 5 percent is allowed only to "National" accounts.)

The Shawmut brand of footwear is sold by respondent subject to the above-described discounts under either that brand name or under the private brand of the purchaser or under no brand and is of like grade and quality to its first grade advertised brands, Goodrich and Hood.

Discounts allowed by respondent to small retailers on sale of its second-grade rubber and canvas footwear are the same as allowed on its first grade advertised products above set-out. However, on second-grade footwear, the large retailers designated as "House" and National" accounts are accorded larger discounts, varying somewhat from those allowed them on first-grade footwear, and are as follows:

Discounts allowed on second-grade canvas footwear sold to "House" accounts

On single shipments of—	Branch sales and shipments—stock	Branch sales shipped by factory		Factory sales and shipments [1]	
		Stock	Make-up	Stock	Make-up
	Percent	*Percent*	*Percent*	*Percent*	*Percent*
Less than 144 pairs	5	5	5	----------	----------
144-479 pairs	8	8	8	----------	----------
480 pairs or more	8	8	13	----------	----------

[1] (Not sold by factory.)

Discounts allowed on second-grade canvas footwear sold to "National" accounts

On single shipments of—	Branch sales and shipments—stock	Branch sales shipped by factory		Factory sales and shipments [1]	
		Stock	Make-up	Stock	Make-up
	Percent	*Percent*	*Percent*	*Percent*	*Percent*
Less than 144 pairs	5	5	5	5	5
144–479 pairs	8	8	5	8	8
480 pairs or more	8	8	18	8	18

Discounts allowed on second-grade rubber footwear sold to "House" and "National" accounts

On single shipments of—	Branch sales and shipments—stock	Branch sales shipped by factory		Factory sales and shipments [1]	
		Stock	Make-up	Stock	Make-up
	Percent	*Percent*	*Percent*	*Percent*	*Percent*
Less than 144 pairs	5	5	5	5	5
144–479 pairs	8	8	8	8	8
480 pairs or more	8	8	17.2	8	17.2

[1] (Not sold by factory.)

The discounts from list prices above described in general terms are more fully set forth in respondent's sales policies for the year 1937 which were published and circulated by respondent to its retail trade under the following titles: "1937 Waterproof Sales Policy (Revised) Hood and Goodrich"; "1937 Waterproof Sales Policy Old Colony, Massachusetts and Stafford Brands"; and "1937 Canvas Sales Policy." The pricing policies of respondent, as above described in general terms, and as more particularly described in respondent's published sales policies above referred to, have been continued in force by respondent, with minor variations, to date and such discounts as therein more particularly described and/or as later modified, constitute the means by which respondent has discriminated in price as alleged in paragraph 4 hereof. The discounts above described do not include certain cash and early-order discounts likewise allowed by respondent, but said trade discounts are in addition thereto.

PAR. 6. The effect of such discriminations in price as set forth in Paragraphs Four and Five hereof has been or may be substantially to lessen competition in the line of commerce in which respondent and its competitors are engaged and may be to injure, destroy, or prevent competition in the sale and distribution of rubber and canvas footwear between those of respondent's purchasers who receive the benefits of such discriminations and competing purchasers who do not receive the same benefits.

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

Respondents sell and distribute their said products largely through jobbers and chain stores, the jobbers selling in turn to retailers, and in order to facilitate their sales and deliveries respondents maintain warehouses in various large cities of the Midwestern and Southwestern parts of the United States. Respondents maintain and at all times mentioned herein have maintained a course of trade in their said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business and in connection with the sale of their said product, "Sunshine Foam," respondents have made various false and misleading statements and representations to purchasers and prospective purchasers of said product by means of advertisements inserted in newspapers, magazines, and periodicals, by radio continuities, in circulars, leaflets and pamphlets, and through other advertising media, all of general circulation.

Among and typical of the said statements and representations so made but not all-inclusive are the following:

* * * * * *

The marvelous FOAM in this new scientific cleaner does all the work. The millions of small bubbles penetrate through the rug and upholstery to the very base, cleaning, purifying, and mothproofing.

* * * * * *

Kills and removes larvae, eggs, moth worms, and other pests.

* * * * * *

SUNSHINE FOAM MOTH PROOFS AS IT CLEANS curtains, cushions, shades, drapes, sofas, daybeds, divans, ottomans, chairs, and fabrics are made noneatable by moth or carpet beetles. Kills and removes forever larvae, eggs, moth worms, and other pests.

PAR. 4. By and through the use of the foregoing statements and representations and others similar thereto but not specifically set out herein, respondents represent and have represented that their said product has distinct practical value as a mothproofing agent; that it will make treated fabrics noneatable by moths and carpet beetles and will remove forever the danger of reinfestation by larvae eggs, moth worms, and other insects; that Sunshine Foam is both a mothproofing and larvae-killing agency and that it can even be depended upon to kill all insects within upholstering materials, serving as a contact insecticide, killing and destroying all moths or moth larvae, eggs or worms, or other insects present in the padding or filling of cushions, sofas, day beds, divans, ottomans, overstuffed chairs or other articles of furniture by penetrating throughout the flax, straw, cotton, moss, hair, feathers, or other materials employed in the construction of stuffed or upholstered furniture or similar articles.

PAR. 5. In truth and in fact, respondents' said product has no practical value and is not dependable as a mothproofing agency; it does not make treated fabrics noneatable by moths and carpet beetles, and does not remove forever the danger of reinfestation by larvae, eggs, moth worms, and other insects, and in the case of cushions, sofas, day beds, divans, ottomans, and chairs containing upholstering materials such as moss, hair, and feathers, the thorough application of "foam" to the fabric cover will not kill insects within the upholstering materials.

While the said solution might kill fabric pests thoroughly wet with the product at the time of application, in doing this it would do no more than would be done by any so-called "contact" insecticide, and the application of "Sunshine Foam" to the fabric cover of cushions, sofas, day beds, ottomans, and chairs or other articles or furniture containing upholstering materials will not kill insects within the upholstering materials for the reason that such application cannot wet the interor sufficiently to allow the "foam" to act as a contact insecticide throughout the flax, straw, cotton, moss, hair, feathers, or other material used as upholstering in the construction of the furniture or other upholstered articles.

PAR. 6. The use by respondents of the said false and misleading statements and representations in connection with the sale of their aforesaid product has a tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers of respondents' said product into the erroneous and mistaken belief that such statements and representations are true, and because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' said product. By these means respondents have further placed in the hands of their dealers, agents, and distributors an instrument by means of which the latter mislead and deceive and have misled and deceived members of the consuming public.

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.

Complaint dismissed without prejudice by the following order:

This matter came on to be heard in regular course upon motion to dismiss the complaint without prejudice, dated January 17, 1949, filed by counsel in support of the complaint, in which said motion counsel for respondents waive notice thereof and consent that it be granted.

The complaint herein, issued July 9, 1946, charges respondents with unfair and deceptive acts and practices in commerce in the sale and distribution of "Sunshine Foam," a preparation designed and in-

tended for use as a mothproofing agent, through the use and dissemination of certain statements and representations relating to its effectiveness, which are alleged to be false and misleading, and made or caused to be made and disseminated for the purpose of inducing the purchase of said preparation.

On June 25, 1947, subsequent to the issuance of the aforesaid complaint, the Federal Insecticide, Fungicide, and Rodenticide Act was approved. It appears to the Commission that the preparation involved in this proceeding is an "economic poison" within the meaning of said act and that in accordance with the provisions thereof the Secretary of Agriculture is vested with primary jurisdiction over certain claims, statements, and representations with regard to its effectiveness.

In view of the foregoing, the Commission is of the opinion that under its policy of cooperating with other Federal agencies in connection with practices and commodities concerning which such other Federal agencies also have jurisdiction, no further corrective action should be taken in this matter at this time with respect to the aforesaid statements and representations.

The Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that in the circumstances the motion to dismiss the complaint should be granted:

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to take such further action at any time in the future as may be warranted by the then existing circumstances.

Mr. William L. Pencke for the Commission.

Pugsley, Hayes & Rampton, of Salt Lake City, Utah, for Sunshine Household Products Co., Inc., Carl Nicewander, Sadie Rees, Judy Brant, Theo. Fink, and Archie I. Bess.

Cheny, Jensen, Marr & Wilkins, of Salt Lake City, Utah, for David W. Evans.

NORTHWEST DRIED FRUIT ASSOCIATION, ITS OFFICERS, DIRECTORS, AND MEMBERS. Complaint, April 28, 1945. Opinion and order, August 10, 1949. (Docket 5311.)

Charge: Entering into and carrying out understandings and combinations to suppress competition in the sale of dried prunes among respondent members through concertedly (1) fixing the percentage of deliveries to their future contract customers, on the basis of estimated crop failures, and so delivering, and (2) selling and delivering at enhanced prices the remaining surplus; with effect of unduly and unlawfully restricting and restraining trade in commerce in said products, substantially enhancing prices to the direct purchasers and to the consuming public, and otherwise depriving the public of the benefits

and advantages that would flow from normal competition between respondents; and of eliminating competition in said products, and with tendency so to do and to create a monopoly in the sale thereof in interstate commerce.

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 Northwest Dried Fruit Association, its officers, directors or members hereinafter referred to as respondents, have violated the provisions of section 5 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 Northwest Dried Fruit Association is a nonprofit membership corporation sometimes hereinafter referred to as respondent Association organized and existing under the laws of the State of Oregon, with its principal office at 305 Title and Trust Building, Portland, Oreg., composed of trade associations and their members, and other corporations, partnerships, and individuals, and whose said members are variously engaged in the business of growing fruit and drying, packing, selling, and/or shipping, such fruits, among which fruit are prunes, and comprises practically the whole of that industry, the same being principally located in the States of Washington, Oregon, Idaho, and California. The respondent association was organized for the purpose of promoting the interests of, and to secure friendly relations and cooperation between and among, the various growers, packers, and shippers of dried prunes for their mutual benefit and advantage.

The following named individuals are or have been officers of said respondent association, and as such, and individually, are designated as respondents herein:

H. H. Hallauer, president.
Sam N. Petersen, vice president.
John F. White, treasurer.
Mrs. V. K. Denny, secretary.

The following named individuals in addition to the foregoing named officers are, or have been, members of the board of directors of respondent association, and as such, and individually, are named as respondents herein:

L. M. Jones,	J. C. Tracy,
W. S. LeVan,	Ira D. Cardiff.

PAR. 2. The following corporations are or were at the time of the happening hereinafter referred to members of respondent associations; to wit:

(1) Respondent, Oregon Prune Exchange, is a nonprofit corporation, organized, existing, and doing business under the laws of the State

of Oregon, with its principal office and place of business at 309 Southwest Third Avenue, Portland, Oreg., and is a selling agent for a number of fruit-growers' associations.

The following persons are or have been officers of respondent exchange, and as such, and individually, are named as respondents herein:

M. H. King, president.
R. P. Parsons, vice president.
John F. White, manager and secretary-treasurer.

The following persons are or have been directors of said exchange, and as such, and individually, are named as respondents herein:

C. A. Ratcliff,
M. H. Middleburg,
George S. Zimmerman,

and the above-named officers.

(2) Respondent Washington Growers Packing Corp. is a cooperative organization, organized, existing, and doing business under the laws of the State of Washington, with its principal office and place of business at 507¼ Main Street, Vancouver, Wash., and is a packing and sales agent of a large number of producers of prunes in the State of Washington.

The following persons are or have been officers of said respondent corporation, and as such, and individually, are named as respondents herein:

John Scholl, president.
Frank Erickson, vice president.
Walter Cebula, treasurer.
Edward J. Boddy, secretary.

The following persons are or have been directors of said respondent corporation, and as such, and individually, are named as respondents herein:

C. M. Gibbons,
Floyd Kingen,
D. C. McCain,
Hugh E. Engler,
C. A. Mills,
J. G. Strong,

and the above-named officers.

(3) Respondent Rosenberg Bros. & Co., is a corporation, organized, existing, and doing business under the laws of the State of California, with its principal office and place of business at 334 California Street, San Francisco, Calif., and is engaged in the buying, packing, and selling of dried fruits, including prunes.

The following named persons are or have been officers of said respondent Rosenberg Bros. of California and as such, and individually are named as respondents herein:

Arthur C. Oppenheimer, president.
Robert S. Geen, vice president and secretary.

H. P. Higgins, vice president.
Rosa L. Selene, treasurer.

The following named persons, are or have been members of the board of directors of said respondent Rosenberg Bros. & Co. of California and as such, and individually are named as respondents herein:

Arthur C. Oppenheimer. Robert S. Geen.
Harry R. Higgins. Alice J. Rosenberg.
Louise R. Bransten.

(4) Respondent Rosenberg Bros. & Co. is a corporation, organized, existing, and doing business under the laws of the State of Oregon, with its office and principal place of business at 2211 Northwest Front Avenue, Portland, Oreg., and is engaged in the buying, packing, and selling of, amongst other dried fruits, prunes.

The following named persons are or have been officers of said respondent, Rosenberg Bros. & Co. of Oregon, and as such, and individually, are named as respondents herein:

Samuel N. Petersen, president.
Dwight K. Grady, vice president.
G. R. Wilson, secretary and treasurer.

The memberships of the above-named respondent association and corporate respondents change from time to time by the addition and withdrawal of members, so that all of the members of said association and member corporations at any given time cannot be specifically named as respondents herein, without considerable inconvenience and delay; therefore, the above-named respondent member corporations, their officers and directors hereinbefore named as respondents, as such officers and directors are also made respondents as being representatives of all the members of respondent Northwest Dried Fruit Association and the members of the respective respondent member corporations named herein.

PAR. 3. The packer and shipper members of respondent Northwest Dried Fruit Association and the members of the respective respondent member corporations named herein, in the regular course and conduct of their business, ship and deliver their said products, when sold, to their respective customers in the various States of the United States other than the States in which they, the said members, are located, and in the District of Columbia, and are engaged in interstate commerce.

PAR. 4. The respondent member corporations and their members, growers, packers, and shippers, or their agents or repesentatives, in the purchase and sale or negotiation for the purchase and sale of prunes, customarily and as a general practice, enter into future contracts, generally uniform in character, terms and conditions, the same being known as Northwestern Dried Fruit Contracts, promulgated by respondent association usually several months before the time of harvesting or before they are ready for market. Said contracts generally

provide for the contingency of a crop failure, making uniform percentage arrangements for settlements of damages, the applicable part thereof being as follows:

In the event of destruction or serious damage to crops after April 15 of the year in which this sale is made and subsequent to the date of this contract, Seller may reduce quantity twenty-five (25%) percent without penalty. If less than seventy-five percent (75%) is tendered, Seller shall pay as damages ten percent (10%) of net contract price of shortage below estimated amounts only, and owing to the uncertainty of climatic conditions in Oregon, Washington and Idaho, just previous to and at the ripening period, should severe damage occur at that time, reducing Growers' and Packers' crop estimates, this delivery, both as to size and quantity, may be reduced proportionately without penalty to the Seller * * *.

PAR. 5. In 1941, a prune crop failure was anticipated on account of the excessive rains and storms, and the said respondent member corporations and their members and respondent association, acting together, estimated the ratio or percentage of the prospective crop losses, but, however, upon the harvesting or gathering of the crop, it developed that the same was larger than estimated, at least in respect to some grades of prunes and said respondents entered into the following understandings, agreements, combinations, and conspiracies and carried out an agreed common course of action in the sale of dried prunes to hinder or suppress competition between respondent members or between their respective members and cooperatively and concertedly performed the following acts to wit:

1. Fixed the percentage of deliveries to their respective future-contract customers on the basis of such estimated crop failure, and made deliveries upon such basis;

2. Sold and delivered at enhanced prices, or cooperated in the sale and delivery at enhanced prices, of surplus dried prunes remaining after the filling of orders on an agreed yield percentage or pro-rata basis, in execution of their future delivery contracts.

PAR. 6. Said understandings, agreements, combinations and conspiracies, and the things done thereunder, and pursuant thereto, as hereinabove alleged, have had and have, the direct effect of unduly and unlawfully restricting and restraining trade, in commerce, in said products, between and among the several States of the United States, and in the District of Columbia; all substantially enhancing prices to the direct purchasers and to the consuming public and otherwise depriving the public of the benefits and advantages that would flow from normal competition among and between respondent member corporations and between their respective members; all tending to eliminate, and eliminating, competition, and all tending to create a monopoly in the sale of dried prunes in interstate commerce.

PAR. 7. The acts and practices and methods of the respondents, as herein alleged, are all to the prejudice of the public; have a danger-

ous tendency to, and have actually hindered competition between and among respondents in the sale of dried prunes, in commerce, within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have tended to create in respondents a monopoly in the sale of said product, in interstate commerce; have unreasonably restrained interstate commerce in said product, 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.

OPINION OF THE COMMISSION

AYRES, *Commissioner.*

Respondents are charged with conspiracy in restraint of trade in violation of section 5 of the Federal Trade Commission Act. The members of respondent association are variously engaged in growing, drying, packing, and selling dried prunes, and comprise practically the whole of the prune industry in Washington, Oregon, and Idaho. The prunes grown in these States are the tart Italian type, distinctly different in flavor from the sweet French type grown in California. Their production does not exceed 5 percent of the dried prunes produced in the Pacific coast area, but they represent substantially the entire production in this country of Italian type prunes.

The complaint relates to certain activities by the respondents in the crop year 1941–42. Such activities were based upon the provisions of uniform future sales contracts developed by respondent association in 1919 which have since been in general use by members of the association. Insofar as pertinent to the consideration involved here, the future sales contracts contain the following provision designed to protect respondent sellers against delivery obligations in the event of unusual damage to the crop resulting from climatic conditions:

* * * It is further agreed by the parties hereto that inasmuch as this sale is made against Grower's contracts for estimated amounts only, and owing to the uncertainty of climatic conditions in Oregon, Washington, and Idaho just previous to and at the ripening period, should severe damage occur at that time reducing Growers' and Packers' crop estimates, this delivery, both as to sizes and quantity, may be reduced proportionately, without penalty to the Seller. Unless a particular district is specified, the crop of the variety of fruit named produced in Oregon, Washington, and Idaho shall be taken into consideration in determining what is a fair delivery, any dispute as to the extent of crop damage in any of such States to be left to the decision of its State Board of Horticulture or if no Board of Horticulture exists in such State, its State Department of Agriculture.

The complaint alleges that in 1941 a crop failure was anticipated because of excessive rains, that the respondents, acting together, estimated the percentage of the prospective crop loss, and that by concerted action they—

1. Fixed the percentage of deliveries to their respective future-contract customers on the basis of such estimated crop failure, and made deliveries upon such basis;

2. Sold and delivered at enhanced prices, or cooperated in the sale and delivery at enhanced prices, of surplus dried prunes remaining after the filling of orders on an agreed yield percentage or pro-rata basis, in execution of their future delivery contracts.

The latter allegation was not sustained by the record and does not require further consideration. The only remaining substantial issue is whether or not by conspiracy the respondents "fixed the percentage of deliveries to their respective future-contract customers on the basis of such estimated crop failure, and made deliveries upon such basis."

The record discloses that about the first of September 1941, when the prunes were ripe and ready for harvest, severe rains occurred and continued for several days in the producing areas, causing great damage to the prune crop. Immediately following the rain damage, the prune packing members of the respondent association conferred concerning the extent of damage and the proportionate delivery which should be made to buyers under the terms of the future sales contracts. At their request the Chief of the Division of Plant Industry of the State of Oregon made a limited inquiry and on the basis of his inquiry estimated a 62 percent crop loss. The respondents were not satisfied with that estimate, and decided to wait for the report of the Federal Crop Reporting Service in the State of Oregon, a branch of the United States Department of Agriculture, which was better equipped to make an estimate. Shortly thereafter, that service made a public report which showed that before the rain damage the estimated dried prune crop was approximately 24,670 tons and that the rain damage had reduced the estimated crop to 6,400 tons, of which 25 percent was substandard. This meant an estimated crop damage of 80.8 percent, or an estimated crop salvage of 19.2 percent. The actual dried prune production as later determined by the Federal Crop Reporting Service after the entire crop had been harvested was 400 tons in excess of its early estimate. The prune packing members of the respondent association accepted the estimate of the Federal Crop Reporting Service as a basis for determining the percentage of their commitments which they should deliver under their future sales contracts. That estimate did not indicate the proportion of the various sizes of prunes involved in the salvage estimate. The respondents, however, agreed among themselves upon the percentage of the various sizes which should be delivered under their contracts.

Only part of the crop is ordinarily sold under future sales contracts, the remainder being sold in spot transactions at prices then prevailing. Following the rain damage, the prices of dried prunes advanced to the extent that the prices prevailing in the fall of 1942 were about double those prevailing in the fall of 1941. After the

respondents had discharged their contract obligations for deliveries on the contract price basis, they were free to buy and sell prunes in spot transactions at the increased prices, and they did so to a substantial extent. The financial advantages accruing to them as result of the reduction of delivery obligations under their future sales contracts are readily apparent.

The complaint here does not challenge the legality of the agreement by which the respondents adopted the uniform future sales contracts in 1919, and have since used them. It challenges only the things which the respondents did pursuant to those contracts. Because the scope of the complaint is thus limited, any order to cease and desist which could be issued in this proceeding could prohibit the respondents only from concertedly fixing the percentage of deliveries under their future contracts, but could not require them to discontinue using the contracts themselves. Under such an order, the respondents would be left free individually to adhere to percentages determined under the provisions of their uniform contracts. By that process, they could, without further concerted action, achieve substantial uniformity in determining their delivery obligations without violating the provisions of such an order.

The complaint does not reach the agreement by which the respondents adopted the uniform contract provisions upon which the acts charged were based; and it does not appear that the public interest would be materially served by requiring respondents to cease and desist from these overt acts while leaving them free to accomplish substantially the same results by individual action under the contracts. It is the opinion of the Commission, therefore, that the proceeding under this complaint should be dismissed.

The uniform contract provisions out of which this situation developed have been in effect since about 1919. They were not invoked by the respondents until 1941, and there is nothing in the record to indicate that they have been invoked since that time. There is no assurance that these provisions will not be applied with greater frequency in the future. On the basis of this history, however, there is little to indicate that it would be in the public interest to institute further proceedings at this time to challenge the legality of the agreement by which the respondents adopted the uniform future sales contracts in 1919. If future developments disclose the need for corrective action with respect to these contracts, consideration can be given at the proper time to an appropriate type of proceeding based on the then existing circumstances.

Complaint dismissed by the following order:

This proceeding came on to be heard by the Commission on the complaint, answers of respondents, testimony and other evidence, recom-

mended decision of the trial examiner and exceptions thereto, and the briefs of counsel.

The Commission having duly considered the matter and being now fully advised in the premises:

It Is Ordered, For the reasons stated in the accompanying opinion of the Commission, that the complaint in this proceeding be, and the same hereby is, dismissed.

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

Mr. George W. Williams for the Commission.

King & Wood, Portland, Oreg., for Northwest Dried Fruit Association, Oregon Prune Exchange, Washington Growers Packing Corp., and the officers and board of directors thereof.

Mr. Norman A. Eisner, of San Francisco, Calif., for Rosenberg Bros. & Co. of California, Rosenberg Bros. & Co. of Oregon, and various officers and board of directors thereof.

Mr. Wesley W. Kergan, of Carmel, Calif., for Elizabeth M. Higgins, executrix for H. P. Higgins.

AMERICAN NICKELOID CO. Complaint, February 20, 1942. Opinion and order, August 19, 1949. (Docket 4713.)

Charge: Advertising falsely or misleadingly and using misleading product names or title, and furnishing means and instrumentalities of misrepresentation and deception, as to nature of product; in connection with the manufacture and sale of prefinished plated metals designated Brass Steel, Brass Tin, Copper Tin, Copper Steel, Chromaloid (sometimes referred to as Chrome Zinc), Chrome Brass, Chrome Copper, Chromium Copper, Chrome Nickel Silver, Chrome Tin, Chrome Steel, Nickel Brass, Nickel Copper, Nickel Steel, and Nickel Tin.

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 American Nickeloid 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, American Nickeloid Co., is a corporation organized under the laws of the State of Illinois with its principal place of business located in the city of Peru, Ill.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the manufacture of prefinished plated metals in varying quality, style, form, gage, and finish (suitable for decorative purposes and for use by metal fabricators in the manufacture of innumerable articles) and in the sale and distribution thereof in com-

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

Respondent sells its prefinished plated metals to distributors, decorators, and metal fabricators located in the various States of the United States and causes said metals, when sold, to be transported from its place of business located in the State of Illinois to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia.

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

PAR. 3. In the furtherance of the sale and distribution of its prefinished plated metals, as aforesaid, respondent has been and is now engaged in falsely representing the nature, texture, quality, composition, and character of its aforesaid metals through false, deceptive, and misleading representations disseminated by advertisements inserted in newspapers, periodicals, trade journals, circulars, cards, pamphlets, folders, and other advertising media.

Among and typical of such false, deceptive, and misleading representations are the trade names given by respondent to its prefinished plated metals. Respondent uses such trade names as Brass Steel, Brass Tin, Copper Tin, Copper Steel, Chromaloid (sometimes referred to by respondent as Chrome Zinc), Chrome Brass, Chrome Copper, Chromium Copper, Chrome Nickel Silver, Chrome Tin, Chrome Steel, Nickel Brass, Nickel Copper, Nickel Steel, and Nickel Tin to designate its various plated metal products.

PAR. 4. Through the use of the names of familiar and well known alloys such as Copper Steel, Copper Tin, Chrome Steel, Nickel Brass, Nickel Copper, and Nickel Steel, and others similar thereto but not specifically set out herein, as the trade names for and to designate certain of its prefinished plated metals, each of which purport to be descriptive of the nature, texture, quality, composition, and character of the prefinished plated metals so designated respondent represents directly that the prefinished plated metals respectively so designated are alloys.

The names Brass Steel, Brass Tin, Chromaloid (sometimes referred to as Chrome Zinc), Chrome Brass, Chrome Copper, Chromium Copper, Chrome Nickel, Silver, Chrome Tin, and Nickel Tin used by respondent are not the names of any familiar or well known alloys but, due to the manner of grouping the names of the constituent metals, and in the case of the trade name Chromaloid by reason of the suffix "aloid" which phonetically is like the word "alloyed," these names have the tendency and capacity to suggest and imply alloys. Through the use of these trade names to designate certain of its prefinished

plated metals, and others similar thereto but not specifically set out herein, each of which purport to be descriptive of the nature, texture, quality, composition, and character of the prefinished plated metals so designated, respondent represents indirectly and by implication that the prefinished plated metals respectively so designated are alloys.

PAR. 5. The foregoing trade names, and others similar thereto but not specifically set out herein, are all false and misleading.

Respondent's prefinished plated metals designated Brass Steel, Brass Tin, Copper Tin, Copper Steel, Chromaloid (sometimes referred to by respondent as Chrome Zinc), Chrome Brass, Chrome Copper, Chromium Copper, Chrome Nickel Silver, Chrome Tin, Chrome Steel, Nickel Brass, Nickel Copper, Nickel Steel, and Nickel Tin are not produced by the fusion of the metals named and are not alloys as the names represent or imply. They are all "electroplated metals."

PAR. 6. In the field of metallurgy science has developed a process whereby one metal is by fusion combined with one or more other metals or with an nonmetallic element. During this process chemical and physical changes take place resulting in a new class of metals well known and familiar to industry and the arts as "alloys."

Science has also developed a process known as "electrodeposition," or more specifically known as "electroplating,'" whereby a coating of one or more different metals may be separately or simultaneously deposited upon another pure metal or alloy commonly known as the base metal. During this process there are no profound or important changes in the physical or chemical characteristics of the constituent metals, except possibly at the immediate interfacing. This process has not resulted in a new class of metals but has produced a product well known and familiar to industry and the arts as "electroplated metals."

The two products "alloys" and "electroplated metals" have physical and chemical characteristics that are widely different as to nature, texture, quality, and composition. For example, the pure metals copper and zinc can be combined by fusion to produce a new and different metal well known to industry and art as brass, which is one of the oldest known alloys. It is also possible, by the process of "electrodeposition" to deposit a coating of the metal copper upon the metal zinc, resulting in a product that may have useful applications, but it is not an alloy of copper and zinc. It is not brass, it is still copper and zinc and could not properly be designated brass, but such product is known to industry and art as "copperplated zinc."

The metal iron can be combined by fusion with the nonmetallic element carbon resulting in a product well known to industry and art as steel. The alloyed metal steel can be combined by fusion with other metals such as, for example, nickel or chromium. The result of this process is a new alloy well known to industry and the arts as

nickel steel or chromium steel (chrome steel), as the case may be. It is possible, by the process of "electrodeposition" to deposit a coating of the pure metal nickel or the pure metal chromium on the base alloy metal steel resulting in products that may have useful applications, but such products are not alloys of the metals used. The product is not nickel steel in the one instance or chrome steel in the other, and could not properly be, respectively, so designated. The products are steel plated with nickel and steel plated with chromium and are familiar and well known to industry and the arts as nickel-plated steel and chrome-plated steel, respectively.

Alloys are frequently designated by grouping together or using the names of the constituent metals or elements, such as for example: The alloy of nickel and steel is usually designated nickel steel. This manner of designating alloys is a familiar and well known custom to science, industry and the arts.

The names Copper Steel, Copper Tin, Chrome Steel, Nickel Brass, Nickel Copper, and Nickel Steel are all names commonly used in the science of metallurgy and familiar and well known to the industry and arts as names designating certain well known alloyed metals or alloys, produced by the process of fusion. The names Brass Steel, Brass Tin, Chromaloid (sometimes designated Chrome Zinc), Chrome Brass, Chrome Copper, Chromium Copper, Chrome Nickel Silver, Chrome, Tin, and Nickel Tin are not familiar or well known names to the science of metallurgy or industry or the arts as names designating alloyed metals or alloys. In fact, there are no known alloys so designated or produced by the fusion of the metals so grouped, however, the metals are grouped together to form a name in the same manner usually used to designate the name of an alloy.

PAR. 7. The use by respondent of the foregoing false, misleading and deceptive trade names, disseminated as aforesaid, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the prefinished plated metals bearing such trade names are alloys and places in the hands of distributors, decorators, and fabricators a means and instrumentality by which said distributors, decorators, and fabricators may mislead and deceive the purchasing public as to the actual kind of metal used for decorative purposes or used in the finished product; and to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's aforesaid prefinished plated metals.

PAR. 8. The aforesaid acts and practices of said 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.

OPINION OF THE COMMISSION

This matter came on to be heard in regular course upon motion, filed January 11, 1949, by counsel supporting the complaint, to close this case without prejudice, to which no answer has been filed by respondent.

The complaint herein, issued February 20, 1942, charges respondent with unfair and deceptive acts and practices in commerce in the sale and distribution of prefinished plated metal products of varying quality, style, form, gage, and finish through the use of trade names and other descriptive designations in advertising disseminated by it and placed in the hands of others for use and dissemination in connection therewith, and alleged to be false, deceptive, and misleading for the reason that said trade names and descriptive designations convey the erroneous impression that said metals are alloys, when, in fact, they are not alloys but "electroplated" metals. The complaint alleges that respondent sells said products to distributors, decorators, and metal fabricators, to be resold for use or used in the manufacture of innumerable finished products and decorative articles, and that respondent, by the use of the aforesaid trade names and descriptive designations for its products disseminated to said distributors, decorators, and metal fabricators, places in their hands a means and instrumentality by which they may mislead and deceive the purchasing public as to the actual kind of metal used in finished products and for decorative purposes.

From the motion to close this proceeding, it appears that at the time complaint issued respondent was distributing catalogs, circulars, and other advertising material depicting and describing its plated metal products and was also supplying its distributor-customers with advertising material for their use in reselling such products. Some of said advertising material described the method by which the plated metal products of respondent were manufactured and clearly indicated that such products were plated and therefore not alloys, while other of such advertising failed to describe the manufacturing processes. It further appears from said motion that subsequent to the end of World War II, respondent has advertised its products solely by means of two booklets distributed only to its direct customers, who are fabricators, and to its wholesale distributors, which said booklets clearly state that the metal products sold by respondent are plated and are not alloys, and by which said customers are not misled or deceived. The manufacturers of products consisting in part of respondent's plated metals do not describe, designate, or refer to such products by the name or names used by respondent or by any simulation thereof, except in the instance of one manufacturer, with regard to whom the Commission dismissed its complaint charging false, misleading, and deceptive advertising through the use of the word "Chromsteel."

The Commission is therefore of the opinion that under the foregoing circumstances the public interest does not require further corrective action in this matter at this time and that the motion to close this proceeding without prejudice should be granted.

ORDER CLOSING CASE WITHOUT PREJUDICE

It is ordered, That this case be, and it is hereby, closed without prejudice to the right of the Commission to reopen it or to take such further action at any time in the future as may be warranted by the then existing circumstances.

Mr. Edward L. Smith and *Mr. George M. Martin* for the Commission.

D'Ancona, Pflaum, Wyatt, Marwick & Riskind, of Chicago, Ill., for respondent.

BARJAY PRODUCTS, INC., BENJAMIN RUBIN, JULES JOSEPH, ALEX RUBIN AND CHARLES STRAUB. Complaint, September 24, 1948. Order, September 19, 1949. (Docket 5584.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results and scientific or relevant facts; in connection with the sale of a drug preparation designated "Trymm Tablets."

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 Barjay Products, Inc., a corporation, and Benjamin Rubin, Jules Joseph, Alex Rubin and Charles Straub, 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 in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Barjay Products, Inc., is a corporation organized 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 165 Broadway, New York, N. Y.

PAR. 2. Respondents Benjamin Rubin, Jules Joseph, Alex Rubin and Charles Straub, are, respectively, president, vice president, secretary and treasurer, and manage, direct, and control the business and affairs of respondent corporation, Barjay Products, Inc.

Respondent Benjamin Rubin's address is 2465 Cheltenham Road, Toledo, Ohio.

Respondent Jules Joseph resides at Hotel Fort Meigs, Toledo, Ohio.

Respondent Alex Rubin has his principal place of business with respondent Barjay Products, Inc., 165 Broadway, New York, N. Y.

Respondent Charles Straub resides at 2086 Starr Avenue, Toledo, Ohio.

PAR. 3. Respondents are now, and have been for several years last past, engaged in the business of selling and distributing a drug preparation, as "drug" is defined in the Federal Trade Commission Act.

The designation used by said respondents for their said preparation and the formula and directions for its use are as follows:

Designation: Trymm Tablets.
Formula: Each tablet contains:
Vitamin B_1 (Thiamin Chloride): 0.333 mgm.
Vitamin B_2 (Riboflavin): 0.666 mgm.
Vitamin D: 133.33 units.
Calcium Pyrophosphate: 1,024 mgm.
Niacinamide: 1.67 mgm.
Iron Pyrophosphate: 13.53 mgm.
Sodium Chloride: 0.026 gr.
Coumarin: Filler and Flavoring.
Vanillin: Filler and Flavoring.
Saccharin: Filler and Flavoring.
Chocolate: Filler and Flavoring.
(Phosphorous—256 mgm.—derived from Calcium Pyrophosphate and Iron Pyrophosphate).
Directions: Take one tablet and chew well before each meal with glass of water—three times daily.

The said respondents cause their said preparation when sold to be transported from their place of business in the State of New York to dealers for resale and to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business, respondents, subsequent to March 21, 1938, have disseminated and have caused the dissemination of certain advertisements concerning their said product by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and have caused the dissemination of advertisements concerning their said product by various means for the purpose of inducing and which are likely to induce directly or indirectly the purchase of their said product in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. 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 and other advertising literature are the following:

Reduce. Trymm off the fat that hides your charming self.
Trymm—the new way to reduce.
Helps you eat less.

Three Trymm tablets daily take the place of a lot of food. Easy to diet—you don't get so hungry.

Easy to diet because you don't get hungry.

It is easy to diet down to the weight you want with Trymm.

With Trymm adequate nutrition is assured.

What the body really demands by the sensation of hunger is the life-giving vitamins and minerals.

Overeating and excessive weight may be caused, not by gluttony of the individual, but by the incessant clamor for the life-giving elements which are lacking in the food * * * you do not want so much to eat because your body is not starved for these essential elements.

Trymm provides your daily minimum requirement of the necessary vitamins and minerals.

Three Trymm tablets supply 100% or full amount of the minimum daily food vitamins and mineral requirement of the average adult.

PAR. 6. Through the use of the advertisements containing the aforesaid statements and representations and others of similar import and meaning not specifically set out herein, respondents represented that Trymm Tablets have weight-reducing properties; that their use prevents a person from becoming hungry and as a result, less food is consumed, thereby causing a reduction in weight; that it is easy to adhere to a weight-reducing diet by using said tablets; that Trymm Tablets are an adequate substitute for food that is ordinarily consumed; that hunger results from a lack of vitamins and minerals; that adequate nutrition is assured by the use of these tablets and that their use as directed supplies the full amount of the necessary vitamins and minerals required by the average adult.

PAR. 7. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, Trymm Tablets have no weight-reducing properties. Their use will not prevent a person from becoming hungry and will not result in any appreciable reduction in the amount of food consumed or any appreciable reduction in weight. When overweight is due to the consumption of excess amounts of food, the only method by which weight may be reduced is limiting the intake of food to the extent necessary to bring about a weight reduction. The necessity for such a regimen is not mentioned in the newspaper and periodical advertising. While a reducing diet is referred to in a pamphlet insert in the package, the necessity of following a carefully restricted diet is not pointed out. It is extremely unlikely that a person uninformed as to caloric values would select a diet sufficiently restrictive so as to cause, if followed, a weight reduction. This is particularly true in view of the fact that respondents represent in their general advertisements that it is easy to diet in connection with the use of Trymm Tablets. In case a severely restricted diet should be followed in connection with the use of said tablets, any reduction in weight would be due to the restricted diet and not to the

use of the tablets. The use of these tablets will not make it easy to adhere to a weight-reducing diet. Trymm Tablets are not an adequate substitute for food which is ordinarily consumed. Lack of vitamins or minerals in the diet does not produce hunger. Adequate nutrition is not assured by the use of said tablets. Their use as directed or otherwise will not provide the necessary vitamins and minerals required by the average adult since they do not contain Vitamin A or C and several other vitamins and minerals which are essential to human nutrition.

PAR. 8. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to its said product disseminated as aforesaid, has had and now has a capacity and tendency to, and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true and to induce a portion of the purchasing public, because of such erroneous belief, to purchase respondents' said product.

PAR. 9. The foregoing 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.

Record closed without prejudice by the following order:

This matter came on to be heard by the Commission upon motion to close the case filed on December 1, 1948, by counsel for respondents, affidavits in support thereof, and answer thereto filed on June 14, 1949, by counsel supporting the complaint, which makes no objection to closing the case without prejudice to the right of the Commission to reopen same and to resume trial thereof in accordance with its regular procedure.

The complaint herein, issued on September 24, 1948, charges respondents with the dissemination of false advertisements in connection with the offering for sale, sale, and distribution of their drug preparation designated as "Trymm Tablets."

Having duly considered the motion and the record herein, and it appearing to the Commission that respondents discontinued advertising the drug preparation to which this proceeding relates prior to the issuance of the complaint herein and have discontinued the manufacture of said preparation, with no apparent likelihood of a resumption thereof; that respondent corporation is in the process of dissolution; and that, in the circumstances, the public interest does not require further corrective action in this matter at this time:

It is ordered, That this case be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same and resume trial thereof should future facts warrant.

Commissioner Davis absent.
Mr. Carrel F. Rhodes for the Commission.
Reiman & Reiman, of New York City, for respondents.

NEW ENGLAND CONFECTIONERY CO. Complaint, October 28, 1948. Opinion and order dismissing complaint without prejudice, September 23, 1949. (Docket 5605.)

Charge: Discriminating in price in violation of section 2 (*a*) of the Clayton Act, in connection with the sale and distribution to vending machine operators and lessors, wholesalers and candy jobbers, chain and syndicate stores, and to various other retail outlets, of respondent's candy and confectionery products, including principally candy bars and items sold in wrappers bearing the names "Sky Bar," "Bolster," "Necco Wafers," "Chase & Canada Mints," "Orange Slices," "Brer Rabbit Molasses" and other named candy items made by it, which generally retailed for 5 cents, through selling and distributing its said products in commerce "to certain of its customers, small businessmen at higher prices" than it had been selling said products of like grade and quality in commerce to other larger competing customers, said favored customers to whom it sold substantial quantities of its said bars at discriminatory prices including those who sold through the medium of automatic vending machines in factories, theaters, office buildings, newsstands, restaurants, oil stations, etc., and including specifically the Automatic Canteen Co. of America of Chicago; through selling its said products, etc., at different prices during the same periods of time to competing classifications of customers and to certain favored customers within a classification competing with each other in the same trade areas in the sale of its said products; and through the use of free deals, premium offers, discount deals, rebates, or allowances which were made available to some, but not all of its customers and purchasers who competed in the resale of its products (Count I);

Discriminating "in favor of certain of its customers and purchasers, certain jobbers and vending machine customers, including the Automatic Canteen Co. of America of Chicago, Ill., but not necessarily limited thereto, and against certain of its other customers and purchasers in respect to the sale and purchase" of its said products, in violation of section 2 (*d*) of said act, by allowing, etc., "anything of value, rebates, or discounts from the price paid, in the course of such commerce, as compensation or in consideration for services, or facilities furnished, or benefits conferred by or through said favored customers" in connection with the processing, etc., of its said products, without making available on proportionally equal terms or any similar terms whatsoever the privilege of securing such payments, etc., including,

as typical, the allowance to favored customers and purchasers of an amount alleged to be equal to that saved in eliminating its smaller 24-count package size and the substitution of certain larger sizes, with regular printing or display advertising omitted; allowance as aforesaid as a discount from the price paid of an amount alleged to be equal to that saved in eliminating its regular salesman's commission or other merchandising or administrative costs on orders sent to its home office; allowance, etc., as aforesaid, as a discount of an amount alleged to be equal to that saved in eliminating delivery of its products, or a standardized delivery cost, through purchase on an f. o. b. basis; allowance, etc., as a discount of an amount alleged to be equal to that saved in eliminating return for damaged, stale, or unsalable candy and confectionery products through the elimination of such returns; allowance, etc., as as a discount of an amount alleged to be equal to that saved by eliminating free deals, premium offers or other promotional aids; and allowance, etc., of "something of value," to certain of its customers, such as free deals, premiums, and offers of various kinds and types "either without or in consideration of benefits conferred or services or facilities furnished" by or through such customers, without making said privileges available to all other customers, etc. (Cout II);

Discriminating in favor of certain of its customers, etc., including said Automatic Canteen Co., etc., and certain of its other customers, etc., in the sale and purchase of its said products, in violation of section 2 (*e*) of said act, by contracting to give, etc., or by giving, etc., certain services, or facilities in connection with the sale or offer of its said products so purchased by said favored customers, etc., not accorded or made available "on proportionally equal terms or on any similar terms whatsoever to all other customers or purchasers competing in the distribution" of its said products, including, as typical, the furnishing, etc., to certain of its customers, etc., of its said candy and bars, packed in the 100-count, 110-count, or the larger package sizes, with regular printing or display advertising omitted, without according on proportionally equal terms or otherwise, said privilege, to other purchasers or customers competing in the distribution of its products; the furnishing, etc., of special printing free of charge on its candy wrappers containing advertising, identification marks, or the name of the purchaser or customer, without according said privilege, etc., to other purchasers, etc., as above set out; the furnishing, etc., of its candy and bars in different shaped and smaller weights at a lesser price without according, etc., said privilege, etc., to all other purchasers, etc., as above set out; and the furnishing, etc., to certain of its said customers, etc., such as said Automatic Canteen Co., of "certain services, facilities, and other things of value, or the privilege" of rendering certain other services and facilities for respondent or of conferring certain benefits on it in connection with the sale or resale

of its products, in order that said favored purchasers, etc., may secure certain alleged equivalent payments or discounts from the standard price, as hereinbefore pleaded, without according or making available on proportionally equal terms or any terms, said service, etc., to all other purchasers competing in the distribution of its products, etc. (Count III); and

Paying or granting, directly or indirectly, to certain buyers, customers and purchasers in various other States, and to other chain, syndicate, and vending-machine customers engaged in commerce, and including said Automatic Canteen Co., brokerage or other compensation or allowance or discounts in lieu thereof, on their own purchases, in violation of section 2 (*c*) of the aforesaid act (Count IV); all as in detail set out in the complaint below, to wit:

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

COUNT I

PARAGRAPH 1. The respondent, New England Confectionery Co., is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with its offices and principal place of business located at 254 Massachusetts Avenue, Cambridge, Mass.

PAR. 2. The respondent is now, and since June 19, 1936, has been, engaged in the manufacture, sale, and distribution of many kinds of candy and other confectionery products in commerce to vending machine operators and lessors, wholesalers and candy jobbers, chain and syndicate stores and to various other retail outlets. Respondent causes said products, when sold, to be transported and shipped from its principal place of business in the State of Massachusetts across State lines to its respective customers and purchasers thereof located in each of the other several States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said products in commerce among and between the various States of the United States and the District of Columbia. Among the principal candy and confectionery products manufactured, offered for sale, and sold by the respondent were candy bars and items sold in wrappers bearing the names "Sky Bar," "Bolster," "Necco Wafers," "Chase & Canada Mints," "Orange Slices," "Brer Rabbit Molasses," and other named candy items that generally retailed for 5 cents. Regardless of how a bar was wrapped or packaged, it was of like grade and quality as all other bars of the respondent bearing the same name.

of $0.0240 to $0.0270 per bar or unit (delivered) and sold the same "Sky Bar" and other identically named candy items in the 24-count package to its "jobber" and other customers at the rates of $0.0244 and $0.0267 per bar or unit (f. o. b.) factory to $0.0283 per bar or unit (delivered)—all of whom competed with each other in the same trade areas in the resale of the respondent's said candy bars and items.

(*f*) The respondent sold to the Automatic Canteen Co. of America during the year 1944 in the 100-count package its "Sky Bar," "Bolster," "Necco Wafers," "Chase & Canada Mints," "Orange Slices," "Brer Rabbit Molasses" and other named candy items at the rates of $0.0235 to $0.0260 per bar or unit (f. o. b. factory), while the respondent sold during the same year (1944) the same "Sky Bar" and other identically named candy items in the 100-count package to its "syndicate" and certain other customers at the rates of $0.0262 to $0.0269 per bar or unit (delivered) and sold the same "Sky Bar" and other identically named candy items in the 24-count package to its "jobber" and other customers at the rates of $0.0267 per bar or unit (f. o. b. factory) to $0.0283 per bar or unit (delivered)—all of whom competed with each other in the same trade areas in the resale of the respondent's said candy bars and items.

(g) The respondent sold to the Automatic Canteen Co. of America during the year 1945 in the 100-count package its "Sky Bar," "Bolster," "Peppermints," "Chase & Canada Mints," "Orange Slices," "Hub Jellies," and other named candy items at the rates of $0.0239 to $0.0260 per bar or unit (f. o. b. factory), and in the 96-count package its "Orange Slices" at the rate of $0.0259 per bar or unit (f. o. b. factory), while the respondent sold during the same year (1945) the same "Sky Bar" and other identically named candy products in the 100-count package to its "syndicate" and certain other customers at the rates of $0.0262 to $0.0269 per bar or unit (delivered) and sold the same "Sky Bar" and other identically named candy products in the 24-count package to its "jobber" and other customers at the rates of $0.0267 per bar or unit (f. o. b. factory) to $0.0283 per bar or unit (delivered)—all of whom competed with each other in the same trade areas in the resale of the respondent's said candy bars and items.

(*h*) The respondent sold to the Automatic Canteen Co. of America during the year 1946 in the 100-count package its "Sky Bar," "Bolster," "Peppermints," "Chase & Canada Mints," and "Chase & Canada Wintergreen" at the rates of $0.0239 to $0.0260 per bar or unit (f. o. b. factory) and at the rates of $0.0262 to $0.0285 per bar or unit (delivered), and in the 100-count package its "Sky Bar" at the rate of $0.0285 per bar or unit (delivered), while the respondent sold during the same year (1946) the same "Sky Bar" and other identically named candy items in the 100-count package to its "syndicate" and certain

other customers at the rates of $0.0262 to $0.0314 per bar or unit (delivered) and sold the same "Sky Bar" and other identically named candy items in the 24-count package to its "jobber" and other customers at the rates of $0.0267 per bar or unit (f. o. b. factory) to $0.0313 per bar or unit (delivered)—all of whom competed with each other in the same trade areas in the resale of the respondent's said candy bars and items.

(*i*) The respondent sold to the Automatic Canteen Co. of America during January and February 1947 in the 100-count package its "Bolster" bar, "Peppermints," "Chase Mints" and "Chase Wintergreen" at the rate of $0.0295 per bar or unit (delivered), and in the 110-count package its "Bolster" bar and "Sky Bar" at the rate of $0.0295 per bar or unit (delivered) while the respondent sold during the same period of time (1947) the same "Bolster" bar and other identically named candy items in the 100-count package to its "syndicate" and certain other customers at the rate of $0.0295 per bar or unit (delivered) and in the 110-count package its "Bolster" bar and "Sky Bar" at the rate of $0.0295 per bar or unit (delivered), and sold the same "Bolster" bar, "Sky Bar" and other identically named candy items in the 24-count package to its "jobber" and other customers at the rates of $0.0323 per bar or unit (f. o. b. factory) to $0.0333 per bar or unit (delivered)—all of whom competed with each other in the same trade areas in the resale of the respondent's said candy bars and items.

PAR. 7. In the course and conduct of its business in commerce, as described in paragraphs 2 and 3 hereof, the respondent, since June 19, 1936, has discriminated, directly or indirectly, in price in connection with the sale of its various candy bars through the use of free deals, premium offers, discount deals, rebates or allowances which were made available to some, but not all of its customers and purchasers who competed in the resale of the respondent's products. Such free deals and discount offers constituted direct and indirect discriminations in price made to competing customers and purchasers of the respondent's products in that:

(*a*) Such deals were only offered and made available to certain trade classifications of customers (and purchasers) and only to certain customers (and purchasers) within a trade classification and were not offered or made available to all other customers (and purchasers) in other competing trade classifications or to all other competing customers (and purchasers) within a trade classification;

(*b*) Such deals were offered and made available to certain customers (and purchasers) located in certain cities, States, parts of States, or sections of the United States and were not offered or made available to all other customers (and purchasers) located in other

cities, States, parts of States, or sections of the United States who competed across these arbitrary lines in the resale of the respondent's products;

(*c*) Said deals and offers were not only discriminatory in offering and availability but were intrinsically discriminatory in that each deal or offer varied as to its net discount or value, the duration of time such deals were offered or available, and differed as to the number or quantities permitted to be purchased;

(*d*) Some of such free deals, premiums, discounts or allowances were for the alleged benefit of the respondent's direct-buying customers, while others were to benefit the respondent's indirect-buying customers, their purchasers or the consumer. Such free goods offers included the giving away of so many candy bars with the purchase of so many of the respondent's bars.

Respondent is unable to show that the differentials, described above in paragraphs 6 and 7, make only due allowance for differences in the cost of manufacture, sale, or delivery or otherwise resulting from the differing methods or quantities in which such products are to such purchasers sold or delivered.

PAR. 8. The effect of the discriminations in price (as alleged in paragraphs 6 and 7 herein) has been and may be to substantially lessen competition and to tend to create a monopoly in the line of commerce in which the respondent and other manufacturers were and are engaged pertaining to the manufacture and sale of candy and confectionery products (as set forth in pars. 2 and 3 herein) and in the lines of commerce in which the respondent's customers and purchasers were and are engaged (as set forth in pars. 4 and 5 herein). A further effect of the above-mentioned discriminations in price has been and may be to injure, destroy, or prevent competition between the respondent and its said competitors (as set forth in par. 3 herein) and to injure, destroy, and prevent competition between certain customers of the respondent and purchasers of its products who, directly or indirectly, received the benefits of said discriminations (as set forth in pars. 4 and 5 herein) and competing customers and purchasers of said products, who did not receive said benefits or who did not have the opportunity to participate in the receipt of said benefits.

A further effect of the above-mentioned discriminations in price has been and may be to injure, destroy, and to substantially lessen competition or tend to create a monopoly in the lines of commerce pertaining to the development, acquisition, manufacture, ownership, sale, operation, or leasing of coin-operated vending machines, as described in paragraph 4 herein. For example, the favored prices granted to the Automatic Canteen Co. of America by the respondent, as described in paragraph 6 herein, materially aided this favored customer and/or its distributors to expand and increase its and their operations, as

described in paragraph 4 herein, to the detriment and injury of all nonfavored competing customers or purchasers of the respondent's products, causing a lessening of competition and a tendency to create a monopoly in the lines of commerce described. Those who received the benefit of the respondent's direct or indirect price discriminations have obtained and may obtain substantial competitive advantages such as that of:

(*a*) Favored vending-machine lessors, operators, and distributor customers and purchasers over their competitors;

(*b*) Favored jobber purchasers and their customers over nonfavored jobber purchasers and their customers;

(*c*) Favored retail customers and purchasers of respondent's products over nonfavored retail customers and purchasers of the respondent's products;

(*d*) Other favored customers and purchasers of the respondent's products over other nonfavored customers and purchasers.

Such discriminations in price by respondent between different purchasers of commodities of like grade and quality in interstate commerce in the manner and form hereinabove set forth are in violation of provisions of subsection (*a*) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13).

COUNT II

And the Federal Trade Commission, as and for a further and Second Count of this complaint, states its charges in respect thereto as follows:

PARAGRAPH 1. Paragraphs 1, 2, 3, 4, 5, 6, and 7 of Count I are hereby adopted and made a part of this count to the same extent and effect as though herein set forth verbatim.

PAR. 2. In the course and conduct of its business in commerce, the respondent is now, and since June 19, 1936, has been discriminating in favor of certain of its customers and purchasers, certain jobber and vending-machine customers, including the Automatic Canteen Co. of America, of Chicago, Ill., but not necessarily limited thereto, and against certain of its other customers and purchasers in respect to the sale and purchase of respondent's candy and confectionery products by contracting to pay and allow or by paying or allowing, directly or indirectly, anything of value, rebates, or discounts from the price paid, in the course of such commerce, as compensation or in consideration for services, or facilities furnished, or benefits conferred by or through said favored customers in connection with the processing, handling, sale or offering for sale of the candy and confectionery products manufactured, sold, and offered for sale by the respondent with-

out making available on proportionately equal terms or on any similar terms whatsoever the privilege of securing such payments, rebates, or discounts from the price paid, or the opportunity to perform the necessary services, facilities or to confer benefits to all other customers competing with such favored customer or customers in the distribution of respondent's candy and confectionery products.

Among and typical of the practices pursued by the respondent, but not necessarily limited thereto, were the practices of paying and allowing rebates and discounts from the price paid for alleged services and facilities rendered or benefits conferred by certain of its said customers and purchasers, including the Automatic Canteen Co. of America, but not necessarily limited thereto, in connection with the sale or the offering for sale of the respondent's candy and confectionery products, as follows:

(*a*) Respondent has been favoring certain of its customers and purchasers of its candy and confectionery products, as aforesaid, by contracting to pay or by paying or allowing, directly or indirectly, as a discount from the price paid for respondent's products an amount alleged to be equal to that saved in eliminating the smaller 24-count package size and the substitution or the supplying of the 100-count, the 110-count, or larger package sizes, with the regular printing or display advertising omitted on the larger count packages without making available (or according) to all other customers (or purchasers) competing in the distribution of the respondent's products on proportionally equal terms or on any similar terms whatsoever, the privilege of securing the same alleged equivalent payment or discount from the standard price paid for the elimination of the smaller 24-count package size or the unwanted printed display advertising.

(*b*) Respondent has been favoring certain of its customers and purchasers of its candy and confectionery products, as aforesaid, by contracting to pay or by paying or allowing, directly or indirectly, as a discount from the price paid for respondent's products, an amount alleged to be equal to that saved in eliminating the respondent's regular salesman's commission or other merchandising or administrative costs on orders for products sent direct to the repondent's home office, without making available (or according) to all other customers (or purchasers) competing in the distribution of the respondent's product on proportionally equal terms or on any similar terms whatsoever, the privilege of securing the same alleged equivalent payment or discount from the standard price paid for eliminating such salesman's commission or other merchandising or administrative costs.

(*c*) Respondent has been favoring certain of its customers and purchasers of its candy and confectionery products, as aforesaid, by contracting to pay or by paying or allowing, directly or indirectly, as a discount from the price paid for respondent's products, an amount

alleged to be equal to that saved in eliminating delivery of the respondent's products or a standardized delivery cost, without making available (or according) to all other customers (or purchasers) competing in the distribution of the respondent's products on proportionally equal terms or on any similar terms whatsoever, the privilege of securing the same alleged equivalent payment or discount from the standard price paid for eliminating such delivery of the respondent's products or a standardized delivery cost by buying on an f. o. b. basis.

(*d*) Respondent has been favoring certain of its customers and purchasers of its candy and confectionery products, as aforesaid, by contracting to pay or by paying or allowing, directly or indirectly, as a discount from the price paid for respondent's product, an amount alleged to be equal to that saved in eliminating returns for damaged, stale, or unsalable candy and confectionery products without making available (or according) to all other customers (or purchasers) competing in the distribution of the respondent's products on proportionally equal terms, or on any similar terms whatsoever, the privilege of securing the same alleged equivalent payment or discount from the standard price paid for eliminating such returns for damaged, stale, or unsalable candy and confectionery products.

(*e*) Respondent has been favoring certain of its customers and purchasers of its candy and confectionery products, as aforesaid, by contracting to pay or by paying or allowing, directly or indirectly, as a discount from the price paid for respondent's products an amount alleged to be equal to that saved by eliminating free deals, premiums, offers or other promotional aids without making available (or according) to all other customers (or purchasers) competing in the distribution of the respondent's products on proportionally equal terms or on any similar terms whatsoever, the privilege of securing the same alleged equivalent payment or discount from the standard price paid for eliminating such so-called free deals, premiums, offers or other promotional aids.

(*f*) Respondent has been favoring certain of its customers and purchasers of its candy and confectionery products, as aforesaid, by contracting to pay anything of value or by paying or allowing, or giving something of value, to certain of its customers and purchasers, as aforesaid, such as free deals, premiums, and offers of various kinds and types either without or in consideration of benefits conferred or services or facilities furnished by or through these certain customers or purchasers without making available (or according) to all other customers (or purchasers) competing in the distribution of the respondent's products on proportionally equal terms or on any similar terms whatsoever, the privilege of securing the same identical thing of value, free deal, premium, offer or its equivalent value.

PAR. 3. The above-described acts and practices of the respondent, as set forth in paragraph 2 of this count, are in violation of subsection (*d*) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13).

COUNT III

And the Federal Trade Commission, as and for a further and Third Count of this complaint, states its charges in respect thereto as follows:

PARAGRAPH 1. Paragraphs 1, 2, 3, 4, 5, and 6 of Count I and paragraph 2 of County II are hereby adopted and made a part of this count to the same extent and effect as though herein set forth verbatim.

PAR. 2. In the course and conduct of its business in commerce, the respondent is now, and since June 19, 1936, has been discriminating in favor of certain of its customers and purchasers, including the Automatic Canteen Co. of America of Chicago, Ill., but not necessarily limited therto, and against certain of its other customers and purchasers in the sale and purchase of respondent's candy and confectionery products by contracting to give or furnish or by giving or furnishing, or by contributing, directly or indirectly, to the giving or the furnishing of certain services or facilities in connection with the sale or the offering for sale of said candy and confectionery products so purchased by these said favored customers and purchasers for resale which were not accorded to or made available on proportionally equal terms or on any similar terms whatsoever to all other customers or purchasers competing in the distribution of the respondent's products. Among and typical of the practices pursued by the respondent, but not necessarily limited thereto, are the following acts and practices of the respondent in giving and furnishing, or contributing to the giving or the furnishing of services or facilities to certain of its customers and purchasers, including the Automatic Canteen Co. of America, of Chicago, Ill., but not necessarily limited thereto, in connection with the sale or the offering for sale of its candy and confectionery products:

(*a*) Respondent has been discriminating in favor of certain of its customers and purchasers of its candy and confectionery products, as aforesaid, by contributing to the furnishing, or by furnishing, directly or indirectly, candy and confectionery bars, packed in the 100-count, the 110-count, or in the larger package sizes (with the elimination of the regular printing or display advertising on said boxes) without according (or making available) on proportionally equal terms or upon any similar terms whatsoever the same privilege, service or facility to all other purchasers (or customers) competing in the distribution of the respondent's products.

(*b*) Respondent has been discriminating in favor of certain of its customers and purchasers of its candy and confectionery products, as aforesaid, by contracting to give or furnish, or by giving or furnishing, or by contributing, directly or indirectly, to the giving or the furnishing of special printing free of charge on its candy wrappers containing advertising, identification marks or the name of the purchaser (or the customer) of the respondent without according (or making available), on proportionally equal terms, or upon any similar terms whatsoever, the same privilege, service or facility to all other purchasers (or customers) competing in the distribution of the respondent's products.

(*c*) Respondent has been discriminating in favor of certain of its customers and purchasers of its candy and confectionery products, as aforesaid, by contributing to the furnishing, or by furnishing, directly or indirectly, candy and confectionery bars in different shaped and smaller weight bars at a lesser price without according (or making available), on proportionally equal terms or upon any similar terms whatsoever, the same privilege, service or facility to all other purchasers (or customers) competing in the distribution of the respondent's products.

(*d*) Respondent has been discriminating in favor of certain of its customers and purchasers of its candy and confectionery products, such as the Automatic Canteen Co. of America, and against its other customers and purchasers, by contracting to furnish or grant or by directly or indirectly contributing to the furnishing or the granting of certain services, facilities and other things of value, or the privilege, service or facility of rendering certain other services and facilities for the respondent or to confer certain benefits on the respondent in connection with the sale or the resale of these products (in order that these favored purchasers or customers may secure certain alleged equivalent payments or discounts from the standard price, as set forth in subparagraph (*a*) to (*e*), inclusive, or paragraph 2 of Count II herein), without according or making available on proportionally equal terms or upon any similar terms whatsoever either the same service, facility and thing of value, to all other purchasers (or customers) competing in the distribution of the respondent's products, or the privilege to render certain other services, facilities or benefits (in order to secure like deductions from the standard price paid).

PAR. 3. The above-described acts and practices of the respondent as set forth in paragraph 2 of this count are in violation of subsection (*e*) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13).

COUNT IV

And the Federal Trade Commission, as and for a further and Fourth Count of this complaint, states its charges in respect thereto as follows:

PARAGRAPH 1. Paragraph 1, 2, 3, 4, 5, and 6 of Count I are hereby adopted and made a part of this count to the same extent and effect as though herein set forth verbatim.

PAR. 2. In the course and conduct of its business in commerce the respondent, since June 19, 1936, has sold its candy and confectionery products to certain buyers, customers and purchasers located in the various States of the United States other than the State where respondent is established and to other chain, syndicate and vending machine customers engaged in commerce, including the Automatic Canteen Co. of America, but not necessarily limited thereto, and has been and is now paying or granting or has paid or granted, directly or indirectly, commissions, brokerage or other compensation or allowance or discounts in lieu thereof to such buyers, customers and purchasers of its candy and confectionery products.

PAR. 3. The paying and granting by the respondent, directly or indirectly, of commissions, brokerage or other compensation and allowances or discounts in lieu thereof to its buyers, customers, and purchasers of its candy and confectionery products, on their own purchases, and the acts and practices of the respondent in promoting sales of candy and confectionery products by paying to buyers, customers and purchasers, directly or indirectly, commissions, brokerage or other compensation and allowances or discounts in lieu thereof, as set forth in paragraph 2 of this Count, are in violation of subsection (*c*) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13).

OPINION AND ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

OPINION OF THE COMMISSION

This matter came on to be heard in regular course upon the motion filed by respondent on March 7, 1949, to dismiss the complaint in its entirety for alleged want of jurisdiction and memorandum brief and affidavit in support thereof, and upon the motion filed by respondent on January 18, 1949, to dismiss Counts II, III, and IV of the complaint or, alternatively, to strike certain matters incorporated in these counts, and memorandum briefs in support of and in opposition to such motion.

The complaint in this proceeding alleges violations of section 2 of the Clayton Act, as amended. This complaint is drawn in four counts which, in numerical order, charge violations of sections 2 (*a*), 2 (*d*), 2 (*e*), and 2 (*c*), respectively, of said act.

The motion to dismiss the complaint in its entirety for alleged lack of jurisdiction is upon the ground that respondent, in selling its products to purchasers in States other than the State in which the goods are manufactured or other than that in which the warehouse

from which shipment may be made is located, title passes to the purchaser upon delivery of the goods by respondent to the common carrier and subsequent movements in interstate commerce are under the control of the purchaser. The allegations of the complaint with respect to commerce, even when qualified by the matters set out in the motion, disclose a situation which the Commission views as so clearly within its jurisdiction under the Clayton Act as not to require discussion.

The other motion challenges the sufficiency of Counts II, III, and IV. In Count II it is charged in subparagraphs (*a*) to (*e*), inclusive, of paragraph 2 that in granting to some purchasers a rebate or discount in price said to equal the savings in cost attributed to different procedures followed in packing, selling, or delivering its products, respondent is compensating such purchasers for services or facilities performed by them. These rebates or discounts are alleged to be unlawful under section 2 (*d*) of the act because like privilege of receiving payments for services or benefits conferred is not accorded on proportionally equal terms to other purchasers competing in the distribution of respondent's products. The Commission is of the view that the matters thus alleged, consisting of the acceptance by purchasers of a discount in price in lieu of respondent following its usual procedures in packing, selling, or delivering its products to them, all in connection with the original sale, do not charge the performance by the customer of a service or facility within the meaning of section 2 (*d*).

It is alleged in subparagraph (*f*) of paragraph 2 that respondent has contracted to pay something of value or has allowed free deals, premiums, and offers of various kinds, either in consideration of benefits conferred or services or facilities furnished, or, in the alternative, without exacting from buyers any benefits, services, or facilities, and has not made these available on proportionally equal terms to competing customers. The charge that respondent has contracted to pay something of value, such as a promotional deal, without exacting benefits, services, or facilities in return is not cognizable under section 2 (*d*) of the statute for the reason that the benefit conferred by the seller is not in consideration of services or facilities rendered. In respect to the alternative allegation that such payment was "in consideration of benefits conferred or services or facilities furnished," no description of the service or facility is set forth. It is inferred that the alleged benefit conferred on respondent flows only from the buyer's acceptance of the deal itself, and the Commission is of the view that mere acceptance by a purchaser of a promotional offer intended to facilitate the original sale, does not constitute the rendering of a service or facility by the purchaser within the meaning of section 2 (*d*).

In subparagraphs (*a*), (*b*), and (*c*) of paragraph 2 of Count III of the complaint discriminations among competing purchasers in fur-

nishing respondent's products packaged in containers of particular sizes, furnishing products marked with the name of the customer, and the supplying of respondent's products in different shapes and sizes are alleged as violations of section 2 (*e*) of the act. As a matter of law these may be services or facilities furnished by the respondent in connection with the resale of its goods.

In subparagraph (*d*) of paragraph 2 of Count III the same matters charged as violations of section 2 (*d*) in subparagraphs (*a*) to (*e*), inclusive, of paragraph 2 of Count II are charged as violations of section 2 (*e*). Apparently these charges are based upon the theory that the discounts granted were contributions to services or facilities not granted to competing purchasers upon proportionally equal terms. Under such a construction substantially any price difference, including those which Congress clearly intended to be considered under section 2 (*a*) of the act, might be charged under section 2 (*e*) and the standard of proportionally equal terms applied instead of the standards established in section 2 (*a*).

Paragraph 1 of Count II adopts and makes a part of that count paragraphs 1 through 7 of Count I, and Counts III and IV similarly adopt paragraphs 1 through 6 of Count I as a part of each of those counts. Paragraphs 1 and 2 of Count I identify the respondent and contain the jurisdictional plea. The matters charged as violations of law in Counts II, III, and IV, respectively, are set out in each count, and none of the paragraphs of Count I included by adoption is alleged to set out any violation of the counts of which it is adopted as a part.

In the complaint here a given practice is, in instance after instance, within the scope of the charges of two or more counts of the complaint. For instance, the matter of discounts in price allegedly based upon savings in cost resulting from elimination of salesmen's commissions on orders sent direct to the factory is separately pleaded in Counts II and III, is apparently the basis for Count IV, and is involved in the discriminations charged in Count I. With minor exceptions, every practice challenged by the complaint appears in or is within the scope of at least two and in most instances three counts of the complaint.

There are instances in which a given act may violate more than one provision of law, and in order to secure a fully effective remedy it may be necessary to plead the same act as violating separate provisions of law. There are also instances in which a pleader cannot be sure whether his proof will show a violation of one or the other of different provisions of law, and it may therefore be desirable to plead both. Such considerations do not explain the multiple charges here. The Commission is of the view that the surplusage in the complaint, and the multiplicity of charges applicable to the same practice with no

apparent necessity therefor, can only result in unreasonably complicating the proceeding and prolonging the trial, and will militate against orderly hearing and disposition of the matter. It is therefore believed that it would be in the public interest to dismiss the present complaint without prejudice to the issuance of a new complaint based in whole or in part upon the same factual situation.

ORDER

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice.

Commissioner Davis absent.

The Commission, on September 23, 1949, also dismissed without prejudice 32 other substantially similar complaints, in which the Commission charged manufacturers of candies and confections with violating sections 2 (*a*), 2 (*d*), and 2 (*e*), and, with some exceptions, 2 (*c*) of the Clayton Act as amended by the Robinson-Patman Act. In said cases the same principles were involved as in the New England Confectionery case above, which was the first to come before the Commission for consideration, and in which motions to dismiss were filed.

The decision in the New England Confectionery case was accordingly controlling in the dismissal of the other 32, as set forth in the following language taken from the "order dismissing amended complaint without prejudice" in the first of this group of cases, namely, Wayne Candies, Inc., Docket 5544.

Said order, after reciting the status of the case as before the Commission, and that the Commission had considered a motion which challenged the sufficiency as a matter of law of Counts II, III, and IV, and incorporation into reference of such counts of certain paragraphs from Count I of the complaint, as "filed by the respondent in the matter of "New England Confectionery Co., Docket 5605" states:

> The complaint in that matter is based on the same legal theory and is similar in form to the amended complaint in this proceeding. The motion to dismiss this proceeding is based on other grounds, but the principles involved in the New England Confectionery matter are controlling here, and for the reasons expressed in the opinion accompanying the order of dismissal without prejudice in that case like action upon the Commission's motion is required here.

Similar language was employed in dismissing the various proceedings in the other cases, irrespective of whether or not a motion to dismiss was before the Commission in the particular matter.

The orders of dismissal heretofore referred to, as made without prejudice, were entered in the following cases, those in which violation of section 2 (*c*) was also charged being indicated by an asterisk.

*Wayne Candies, Inc., Fort Wayne, Ind.; Frosty Nougat, Buns, Chop Suey, Triple Hit, and Flip candy bars. (5544)

*Melster Candies, Inc., Cambridge, Wis.; Cherrie Bar, Swiss Lunch, Brown Beauty, Club House, Ripley Log, Hot Scotch, Sunny Jim, Nut Lunch, Melster Nougat, and special candy bars. (5545)

*Luden's Inc., Reading, Pa.; 5th Avenue Bar, Krimpy-Nut Bar, Bristol Hard Candies and Luden's Cough Drops. (5546)

*D. L. Clark Co., Pittsburgh; Clark Bar, Zag Nut Bar, Honest Square Bar, and Winkler Bar. (5547)

*The Williamson Candy Co., Chicago, wholly-owned subsidiary of General Candy Corp., also of Chicago; Oh Henry, Amos N' Andy. (5548)

*Bunte Bros., Inc., Chicago; Tango, Creamy Cakes, Milk Blocks, Tartines, Two Timers, Maltese, and Blizzard candy bars. (5549)

The Sperry Candy Co., Milwaukee; Chicken Dinner, Denver Sandwich, and Hot Turkey candy bars. (5550)

*The Queen Anne Candy Co., Hammond, Ill.; Cream-O-Nut, Fruit & Nut, Nutty Mello, Aristocrat, Almond Toffee, King Nut Roll, Kernel Nut, Queen Ann, Refresh Bar, and Nut Rolls candy bars. (5551)

*The Switzer's Licorice Co., St. Louis; Switzer's Old Fashioned Licorice Twist. (5552)

William Wrigley, Jr., Co., Chicago; chewing gum. (5553)

*Clayton A. Minter and Ira W. Minter, doing business as Minter Brothers, Philadelphia; Cadet, Glace Brazil, Dutch Maid Fudge, Oriental Cocoanut, Logan Squares, City Blocks, and Toasted MM Square. (5596)

*Town Talk, Inc., Phoenixville, Pa.; Old Fashioned Cookies, Peanut Buttered Scotties, Vanilla Creams, Chocolate Fudge, Shortbreads, Cream Filled Sandwiches, Peanut Buttered Cheese Sandwiches, and Peanut Buttered Crisp Sandwiches. (5597)

*D. Goldenberg, Inc., Philadelphia; Peanut Chew, Zil, Sweet Sue, Walnut Chew, Nickle Andy, Juliets, Whippet, Valley Fudge, Creole, and Kreem Maid Fudge. (5598)

*The Euclid Candy Co., Inc., Brooklyn; Jumbo, Dolly Dimple, Cow Boy, Nu Bites, and Four Star. (5600)

*Mason, Au and Magenheimer Confectionery Mfg. Co., Brooklyn; Peaks, Mints, Rumors, Silver Wings, Please, Brazils, Mol and Coo, Clusters, Eclipse, Rings, Cherry Bombs, Queens, Dots, and Crows. (5601)

*Sweets Co. of America, Inc., Hoboken, N. J.; Tootsie Roll and Tootsie Caramel. (5602)

*Kerr's Butterscotch, Inc., Jamesburg, N. J.; Kerr's Butterscotch, Kerr's Coffee Scotch, and Kerr's Rum and Butter Toffee. (5603)

*Delicia Chocolate and Candy Manufacturing Co. and its sole distributing agent, United Distributors, Inc., Bronx, N. Y.; Delicia Crushed Almond, Coffee Cream, and Delicia Filberts. (5604)

*Charles N. Miller Co. and John Mackintosh & Sons, Ltd., Inc., Boston; Rollo, Toff-O-Luxe, Dearo, Old Fashioned Molasses, and Mary Jane. (5606)

*F. B. Washburn Candy Corp., Brockton, Mass.; Cocoanut, Dandy Dan, and Peanut Bar. (5607)

American Chicle Co., Long Island City, N. Y.; Chiclets, Dentyne, Adams Pepsin, Black Jack, Adams Clove, Beeman's Pepsin, and Tempters. (5608)

*Planters Nut and Chocolate Co., Wilkes-Barre, Pa.; Jumbo Block, Chocolate Crunch, Salted Peanuts, Cocktail Salted Peanuts, and Coco Peanut. (5609)

*George Ziegler Co., Milwaukee; Big Swing, Giant, Mounties, Fruit Salad, and Frappe. (5610)

*The Euclid Candy Co. of Illinois, Inc., Chicago; Jumbo, Four Star, Love Nest, Melt Away, Chock Full O' Almonds, Red Cap, Best Pal, First Mate, Dolly Dimple, Cowboy, Peco, Big Game, Double Header, Rusty, Skipper, and Victory. (5611)

*Dante Candy Co., Chicago; Doctor's Orders, Plum Good, and Challenger. (5612)

*Fred W. Amend Co., Danville, Ill.; Chuckles, Orange Slices, and Assorted Jellies. (5613)

*Shotwell Mfg. Co., Chicago; Roasty Toasty, Nut Nougat, Caramel Sunday, Toasted M. M., Co-Co Figmellow, and Hi Mac. (5614)

*The Kimbell Candy Co., Chicago; Chocolate Pecan Krunch, Chocolate Nips, Speedways, Pineapple Toasties, Kimbell Bar, Macaroons, Almond Tea Cakes, Almond Krunch, Smacks, Krunchies, Chocolate Flavor Coconut, and Y-USA-Y. (5615)

M. J. Holloway & Co., Chicago; A to Z, Trade Wind, and Milk Duds. (5616)

*Universal Match Corp. (Schutter Candy Division), St. Louis and Chicago; Old Nick, Bit-O-Honey, Golden Harvest, Gold, Nut Chews, and Chocolate Ices. (5617)

Hollywood Brands, Inc., Centralia, Ill.; Payday, Milk Shake, Tuesdae, Hail, Zero, Smooth Sailin, Almond Bar, and Butternut. (5618)

*Paul F. Beich Co., Bloomington, Ill.; Pecan Pete, Whiz, and Dipsy Doodle. (5619)

Appearances in the foregoing group of cases were as follows:

Mr. Austin H. Forkner for the Commission; respondents being represented by counsel in the various cases as follows:

Wayne Candies, Inc., D. 5544, *Mr. Paul E. Congdon*, of Fort Wayne, Ind.

Melster Candies, Inc., D. 5545, *Roberts, Roe & Boardman*, of Madison, Wis.

Luden's, Inc., D. 5546, *Sanders, Gravelle, Whitlock & Howrey*, of Washington, D. C.

D. L. Clark Co., D. 5547, *Mr. A. M. Simon*, of Pittsburgh, Pa., and *Mr. John Wattawa*, of Washington, D. C.

Williamson Candy Co. et al., D. 5548, *Moses, Bachrach & Kennedy*, of Chicago, Ill.

Bunte Brothers, Inc., D. 5549, *Mr. Henry Junge*, of Chicago, Ill.

Sperry Candy Co., D. 5550, *Seher & Seher*, of Milwaukee, Wis.

Queen Anne Candy Co., D. 5551, *Beach, Fathchild & Scofield*, of Chicago, Ill.

Switzer's Licorice Co., D. 5552, *Fahey & Switzer*, of St. Louis, Mo.

William Wrigley, Jr., Co., D. 5553, *Winston, Strawn & Shaw*, of Chicago, Ill.

Clayton A. Minter et al., D. 5596, *Mr. David H. Kinley*, of Philadelphia, Pa.

Town Talk, Inc., D. 5597.

D. Goldenberg, Inc., D. 5598, *Denny & Denny*, of Philadelphia, Pa.

Euclid Candy Co., Inc., D. 5600, *Tenzer, Greenblatt, Fallon & Kaplan*, of New York City, before *Mr. Webster Ballinger*, trial examiner.

Mason, Au & Magenheimer Confectionery Mfg. Co., D. 5601, *Rogers, Hoge & Hills*, of New York City, before *Mr. Webster Ballinger*, trial examiner.

Sweets Co. of America, Inc., D. 5602, *Becker, Ross & Stone*, of New York City, and *Mr. Gordon Pickett Peyton*, of Washington, D. C.

Kerr's Butter Scotch, Inc., D. 5603, *Gross & Gross*, of Brooklyn, N. Y., and *Barnes & Hill*, of Washington, D. C.

Delicia Chocolate & Candy Mfg. Co., et al., D. 5604, *Baer & Marks*, of New York City.

New England Confectionery Co., D. 5605, *Choate, Hall & Stewart*, of Boston, Mass., before *Mr. Clyde M. Hadley*, trial examiner.

Charles N. Miller Co., et al., D. 5606, *Mr. Francis T. Leahy*, of Boston, Mass., before *Mr. Clyde M. Hadley*, trial examiner.

F. B. Washburn Candy Corp., D. 5607, *Sanders, Gravelle, Whitlock & Howrey*, of Washington, D. C., before *Mr. Clyde M. Hadley*, trial examiner.

American Chicle Co., D. 5608, *Covington, Burling, Rublee & Shorb*, of Washington, D. C., before *Mr. Webster Ballinger*, trial examiner.

Planters Nut & Chocolate Co., D. 5609, *Daniel & Bernard Jacobson*, of New York City.

George Ziegler Co., D. 5610, *Wood, Warner, Tyrrell & Bruce*, of Milwaukee, Wis.

Euclid Candy Co. of Illinois, Inc., D. 5611, *Tenzer, Greenblatt, Fallon & Kaplan*, of New York City, before *Mr. Earl J. Kolb*, trial examiner.

Dante Candy Co., D. 5612, *Mr. John H. Galgano*, of Chicago, Ill.

Fred W. Amend Co., D. 5613, *Campbell, Clithero & Fischer*, of Chicago, Ill.

Shotwell Mfg. Co., D. 5614, *Sullivan, O'Toole & Sullivan*, of Chicago, Ill.

Kimbell Candy Co., D. 5615, *Sanders, Gravelle, Whitlock & Howrey*, of Washington, D. C., before *Mr. Earl J. Kolb*, trial examiner.

M. J. Holloway & Co., D. 5616, *Mr. Henry Junge*, of Chicago, Ill.

Universal Match Corp., D. 5617, *Sievers & Reagan*, of St. Louis, Mo., before *Mr. Earl J. Kolb*, trial examiner.

Hollywood Brands, Inc., D. 5618, *Mr. Fred L. Wham, Jr.*, of Centralia, Ill.

Paul F. Beich Co., D. 5619, *Costigan, Wollrab & Yoder*, of Bloomington, Ill.

In addition to the foregoing group of cases a similar complaint was dismissed outright on the same date in the matter of Cream-O-Specialty Sales Co., Inc., D. 5599, involving sale of respondent's Cheese, Mac, Duplex, Shortbreads, Tasty, Sultana, Figs, Macaroons,

and other confections and candy, because respondent had discontinued business and been dissolved.

Appearances in said case were as follows:

Mr. Austin H. Forkner for the Commission.

Mr. A. Walter Socolow, of New York City, for respondent.

WARWICK MANUFACTURING CORP. Complaint, January 27, 1945. Order, October 7, 1949. (Docket 5268.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results, nature of manufacture, and prices of product; in connection with the manufacture, assembly and sale of radio receiving sets, radio tubes and like products.

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 Warwick Manufacturing Corp., 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 Warwick Manufacturing Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1700 West Washington Street, Chicago, Ill. The respondent is now, and has been for more than 5 years last past, engaged in the business of manufacturing and assembling radio receiving sets, radio tubes and like products, and in selling and distributing said products to dealers for resale direct to the purchasing public.

PAR. 2. In the course and conduct of its business respondent corporation sells and distributes its radio receiving sets and products to dealers for resale and to members of the purchasing public throughout the United States and in the District of Columbia. Said respondent now causes, and for more than 5 years last past has caused, its said products, when sold either to dealers for resale or direct to the purchasing public, to be transported from its principal place of business in Chicago, Ill., to purchasers thereof at their several points of location in the State of Illinois and in the various States of the United States other than the State of Illinois, and in the District of Columbia.

There is now and has been at all times mentioned herein a course of trade in said products so sold and distributed by said respondent between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of the business set out and described in paragraphs 1 and 2 hereof, for the purpose of inducing the

purchase of respondent's radio receiving sets, radio tubes and like products, offered for sale and sold by it, the respondent has circulated and has caused dealers in its products to circulate among prospective purchasers throughout the United States, by mail and otherwise, advertisements in newspapers and magazines and by means of advertising folders, price lists, pamphlets, circulars, letters, and other literature, many statements and representations concerning its said radio receiving sets. By said means respondent has made and has caused dealers to make false and misleading statements and representations in describing said radio receiving sets and their power and capacity for reception, the number of active functioning tubes in said radio sets and the prices of said sets. Among such statements and representations so made and circulated by respondent and its dealers under its direction are the following:

Famous Make, 12 Tube, 3 Band, AC * *

* * *

Model 1012—List Price $89.95
YOUR COST EACH, SPECIAL---------- $39.95.
Famous Make HOWARD Model 718
12 TUBE, 3 BAND AC De Luxe 1941 All-Walnut Console
Just Look at these Outstanding FEATURES!

* * *

A GREAT BUY AT THE REGULAR PRICE! A TREMENDOUS BARGAIN AT OUR SPECIAL PURCHASE SALE PRICE!

* * *

Original $129.00 List Value! * * * $51.88 Complete.
CHALLENGERS—Orioles New 1940 Super Value Sets!
Quality—Beauty—Performance, Surpassing Anything in Their Price Range!
8 TUBE * *

* * *

Model 3W-200 List $34.95
YOUR COST, EACH--------- $22.95.
TROUBADOR Model LORAYNE

* * *

Seven latest type tubes—nine tube performance
6 Station Feather touch Push Button * * *
Connections for television, phonograph and
microphone. * * *

Model FARGO
6 full working tubes— * * *
Combination television, phonograph and microphone
plug * * *.
ORIOLE 7 TUBE AC-DC (Including Ballast)

* * *

WALNUT MODEL W3-102 LIST---------- $17.95
YOUR COST EACH SPECIAL---------- $10.95
IVORY MODEL W3-100 LIST---------- $19.95
YOUR COST EACH SPECIAL---------- $11.45

Model	Description	Cabinet & Color	Sug'd List	Dist. Net Cost
FAIR	7-Tube AC-DC Superhet. (incl. ballast). Wired for television.	Walnut Plastic	$17. 95	$9. 45
FARGO		Ivory Plastic	18. 95	9. 95
GALA	7-Tube AC-DC Superhet. (incl. ballast), wired for television.	Wood	24. 95	12. 95
JEWEL	8-Tube AC-DC Super. Wired for television * * *.	Wood	34. 95	16. 95
KEN	6-Tube AC-DC Superhet. (incl. ballast) * * Sensational leader.	Console	29. 95	14. 97
LINDY	7-Tube AC-DC Superhet. (incl. ballast), wired for television * *.	Lobby Console	42. 95	20. 97

The aforesaid statements and representations, together with similar statements and representations not herein set out, purport to be descriptive of respondent's said radio receiving sets, the necessary number of functioning tubes and television attachment with which they are equipped, and the prices thereof, and serve as representations on the part of respondent to members of the purchasing public and to dealers that said radio receiving sets are equipped some with 6, some with 7, some with 8 and some with 12 active, fully functioning tubes and are wired or equipped for television, and the prices represented as "list prices" are the regular retail prices, and that the prices stated as "net cost" prices are special reduced prices for said sets.

A substantial number of the purchasing public believe that radio means the reception and transmission of sound waves and their audible reproduction and believe that the greater the number of actual fully functioning tubes in the radio receiving set the better the performance and the greater its power for detecting, amplifying and receiving sound waves, and believe that television means the reception and transmission of picture signals and their visual reproduction, and a substantial number of the purchasing public buy respondent's said radio receiving sets under such beliefs.

PAR. 4. In truth and in fact the foregoing statements and representations made by the respondent are false, deceptive and misleading. Respondent's aforesaid radio receiving sets are not equipped with 6, 7, 8 or 12 active, necessary, fully functioning tubes, respectively, but have installed therein one or two or more ballast, nonfunctioning or tuning beacon tubes or rectifying tubes. Such ballast or tuning beacon tubes or rectifier tubes, devices, and accessories do not serve as detecting, ampifying or oscillating tubes and do not perform any recognized, customary function of radio tubes in the detection, amplification, and reception of radio signals. Respondent's said radio receiving sets are not wired or equipped for television and are not capable of

receiving and reproducing, and do not receive and reproduce, picture signals in visual form; and the prices represented as "net cost" prices or "special" prices are the prices at which respondent sells its said radio receiving sets and authorizes its dealers to sell said sets in the usual and regular course of business, and are not special reduced prices; and said "list prices" are fictitious prices and are not the prices at which respondent sells its said products or at which it authorizes dealers to sell said products.

PAR. 5. Each and all of the foregoing false and misleading statements and representations made by respondent, describing its said radio receiving sets, the number of tubes contained therein, and the capacity of said sets for television or the reception and reproduction of picture signals in visual form, and the prices thereof as hereinabove set out, were and are calculated to, and have had and now have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations are true. As a result of these erroneous and mistaken beliefs, a substantial number of the purchasing public have purchased a substantial volume of respondent's said radio receiving sets.

The aforesaid acts and practices of the respondent as herein alleged are all to the injury and 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.

Complaint dismissed without prejudice by the following order:

The respondent in this proceeding having heretofore, on May 13, 1948, filed a motion seeking dismissal of the complaint herein; and

The respondent having shown by said motion and the affidavit in support thereof that all of the practices charged in the complaint as being in violation of the Federal Trade Commission Act, except the practice of including rectifier tubes in representations that the respondent's radio receiving sets contain a designated number of tubes or are of a designated tube capacity, were discontinued as of January 27, 1945, with no intention on the part of the respondent that such practices would be resumed; and

The Commission, on January 7, 1949, having denied the aforesaid motion, without prejudice, however, to the respondent's right to renew the same upon the presentation of assurances satisfactory to the Commission that the respondent has also discontinued with no intention of resuming the practice of listing rectifier tubes among the tube complements of its radio receiving sets, even when the total tube counts are set forth; and

The respondent having subsequently, on May 20, 1949, renewed its motion for dismissal of the complaint and having submitted in support

of said renewal an additional affidavit, executed by its president, in which the assurances referred to in the Commission's order of January 7, 1949, were presented; and

Counsel in support of the complaint having filed an answer to the respondent's renewal of its motion in which he stated that he did not oppose said motion; and

The Commission being of the opinion that in the circumstances the public interest does not require a continuation of this proceeding:

It is ordered, That the aforesaid motion be, and it hereby is, granted, and that the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding or to take such further or other action against the respondent in the future as may be warranted by the then existing circumstances.

Commissioner Davis absent.

Before *Mr. George Biddle*, trial examiner.

Mr. Carrel F. Rhodes for the Commission.

Schapiro & Schiff, of Chicago, Ill., for respondent.

E. I. DU PONT DE NEMOURS & Co., INC. Complaint, January 9, 1948. Order, October 20, 1949. (Docket 5526.)

Charge: Discriminating in price through arbitrarily classifying a reseller customer as a consumer customer and selling to such customer at the higher consumer price, effect of which practice has been, or may be, to substantially lessen competition between favored customers and those thus arbitrarily and improperly classified as consumers, in the sale and distribution in interstate commerce of vapor metal degreasing solvents, and to substantially lessen competition in the line of commerce concerned, and to tend to create in the respondent and its favored customers a monopoly; in violation of subsection (*a*) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

COMPLAINT: The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated, and is now violating, the provisions of section 2 (*a*) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C. sec. 13), hereby issues its complaint, setting forth its charges with respect thereto as follows:

PARAGRAPH 1. Respondent E. I. du Pont de Nemours & Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its main office and place of business being located in the city of Wilmington, Del.

PAR. 2. Respondent is now, and has been since June 19, 1936, engaged, among other activities, in the business of manufacturing, producing, selling, and delivering a chemical known as trichlorethylene,

hereinafter referred to as "the commodity." Said commodity is a clear liquid which is noninflammable at ordinary room temperatures. It is used as a vapor metal degreasing solvent, particularly in a specially designed degreasing apparatus; it is also used for spotting and dry cleaning, for the extraction of oils, fats, waxes, and alkaline, and as a freezing depressant for carbon tetrachloride fire extinguisher liquid.

When the commodity is sold for any of the above utilizations, it is stabilized before shipment by the addition of a chemical stabilizer in order to reduce its flash point and to protect it against rancidity. While the commodity with the addition of this stabilizer, which is thereafter then known as "regular trichlorethylene," and hereinafter referred to as "the regular commodity," can be used as a degreasing solvent, it is not very efficient for this purpose, so that when the regular commodity is expressly intended for this utilization, additional chemical stabilizers are added either by the purchasers themselves or by the supplier, such as respondent. When the supplier adds this additional special stabilizer in order to make the commodity usable as a vapor metal degreasing solvent, the supplier uses either his own special stabilizer or one furnished to him by the purchaser.

PAR. 3. The respondent manufactures or produces 95 percent of the total volume of the commodity produced in the United States, there being but one other company producing this commodity in the amount of 5 percent. This latter company, due to its limited productive capacity, has been forced to purchase part of its sales requirements of the commodity from respondent on a spot basis.

PAR. 4. In the course and conduct of its business, respondent sells and distributes the commodity, the regular commodity and the commodity stabilized for use as a metal vapor degreasing solvent to purchasers thereof located at various points in the several States of the United States other than the States in which the commodity is produced or manufactured, and causes said commodity, whether regular or especially stabilized, when sold, to be shipped from its manufacturing or producing plants across State lines to such purchasers.

PAR. 5. Respondent sells the regular commodity and the commodity stabilized for use as a metal vapor degreasing solvent directly to consumers for use in the latter's own plants and to wholesale distributors, called resellers, for resale to consumers.

PAR. 6. The same prices are charged by both the respondent and the other company producing or manufacturing the commodity, to their respective customers of a given class, for the commodity, whether it is the regular commodity or the commodity which has been especially stabilized for use as a metal vapor degreasing solvent. The differences in prices by both respondent and the other producer or manufacturer of the commodity to purchasers of the commodity of the same grade

and quality, whether regular or stabilized for the above purposes, are based first on whether the purchaser is a consumer or reseller, second, whether delivery is in drums, carloads, or less than carload lots, or tank cars, and whether delivery is to a cutomer located in one of the four zones into which the country is divided for delivery purposes.

The basic price differential as between sales of the commodity of the same grade and quality regardless of whether it is a regular commodity or the commodity especially stabilized for use as a metal vapor degreasing solvent, to consumers or resellers is approximately 1¾ cents per pound in favor of the resellers.

PAR. 7. For several years prior to 1945, but since June 19, 1936, there was among the purchasers of the commodity from the respondent, for the purposes of resale, one which added to the regular commodity, which it purchased from the respondent, a comparatively small amount of special stabilizer, before reselling the commodity as a vapor metal degreasing solvent under the different trade names of said purchaser.

PAR. 8. In making and attempting to make resales of the commodity thus stabilized, the said purchaser has been, and is, in competition with the respondent and distributors of respondent and other resellers, in interstate commerce, of similar products composed of the commodity and stabilizers which have been added in order to prepare the commodity for use as a vapor metal degreasing solvent.

PAR. 9. Although the respondent knew, or had reason to believe, that the said purchaser has been, and is, in fact a reseller of the commodity thus stabilized, nevertheless respondent sold it the commodity for the several years prior to March 1945 on a consumer price basis and thereby charged the said purchaser prices which were approximately 1¾ cents per pound higher than the prices at which it sold the commodity of like grade and quality to other resellers who compete in the resale, in interstate commerce, under various trade names, of the commodity stabilized as a metal vapor degreasing solvent.

PAR. 10. In 1945, because of the refusal of the respondent to sell the commodity to it except on a consumer price basis, the said purchaser, at least through the year 1946, purchased the commodity from the other producer or manufacturer of the commodity at the same prices at which that other producer or manufacturer sold the commodity to resellers; however, since this other producer's or manufacturer's supply of the commodity was very limited and it also sells to consumers metal vapor degreasing solvents similar to those sold by the said purchaser, the said purchaser has been unable to obtain a sufficient amount of the commodity to meet its requirements. The fact that the said purchasers, when it purchased the commodity from respondent had to do so on a consumer basis, and the further fact, which is a direct result of that condition, that when it purchased the commodity from the other producer or manufacturer of the commodity it was unable to obtain a sufficient

supply of same, have tended to prevent, and do tend to prevent, the said purchaser from selling vapor metal degreasing solvent in competition with the respondent, respondent's distributors, and others distributing metal vapor degreasing solvents similar to those sold by the said purchaser.

PAR. 11. The effect of the respondent's discriminating in price between different purchasers of commodities of like grade and quality through the practices of arbitrarily classifying some of its customers as consumers when in fact they are resellers, and then selling to such customers so classified at the prices at which it regularly sells said commodities to its consumers, has been, or may be, to substantially lessen competition between the favored customers and those of respondent's customers whom the respondent has thus arbitrarily and improperly classified as consumers, in the sale and distribution in interstate commerce of vapor metal degreasing solvents; and the effect also has been, or may be, to substantially lessen competition in the line of commerce in which the respondent is engaged, and to tend to create in the respondent and its favored customers a monopoly, in the sale and distribution in interstate commerce of vapor metal degreasing solvents.

PAR. 12. Such discriminations in price by the respondent between purchasers of commodities of like grade and quality in interstate commerce, in the manner and form aforesaid, are in violation of subsection (*a*) of section 2 of the act, described in the preamble hereof.

Complaint dismissed without prejudice by the following order:

This matter came on to be heard in regular course upon motion to dismiss the complaint in this proceeding without prejudice, filed March 22, 1949, by counsel in support of the complaint, and the consent answer thereto, filed March 30, 1949, by counsel for respondent.

As grounds for dismissal, counsel in support of the complaint in his motion asserts that the complaint herein involves issues relating more to a private controversy than to those affecting the public interest. He does not thereby provide a sufficient basis for dismissal of the complaint, which charges respondent with violation of section 2 (*a*) of the Clayton Act as amended. However, it is apparent from said motion that counsel in support of the complaint has now abandoned his previously asserted denial of respondent's contention that there is an absence of the requisite competitive effect to constitute a violation of subsection (*a*) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

The complaint, issued January 9, 1948, charges respondent with discriminating in price in the sale of trichlorethylene in commerce; alleges that said discrimination occurred prior to 1945 and was confined primarily to a single purchaser. The record indicates that the alleged price discrimination occurred partially because of wartime controls imposed upon the production and price of the commodity in question;

that because of such conditions the competitive effects of the alleged price discrimination were negligible or nonexistent; and that the pricing practices of respondent which brought about said discrimination were discontinued on April 30, 1945, and are not likely to be resumed. Under these circumstances, the Commission is of the opinion that the reasonable possibility of competitive injury, if any ever existed, has now been terminated.

The Commission having duly considered the matter and being now fully advised in the premises:

It is ordered, That the complaint herein be, and it is hereby, dismissed without prejudice to the right of the Commission to take such further action at any time in the future as may be warranted by the then existing circumstances.

Commissioner Davis absent.

Mr. Fletcher G. Cohn, *Mr. James E. Corkey* and *Mr. Robert F. Quinn* for the Commission.

Covington, Burling, Rublee & Shorb, of Washington, D. C., for respondent.

BEACON MANUFACTURING CO. Complaint, August 1, 1944. Opinion and order, November 2, 1949. (Docket 5198.)

Charge: Misbranding or mislabeling and neglecting, unfairly or deceptively, to make material disclosure as to composition of product in violation of the Wool Products Labeling Act of 1939, and the Federal Trade Commission Act in connection with the introduction and manufacture for introduction into commerce and in the sale of blankets and other articles.

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 Beacon Manufacturing Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Beacon Manufacturing Co., is a Massachusetts corporation with its mill and principal office located at Swannanoa, N. C.

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

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

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported, and distributed in said commerce as aforesaid, were blankets and other articles. Exemplifying respondent's practice of violating said act and the rules and regulations promulgated thereunder is its misbranding of the aforesaid products in violation of the provisions of said act and said rules and regulations by failing to affix to said products a stamp, tag, label, or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (*a*) the percentage of the total fiber weight of the wool products, 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 percentum or more, and (5) the aggregate of all other fibers; (*b*) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling, or adulterating matter; (*c*) the percentages in words and figures plainly legible by weight of the wool contents of such wool product where said wool product contains a fiber other than wool; (*d*) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller of the product as provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of said act with respect to such wool product.

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

OPINION BY COMMISSIONER MASON CONCURRED IN BY COMMISSIONERS FERGUSON AND AYRES

The respondent in this proceeding is engaged in the manufacture and in the interstate sale of blankets and other products composed in

whole or in part of wool. Said respondent was charged by the Commission's complaint with having misbranded certain of these products by failing to affix thereto stamps, tags, labels, or other means of identification, or substitutes therefor, showing the true percentages by weight of wool, reused wool, and other fibers contained in such products, as required by the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder. Specifically, it was contended in support of the complaint that certain of the respondent's blankets which bore labels indicating their fiber contents to be 25 percent wool, 25 percent cotton, and 50 percent rayon, actually contained less than 25 percent wool and more than 25 percent cotton and 50 percent rayon. This was based on certain tests conducted by the Bureau of Standards which showed that swatches of blankets labeled 25 percent wool, 25 percent cotton, and 50 percent rayon, actually had wool contents varying from approximately 20 to about 23 percent in one case, a wool content of only 12 percent, in which latter case, however, it was shown that the variance was due to an isolated error on the part of an employee of the respondent in using a box of filling, during the process of manufacture, which was made and intended for another type of blanket. The record in the case consists of the complaint, the respondent's answer, testimony and other evidence introduced before a trial examiner of the Commission, the trial examiner's recommended decision, written briefs and oral arguments of counsel. In view of the nature of the problem involved, the Commission felt that its order dismissing the complaint should be accompanied by this separate opinion, explaining somewhat in detail the reasons for its action.

The record shows that the respondent is the largest manufacturer of blankets in the United States, and possibly the largest in the world, its total dollar volume of business being between 15 and 20 million dollars per year. It employs approximately 2,000 persons in its mills at Swannanoa, N. C., and produces each year more than 1,600,000 blankets which are made partly of wool.

As a result of numerous tests and checks made by and for the respondent over a period of many years, the respondent has found that in order to produce mixed fiber blankets composed of 25 percent wool, 25 percent cotton, and 50 percent rayon, it is necessary for the blend or mix from which such blankets are made to be composed of 38 percent wool and 62 percent rayon, and it is the respondent's practice, in preparing its mix for such blankets, to place therein wool and rayon fibers in these percentages. The actual mechanical process of manufacturing is fully set forth in the record. After the blend or mix goes through the mixing machines it then goes to the carding rooms, where the materials are further blended by mechanical processes, and thence to the spinning room. It is in the spinning room that the

cotton is added to the mix in the form of warp and core yarns. Later, the material goes to the burling room for the correction of imperfections, and thence to the finishing room, where, by a napping process, a layer of wool and rayon is raised giving the blanket smoothness. In the ordinary course of its business the respondent manufactures approximately 2,000 blankets from about 4,000 pounds of raw materials in each single batch or lot.

Through the use in the mix of the percentage of wool fibers above mentioned, the entire batch or lot of blankets produced will average 25 percent wool. The record shows, however, that, regardless of the care exercised or the precautions taken, individual blankets, or separate parts of individual blankets, in a lot made from such a mix may, in their wool content, vary somewhat, and that some of such blankets or parts thereof may contain slightly more than 25 percent wool and others may contain slightly less. This is due in part to mechanical difficulties encountered in the carding, spinning, weaving, and napping processes, making it impossible to distribute the wool fibers in the mix throughout the entire batch of material so evenly and uniformly that each and every blanket produced, and every part of every blanket, will have exactly the same percentage of wool as every other blanket, and in part to such variable factors as the possibility of errors made by employees and climatic conditions existing during the process of manufacture, which very materially affect the distribution of the fibers. Insofar as the latter named conditions are concerned, the evidence is that a manufacturer's control over them, or the effects of variations thereof, is strictly limited.

The record establishes that in the manufacture of its blankets the respondent uses substantially the same processes as those used by its competitors. It shows, further, that it is and for many years has been the respondent's policy to do everything possible and to take every precaution to see that its blankets contain the percentages of wool and other fibers claimed for them, and it appears that, insofar as this result can be obtained, the respondent has been successful in these efforts. It is true that, due to unavoidable variations in the mechanical manufacturing process, and despite the exercise of due care, swatches of some of the respondent's blankets have been found to contain slightly less than the percentages of wool fibers called for by the labels affixed to such blankets, but these variations apparently represent rare and isolated mistakes against which the respondent cannot reasonably be expected to guarantee, and, in the opinion of the Commission, they constitute the type of thing recognized as inevitable by the proviso of section 4 (a) (2) (A) of the Wool Products Labeling Act of 1939, as follows:

Provided, That deviation of the fiber contents of the wool product from percentages stated on the stamp, tag, label, or other means of identification, shall

not be misbranding under this section if the person charged with misbranding proves such deviation resulted from unavoidable variations in manufacture and despite the exercise of due care to make accurate the statements of such stamp, tag, label, or other means of identification.

For the reasons stated, it is the Commission's conclusion that the public interest does not require the issuance of an order to cease and desist in this matter, but that, in the circumstances, the complaint should be dismissed.

ORDER DISMISSING COMPLAINT

This matter coming on to be heard by the Commission upon the complaint of the Commission, the respondent's answer thereto, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, written briefs, and oral arguments of counsel; and

For the reasons set forth in a separate opinion issued simultaneously herewith, the Commission being of the opinion that the respondent has not violated the provisions of the Wool Products Labeling Act of 1939 or the rules and regulations promulgated thereunder, as charged in the complaint:

It is ordered, That the complaint in this proceeding be, and it hereby is, dismissed.

Commissioner Carson not participating.

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

Mr. DeWitt T. Puckett for the Commission.

Mr. James F. Armstrong, of Providence, R. I., for respondent.

ARTRA COSMETICS, INC. Complaint, March 17, 1943. Original findings and order, May 26, 1948. 44 F. T. C. 883. (Docket 4930.) Opinion, and order vacating and setting aside, etc., November 8, 1949.

Charge: Advertising falsely or misleadingly as to qualities, properties, or results and safety of products; in connection with the sale of two preparations, namely, "Irma" and "Sutra," respectively recommended for use as a depilatory, and as a protection against sunburn.

OPINION BY COMMISSIONER FERGUSON, CONCURRED IN BY COMMISSIONERS MASON, AYRES AND CARSON

This matter is again before the Commission upon the petition of respondent, Artra Cosmetics, Inc., filed July 7, 1948, that the order to cease and desist issued herein on May 26, 1948, be vacated and that the findings as to the facts and conclusions issued on the same date be modified in certain respects, and the answer thereto, filed July 19, 1948. Upon previous consideration of said motion and answer, the

Commission, on June 29, 1949, issued and served upon counsel for respondent and counsel supporting the complaint an order granting them 30 days within which to show cause, if any they had, why said findings and the order to cease and desist should not be modified in the particulars therein proposed. Counsel for respondent, on July 29, 1949, filed answer to said order, stating his reasons why no order to cease and desist should be issued, while no answer was filed by counsel supporting the complaint.

Respondent, in its motion to vacate and in its answer to the order to show cause, contends that certain portions of the findings as to the facts are not supported by the greater weight of the evidence of record and that consequently no order should issue.

The order to cease and desist, in effect, prohibits respondent from disseminating or causing to be disseminated in commerce any advertisement which represents, directly or by implication, that its product "Irma," a depilatory, or any other product composed of substantially similar ingredients or possessing substantially similar properties, is safe for use or that the use of said product will not irritate a normal skin. Said order is based in part upon paragraph 6 of the findings of fact, wherein it was found that certain injuries resulted from the use of said product even though directions for its use were followed and the skin of the user was normal. Such a finding is based almost wholly upon the testimony of witnesses who used said product and who are not qualified, either by training or experience, to properly determine the cause of their stated injuries. Respondent supplies users of the product "Irma" with specific directions as to how it should be applied and warns them to use it only on a small test area whenever the skin appears to be sensitive and to refrain from its use if the skin is inflamed or sore. There is substantial expert medical testimony in the record to the effect that said product is reasonably and comparatively safe when used under said directions and that its use as aforesaid will have no adverse effect upon a normal skin.

Upon reconsideration of the entire record in this matter and for the reasons herein stated, the Commission is of the opinion that the evidence of record fails to give substantial support to that portion of the findings of fact upon which the cease and desist order is predicated and that respondent's motion to vacate said order should be granted and the order to cease and desist vacated and set aside.

The order which accompanies this opinion therefore grants said motion and vacates and sets aside the order to cease and desist hereinbefore issued.

ORDER VACATING AND SETTING ASIDE ORDER TO CEASE AND DESIST

This matter came on to be heard in regular course upon the petition of respondent, filed July 7, 1948, that the order to cease and desist

issued herein on May 26, 1948, be vacated and that the findings as to the facts and conclusion issued on the same date be modified in certain respects, and the answer thereto, filed July 19, 1948.

The Commission having duly considered the matter and being now fully advised in the premises:

It is ordered, For the reasons stated in the accompanying opinion by Commissioner Ferguson, concurred in by Commissioners Mason, Ayres and Carson, that respondent's motion to vacate the order to cease and desist issued May 26, 1948, be, and the same is, hereby granted and that said order to cease and desist be, and the same is, hereby vacated and set aside.

Before *Mr. John L. Horner* and *Mr. Randolph Preston*, trial examiners.

Mr. Merle P. Lyon and *Mr. Clark Nichols* for the Commission.

Klein, Alexander & Cooper, of New York City, for respondent.

MORRIS PAINT & VARNISH CO. (A NEBRASKA CORPORATION), ALFRED SOPHIR, AUDREY SOPHIR, AND LEO SOPHIR. Complaint, December 19, 1947. Opinion and order, November 8, 1949. (Docket 5523.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to dealer being manufacturer, history, unique nature, comparative merits, and qualities, properties or results of product; in connection with the sale of paints, varnishes, enamels, and like products.

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 Morris Paint & Varnish Co., a Nebraska corporation, and Alfred Sophir, Audrey Sophir, and Leo Sophir, individually, and as officers of the above-named corporation, hereinafter referred to collectively 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 Morris Paint & Varnish Co. is a corporation organized and existing under the laws of the State of Nebraska, having been incorporated in that State on or about December 29, 1945. Said corporate respondent, together with the individual respondents hereinafter named as its chief officers, have their principal offices and places of doing business at 1510 Capitol Avenue in the city of Omaha, Nebr.

PAR. 2. Respondent Leo Sophir is an individual residing at 7137 Princton Street in University City, a suburb of St. Louis, Mo. Respondents Alfred Sophir and Audrey Sophir are individuals residing at 687 J. E. George Boulevard in the city of Omaha, Nebr. Said indi-

vidual respondents are the chief officers of said corporate respondent, and in their official capacities they have formulated, controlled, and directed the policies, acts, and practices of said corporate respondent from the time of its formation.

PAR. 3. Prior to the formation of said corporate respondent, respondents Alfred Sophir and Audrey Sophir were copartners trading as Morris Paint & Varnish Co. of Omaha, and likewise had their principal place of business at 1510 Capitol Avenue in the city of Omaha, Nebr. When said corporation was formed, said individual respondents transferred to it the assets and business of the partnership, and said corporation has continued said business.

PAR. 4. Respondents have been engaged in the sale and distribution of paints, varnishes, enamels, and like products to the purchasers and users thereof located in the various States of the United States other than the State of Nebraska, and in the District of Columbia.

Respondents have caused such products, when so sold, to be transported from their principal place of business in Omaha, Nebr., to the purchasers and users thereof located in the various States of the United States other than the State of Nebraska, and in the District of Columbia. There has been a course of trade and commerce by said respondents in such products between and among the States of the United States, and in the District of Columbia.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the purchase of their paints, varnishes, enamels, and similar products, respondents have placed upon the labels affixed to the containers in which the particular product is sold and in advertising material circulated throughout the various States of the United States, statements of which the following are typical:

Morris gives you a genuine morlux product created with the aid of professional painters to make paint work easier, to make paints wear better.

In their development over a period of many years, these products have had the fortunate cooperation of master painters who have "proved up" each Paint item by "use" in practical experimental tests after exhaustive laboratory work. The process of attempted improvement is always continued. We constantly strive to meet and exceed all practical painter requirements in the development of these modern finishes—.

ACCEPT NO SUBSTITUTES. There is only one genuine MORLUX PRODUCT—.

This can contains a genuine "MORLUX PRODUCT" manufactured under the most scientific control for the finest finish for which it is intended.

Through the use of said statements and others similar thereto not specifically set forth herein, respondents represent and imply that the particular product so advertised and sold in containers bearing such labels is a product that was created by respondents, and that they manufacture it according to a process developed exclusively by them.

PAR. 6. In truth and in fact, in many instances, the product so

advertised and sold in containers bearing such labels is not a product that was created by respondents or any of them; nor is it manufactured according to any process developed exclusively by respondents or any of them.

In some instances, said product was purchased by respondents from the manufacturer or seller thereof for resale to respondents' customers, and the same product is sold by the manufacturer or seller thereof to other purchasers and the general public under another trade or brand name.

PAR. 7. In the course and conduct of their business and for the purpose of inducing the purchase of their paint designated by the trade name "Seal-Kote," respondents have circulated among prospective customers throughout the various States of the United States, such statements as the following:

A PAINT MADE FOR SCHOOLS THAT CUTS COSTS IN HALF;
A PAINT MADE FOR SCHOOLS THAT DOES A BETTER JOB.
Also available in the new Charleston White.
5. One coat covers wall paper—.
Even the darkest colors.

Through the use of said statements and others similar thereto not specifically set forth herein, respondents represent and imply that:

1. The paint sold by respondents under the trade name "Seal-Kote" has been made especially for painting school buildings.

2. The use of said paint for this purpose in lieu of other paint, can be expected to reduce the cost of painting any school building, or a part thereof by at least one-half.

3. The application of one coat of respondents' white paint designated by the trade name "Seal-Kote" will be sufficient to cover adequately the darkest colors.

PAR. 8. In truth and in fact, the foregoing representations and implications made by respondents are false, deceptive, and misleading in the following respects:

1. Respondents' paint designated by the trade name "Seal-Kote" has not been made, and is not made, especially for the painting of school buildings.

2. Its use for that purpose in lieu of the paints of competitors of the same type and comparable quality will not reduce the cost of painting any school building, or any part thereof, by one-half or by any substantial amount.

3. The application of one coat of respondents' white paint designated by the trade name "Seal-Kote" will not cover adequately the darkest colors of wall paper.

PAR. 9. The acts and practices of respondents in using the foregoing false, deceptive, and misleading statements and representations have had and now have the capacity and tendency to, and do, mislead

and deceive a substantial portion of the purchasing public by creating the erroneous and mistaken belief that said statements and representations were and are true. As a result of such erroneous and mistaken belief so induced, a substantial number of the purchasing public have purchased substantial quantities of respondents' said products.

PAR. 10. 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 meaning and intent of the Federal Trade Commission Act.

OPINION AND ORDER CLOSING CASE WITHOUT PREJUDICE

OPINION OF THE COMMISSION

This matter came on to be heard in regular course upon motion, filed March 11, 1949, by counsel supporting the complaint, to close this case without prejudice, to which no answer has been filed by respondents.

The complaint herein, issued December 19, 1947, charges the respondents named in the caption hereof with unfair and deceptive acts and practices in commerce in the offering for sale, sale, and distribution of paints, varnishes, enamels, and like products through the use of advertising alleged to be false, misleading, and deceptive, by which advertising said respondents represent that one of said products sold under the trade name "Morlux" is a product created by them and manufactured according to a process developed by them, that a paint product sold under the trade name "Seal-Kote" has been made especially for painting school buildings, that the use of said paint can be expected to reduce the cost of painting any school building or part thereof by at least one-half, and that one coat of white "Seal-Kote" will be sufficient to cover adequately the darkest colors.

From the motion to close this proceeding and from the evidence of record, it appears that on or about December 15, 1945, the individual respondents, Alfred Sophir, Audrey Sophir, and Leo Sophir, organized the respondent corporation, which said corporation succeeded to, and has since carried on, the business previously operated and carried on by the individual respondents Alfred Sophir and Audrey Sophir under the trade name "Morris Paint & Varnish Co.," and that said individual respondents, while carrying on said business, did in fact originate and develop the product "Morlux" and that said product was made by a process developed by them in cooperation with the manufacturer thereof. It further appears from said motion and evidence that while the representations alleged in the complaint with respect to the product "Seal-Kote" were used by the individual respondents Alfred Sophir and Audrey Sophir prior to the organiza-

tion of the corporate respondent, said representations have not since been made by either the individual or corporate respondents.

The Commission is therefore of the opinion that under the foregoing circumstances the public interest does not require further corrective action in this matter at this time and that the motion to close this proceeding without prejudice should be granted.

ORDER

It is ordered, That this case be, and it is hereby, closed without prejudice to the right of the Commission to reopen it or to take such further action at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Gideon H. Schiller, of St. Louis, Mo., for respondents.

MORRIS PAINT & VARNISH CO. (A MISSOURI CORPORATION), LEO SOPHIR AND JACK JAY SOPHIR. Complaint, December 19, 1947. Opinion and order, November 8, 1949. (Docket 5524.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to dealer being manufacturer, history, unique nature, comparative merits, and qualities, properties or results of product; in connection with the sale of paints, varnishes, enamels, and like products.

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 Morris Paint & Varnish Co., a Missouri corporation, and Leo Sophir and Jack Jay Sophir, individually, and as officers of the above-named corporation, hereinafter referred to collectively 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 Morris Paint & Varnish Co. is a corporation organized and existing under the laws of the State of Missouri, having been incorporated in that State on or about December 15, 1945. Said corporate respondent, together with the individual respondents hereinafter named as its chief officers, have their principal offices and places of business at 1823 Washington Avenue in the city of St. Louis, Mo.

PAR. 2. Respondent Leo Sophir is an individual residing at 7137 Princeton Street in University City, a suburb of St. Louis, Mo. Respondent Jack Jay Sophir is an individual residing at 7045 Cornell

Street, likewise in said University City. Said individual respondents are the chief officers of said corporate respondent, and in their official capacities they have formulated, controlled, and directed the policies, acts, and practices of said corporate respondent from the time of its formation.

PAR. 3. Prior to the formation of said corporate respondent, respondents Leo Sophir and Jack Jay Sophir, together with Morris Sophir, Mary Sophir, Dorothy Sophir, and Nathan I. Krutchik, were copartners trading as Morris Paint & Varnish Co., and likewise had their principal place of business at 1823 Washington Avenue in the city of St. Louis, Mo. When said corporation was formed, said individual partners transferred to it the assets and business of the partnership, and said corporation has continued said business.

PAR. 4. Respondents have been engaged in the sale and distribution of paints, varnishes, enamels, and like products to the purchasers and users thereof located in the various States of the United States other than the State of Missouri, and in the District of Columbia.

Respondents have caused such products, when so sold, to be transported from their principal place of business in St. Louis, Mo., to the purchasers and users thereof located in the various States of the United States other than the State of Missouri, and in the District of Columbia. There has been a course of trade and commerce by said respondents in such products between and among the States of the United States, and in the District of Columbia.

PAR. 5. In the course and conduct of their business and for the purpose of inducing the purchase of their paints, varnishes, enamels, and similar products, respondents have placed upon the labels affixed to the containers in which the particular product is sold and in advertising material circulated throughout the various States of the United State, statements of which the following are typical:

Morris gives you a genuine morlux product created with the aid of professional painters to make paints work easier, to make paints wear better.

In their development over a period of many years, these products have had the fortunate cooperation of master painters who have "proved up" each Paint item by "use" in practical experimental tests after exhaustive laboratory work. The process of attempted improvement is always continued. We constantly strive to meet and exceed all practical painters requirements in the development of these modern finishes—.

ACCEPT NO SUBSTITUTES. There is only one genuine MORLUX PRODUCT—.

This can contains a genuine "MORLUX PRODUCT" manufactured under the most scientific control for the finest finish for which it is intended.

Through the use of said statements and others similar thereto not specifically set forth herein, respondents represent and imply that the particular product so advertised and sold in containers bearing such labels is a product that was created by respondents, and that they

manufacture it according to a process developed exclusively by them.

PAR. 6. In truth and in fact, in many instances, the product so advertised and sold in containers bearing such labels is not a product that was created by respondents or any of them; nor is it manufactured according to any process developed exclusively by respondents or any of them.

In some instances, said product was purchased by respondents from the manufacturer or seller thereof for resale to respondents' customers, and the same product is sold by the manufacturer or seller thereof to other purchasers and the general public under another trade or brand name.

PAR. 7. In the course and conduct of their business and for the purpose of inducing the purchase of their paint designated by the trade name "Seal-Kote," respondents have circulated among prospective customers throughout the various States of the United States, such statements as the following:

A PAINT MADE FOR SCHOOLS THAT CUTS COST IN HALF;
A PAINT MADE FOR SCHOOLS THAT DOES A BETTER JOB.
Also available in the new Charleston White.
5. One coat covers wall paper—.
Even the darkest colors.

Through the use of said statements and others similar thereto not specifically set forth herein, respondents represent and imply that:

1. The paint sold by respondents under the trade name "Seal-Kote" has been made especially for painting school buildings.

2. The use of said paint for this purpose in lieu of other paint, can be expected to reduce the cost of painting any school building, or a part thereof by at least one-half.

3. The application of one coat of respondents' white paint designated by the trade name "Seal-Kote" will be sufficient to cover adequately the darkest colors.

PAR. 8. In truth and in fact, the foregoing representations and implications made by respondents are false, deceptive, and misleading in the following respects:

1. Respondents' paint designated by the trade name "Seal-Kote" has not been made, and is not made, especially for the painting of school buildings.

2. Its use for that purpose in lieu of the paints of competitors of the same type and comparable quality will not reduce the cost of painting any school building, or any part thereof, by one-half or by any substantial amount.

3. The application of one coat of respondents' white paint designated by the trade name "Seal-Kote" will not cover adequately the darkest colors of wall paper.

PAR. 9. The acts and practices of respondents in using the foregoing, false, deceptive, and misleading statements and representations have had and now have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public by creating the erroneous and mistaken belief that said statements and representations were and are true. As a result of such erroneous and mistaken belief so induced, a substantial number of the purchasing public have purchased substantial quantities of respondents' said products.

PAR. 10. 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 meaning and intent of the Federal Trade Commission Act.

OPINION AND ORDER CLOSING CASE WITHOUT PREJUDICE

OPINION OF THE COMMISSION

This matter came on to be heard in regular course upon motion, filed March 11, 1949, by counsel supporting the complaint, to close this case without prejudice, to which no answer has been filed by respondents.

The complaint herein, issued December 19, 1947, charges the respondents named in the caption hereof with unfair and deceptive acts and practices in commerce in the offering for sale, sale, and distribution of paints, varnishes, enamels, and like products through the use of advertising alleged to be false, misleading, and deceptive, by which advertising said respondents represent that one of said products sold under the trade name "Morlux" is a product created by them and manufactured according to a process developed by them, that a paint product sold under the trade name "Seal-Kote" has been made especially for painting school buildings, that the use of said paint can be expected to reduce the cost of painting any school building or part thereof by at least one-half, and that one coat of white "Seal-Kote" will be sufficient to cover adequately the darkest colors.

From the motion to close this proceeding and from the evidence of record, it appears that on or about December 15, 1945, the individual respondents, Leo Sophir and Jack Jay Sophir, organized the respondent corporation, which said corporation succeeded to, and has since carried on, the business previously operated and carried on by the aforesaid individual respondents and other individuals under the trade name "Morris Paint & Varnish Co.," and that said individuals, while carrying on said business, did in fact orginate and develop the product "Morlux" and that said product was made by a process developed by them in cooperation with the manufacturer thereof. It further appears from said motion and evidence that while the representations alleged in the complaint with respect to the product "Seal-

Kote" were used by the individual respondents prior to the organization of the corporate respondent, said representations have not since been made, either by the individual or corporate respondents.

The Commission is therefore of the opinion that under the foregoing circumstances the public interest does not require further corrective action in this matter at this time and that the motion to close this proceeding without prejudice should be granted.

ORDER

It is ordered, That this case be, and it is hereby, closed without prejudice to the right of the Commission to reopen it or to take such further action at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Gideon H. Schiller, of St. Louis, Mo., for respondents.

VAN CAMP SEA FOOD CO., INC. Complaint, September 28, 1942. Order, November 15, 1949. (Docket 4841.)

Charge: Discriminating in price between different purchasers of its products of like grade and quality by selling such products to some of its customers at lower prices than it sells products of like grade and quality to other of its customers, effect of which practice has been, or may be, to substantially lessen competition and tend to create a monopoly in said line of commerce and to injure, destroy, and prevent competition between respondent and its competitors and among the customers of respondent; and discriminating in favor of certain of its customers against other of its customers by contracting to furnish and by furnishing to the former certain services or facilities in violation of subsections 2 (a) and 2 (e) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act; in connection with the packing and sale of certain types of canned fish including respondent's "Chicken of the Sea Select Blue Label Tuna."

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

PARAGRAPH 1. Respondent Van Camp Sea Food Co., Inc., is a corporation, organized under and existing by virtue of the laws of the State of California with its principal office and place of business located on Terminal Island, Calif.

PAR. 2. Respondent is now and has been since June 19, 1936, engaged in the business of packing, offering for sale, selling, and distributing certain types of canned fish including tuna which constitutes the major part of respondent's business.

In the course and conduct of its said business, respondent sells and distributes the aforesaid products, in commerce, to purchasers thereof located in the various States of the United States, and causes said products, when sold, to be shipped and transported, by rail and boat, from its places of business in the State of California to the purchasers thereof who are located in the various States of the United States other than the State of origin of shipments. There is, and has been, at all times mentioned herein, a constant current of trade and commerce in said products, between respondent, located in the State of California, and its customers located in the various other States of the United States. Said products are sold and distributed principally to wholesale grocery dealers, super markets and chain stores for use and resale within and throughout the United States.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent has been, and is now, engaged in substantial competition, in commerce, with other packers, sellers, and distributors of tuna fish, who for many years prior hereto, have been and are now engaged in packing, selling, and distributing such products, in commerce, across State lines, to purchasers thereof located in the various States of the United States. Many of respondent's customers are competitively engaged with each other and with the customers of respondent's competitors in the purchase and resale of such products within the several trade areas, in which respondent's said customers respectively offer for sale and sell such products purchased from the respondent.

PAR. 4. There are approximately 11 individuals, firms, or corporations, including the respondent, all located in the State of California, who pack, distribute, and sell practically all the domestic canned tuna and canned-tuna products in the United States. The total annual sales value of canned tuna and tuna products in the United States amount to several millions of dollars. The business, of the respondent, in packing, distributing, and selling such products, constitutes approximately 50 percent of the total of such business in the United States.

PAR. 5. The respondent packs, distributes, and sells different grades of tuna under designated brands and labels. Respondent's "Chicken of the Sea Select Blue Label Tuna" is the product chiefly involved in these proceedings.

PAR. 6. The Kroger Grocery & Baking Co. and its subsidiaries operate in excess of 4,000 retail grocery stores in approximately 1,514 cities located in approximately 18 States of the United States. The Kroger Grocery & Baking Co. is one of the largest retail distributors

of tuna and tuna products in the United States and it purchases from the respondent approximately 90 percent of such products, which it distributes.

PAR. 7. In the course and conduct of its business, as hereinabove described, since June 19, 1936, respondent has been and is now discriminating in price between different purchasers of its products of like grade and quality by selling such products to some of its customers at lower prices than it sells products of like grade and quality to other of its customers, many of whom are competitively engaged, one with the other, in the resale of such products within the United States.

Specifically, among such discriminations, the respondent has sold its Chicken of the Sea Select Blue Label Tuna to The Kroger Grocery & Baking Co. and its subsidiaries at a price, per case, substantially lower than the price, per case, which respondent has granted and allowed to other purchasers of such products, of like grade and quality, some of which other purchasers are engaged competitively with The Kroger Grocery & Baking Co. and its subsidiaries in the resale of such products.

Illustrations of the aforesaid discriminations in price are as follows:

(*a*) On January 23, 1937, respondent contracted to sell to The Kroger Grocery & Baking Co., 70,105 cases of tuna, as ordered to December 1, 1937, at a delivered price of $5.50 per case (the case referred to herein consists of 48 one-half pound tins). On February 4, 1937, respondent increased, to the general trade, the case price of such product to $5.50 f. o. b. Terminal Island, Calif., which would make a delivered price of $5.75 per case in the territory where the Kroger company and many of its competitors do business. (For convenience respondent considers 25 cents as the approximate cost of shipping, i. e., when sales are made on a delivered-price basis, the price is 25 cents per case higher than the price f. o. b. plant.) When the Kroger company had purchased only 24,000 cases under said contract and when said contract had 7 months yet to run, the respondent entered into a new contract with the Kroger company on May 6, 1937, to remain in effect until May 1, 1938. The later contract provided for the purchase, by the Kroger company, of 69,396 cases of tuna at a delivered price (ex-warehouse) of $5.50 per case. During the months of March, April, May, June, and July, 1937, the respondent contracted to sell and sold tuna, of a like grade and quality as above, to other purchasers, including competitors of the Kroger company, at prices of $5.50 per case, f. o. b. Terminal Island (i. e., $5.75 delivered), $5.75 f. o. b. Terminal Island (i. e., $6 delivered), and $6 f. o. b. Terminals Island (i. e., $6.25 delivered).

(*b*) The afore-mentioned contract, entered into on May 6, 1937, expired by its expressed terms on May 1, 1938. At said expiration

date there were several thousand cases of tuna, of the amount set forth in said contract, which had not been purchased by the Kroger company. For a period of over 4 months, to wit, from May 1938 to September 1938, the respondent continued to allow the Kroger company to purchase tuna at a delivered price of $5.50 per case, the price set forth in said expired contract. During the said period of over 4 months the respondent sold tuna of like grade and quality to competitors of the Kroger company at prices from 50 to 75 cents per case higher than the price granted to the Kroger company.

(*c*) On several occasions during the year 1938 the Kroger company sold Chicken of the Sea Select Blue Label Tuna through its retail stores to the consuming public at a price of two ½-pound cans for 25 cents, or, computed on a case basis, at $6 per case. At the same time the price, per case, for tuna, of like grade and quality, charged by respondent to wholesalers, was either $6 or $6.25 per case. On September 8, 1938, the Kroger company advertised, in Cincinnati, Ohio, Chicken of the Sea, two ½-pound cans for 25 cents. On September 1 and September 9, 1938, a competitor of the Kroger company in Cincinnati, Ohio, purchased tuna, of like grade and quality from respondent, at $6.25 per case f. o. b. Cincinnati. The wholesale price to the Kroger company's competitor was 25 cents a case more than the retail price charged by the Kroger company to the consuming public.

PAR. 8. The effect of the aforesaid discrimination in price among such customers may be, has been, and is substantially to lessen competition and tend to create a monopoly in said line of commerce and to injure, destroy, and prevent competition between respondent and its competitors and among the customers of respondent.

PAR. 9. In the course and conduct of its business, as aforesaid, and contrary to the provisions of subsection (e) of said section 2 of the Clayton Act (U. S. C., title 15, sec. 13), as amended by the Robinson-Patman Act, respondent is now and since June 19, 1936, has been discriminating in favor of certain of its customers against other of its customers by contracting to furnish and by furnishing to the former certain services or facilities in connection with the sale, or offering for sale, of their products so purchased by them upon terms not accorded to all their customers on proportionally equal terms.

Illustrations of the aforesaid discrimination in services or facilities are as follows:

(*a*) Respondent maintains consigned stocks of tuna in warehouses strategically located in several cities throughout the United States from which warehouses purchasers of less than carload quantities are supplied. When consigned stocks are held in such warehouses 1 month the price of the tuna is increased 5 cents per case; when such stocks are so held longer than 1 month, the said price is increased 10 cents a case. When the Kroger Grocery & Baking Co. or its subsidiaries were sup-

plied from any such consigned stocks the invoicing and billing are handled, not by the regular agents and representatives of the respondent, but exclusively by the executive officials of the respondent, and all such storage charges were omitted; whereas payment of such storage charges is required from competitors of the Kroger company.

(*b*) When the Kroger company or its subsidiaries receive tuna from the consigned stocks, as described above, the Kroger company is permitted by respondent to remit once each month for such goods; whereas competitors of the Kroger company are required by the respondent to pay for such goods at the time of delivery.

PAR. 10. The foregoing alleged acts and practices of said respondent, as set forth in paragraphs 7 and 9, respectively, constitute violations of subsections 2 (a) and 2 (e) of section 2 of the said act of Congress approved October 15, 1941, as amended by said act of Congress approved June 19, 1936.

Complaint dismissed without prejudice by the following order:

This matter came on for final hearing before the Commission upon complaint of the Commission, the answer of respondent, testimony and other evidence introduced before trial examiners of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, and briefs and oral argument in support of and in opposition to the complaint.

The complaint, issued September 28, 1942, charges that since June 19, 1936, respondent, in the sale in commerce of canned tuna fish has been, and is now, discriminating in price between different purchasers of said products of like grade and quality by selling such products to some of its customers at lower prices than it sells products of like grade and quality to other of its customers competitively engaged in the resale of said products within the United States, in violation of subsection (a) of section 2 of the Clayton Act as amended. Respondent is also charged with a violation of subsection (e) of section 2 of said act by discriminating in favor of certain of its customers against other of its customers by contracting to furnish, and by furnishing, to the former, certain services or facilities in connection with the sale or offering for sale of its said canned tuna-fish products so purchased by them upon terms not accorded to all of its customers on proportionally equal terms.

The evidence adduced discloses that respondent packs, sells, and ships annually from 40 to 50 percent of the tuna used in the United States. On January 23 and May 6, 1937, respectively, respondent entered into contracts with Kroger Grocery & Baking Co., under which it agreed to sell tuna at a price therein stated and to deliver said product over a period therein specified. Both during the period of the respective contracts and after the date of their expiration, respondent sold and delivered tuna to Kroger Grocery & Baking Co.

at prices ranging from 25 cents to $1.25 per case of forty-eight 7-ounce cans below the prices charged competing customers for said products of like grade and quality. Additionally, respondent maintained certain warehouse stocks, from which Kroger could, and did, obtain delivery without charge, while other customers were required to pay 5 or 10 cents per case on delivery from the same warehouses. Respondent permitted Kroger a period of time in excess of that granted other customers in which to receive the benefit of a cash discount of 1½ percent.

It now appears that the discriminatory practices set forth above were discontinued about March 1939, at which time respondent terminated deliveries of tuna under the aforesaid contracts and that said practices are not likely to be resumed. Under these circumstances, the Commission is of the opinion that no useful purpose will be served by proceeding further in this matter at this time and having duly considered the matter and being now fully advised in the premises:

It is ordered, That the complaint herein be, and it is, hereby dismissed without prejudice to the right of the Commission to take such further action at any time in the future as may be warranted by the then existing circumstances.

Commissioner Ayres dissenting.

Before *Mr. Andrew B. Duvall* and *Mr. Miles J. Furnas*, trial examiners.

Mr. Daniel J. Murphy for the Commission.

Michelet & Michelet, of Washington, D. C., for respondent.

ELMER R. HASLETT and PRISCILLA HASLETT, trading as THE FACTORY OF THE GOLDEN GATE FARM, ALKALI-TRAP MANUFACTURING CO., ETC. Complaint, April 24, 1942. Order, December 14, 1949. (Docket 4752.)

Charge: Advertising falsely or misleadingly as to scientific or relevant facts and qualities, properties, or results of product; in connection with the sale of four different water softeners, which operate on the zeolite principle, under the trade names Alkali-Trap, Lux Eau, Junior, Senior, and Jumbo.

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 Elmer R. Haslett and Priscilla Haslett, doing business as The Factory of The Golden Gate Farm, Alkali-Trap Co., Alkali-Trap Manufacturing Co., and Golden Gate Factory, 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. The respondents, Elmer R. Haslett and Priscilla Haslett, are doing business as The Factory of The Golden Gate Farm, Alkali-Trap Company, Alkali-Trap Manufacturing Co., and Golden Gate Factory. Their last known business address was Box D, Sausalito, Calif. Their present residence address is 33-27 Eightieth Street, Jackson Heights, Queens, New York, N. Y. For several years last past, respondents have been engaged in selling and distributing water softeners which operate on the zeolite principle. Respondents sell four different models of water softeners, all of which operate on the same principle, under the trade names Alkali-Trap, Lux Eau, Junior, Lux Eau, Senior, and Jumbo. Said water softeners are cylindrical containers packed with zeolite and are so constructed that they can be attached to a water faucet. Zeolite has the property of softening water which is passed through it.

In the course and conduct of their business as aforesaid, the respondents cause and for several years last past have caused their said water softeners, when sold, to be transported from their said place of business in Sausalito, Calif., to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and all times mentioned herein have maintained, a course of trade in said water softeners in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their aforesaid business and for the purpose of inducing the sale of their said water softeners, respondents have made certain false, deceptive, and misleading statements and representations with respect to the qualities and characteristics of different types of water and the results that can be obtained from the use of their said water softeners. Said statements and representations were made in advertisements which appeared in magazines, newspapers, circulars and pamphlets circulated generally among the purchasing public, and in various other ways. Among and typical of the statements and representations used and circulated by respondents as aforesaid are the following:

The only difference between Soft and Hard Water is Insoluble Alkali. Alkali-Trap removes it instantaneously, And, Thus, (without use of chemicals) Hard Water becomes Soft Water, direct from faucet.

Alkali-Trap actually traps and removes the insoluble alkali and hardness instantly.

Madam, THIS is the new water CLEANER that you may have read about in the magazine. Science has found that all domestic water has so much unsuspected dirt in the form of Alkali,— * * *.

Hard water injures or destroys everything it contacts.

A COMMON THIEF—STEALING * * * YOUR HEALTH—IS ALKALI.

Your FAUCET is the DOOR by which it enters, and ALKALI-TRAP is the LOCK that KEEPS IT OUT.

At this time it is well to bring in the observation that if the alkali can destroy even soap that fast, it is difficult to realize what it does to the delicate lining of the stomach, kidneys and gall bladder. When you touch a person's interest in their health and the health of their family, the few dollars required to correct the water situation fades into insignificance immediately.

IMMEDIATE HEALTH RESULTS!

The principal features of most drinking waters and health waters are SOFTNESS and SOLUBLE ALKALINITY. Therefore, if you paid a dollar a bottle, we doubt if you could secure a better drinking water than that so generously produced by the ALKALI-TRAP.

Various authorities suggest that the constant drinking of the insoluble alkali (so-called hard water) constitutes an unwarranted and unnecessary strain on the kidneys and digestive organs. Some even suggest it as a contributing factor in the formation of calcareous deposits such as gallstones and kidney stones.

Aid's skin's health—prevents clogged pores in bathing.

Unsurpassed for healthful drinking water, cooking and coffee.

These coffee tests were conducted under Professor Samuel Prescott—requiring over a year. The first finding was that soft water brings out the true flavor, requiring less coffee—that hard water neutralizes the coffee acid and it loses its "tang."

* * * cuts soap bill in half * * *

Hard water causes 50 to 90% soap waste.

Doubles life of lingerie and silk hose.

Actual tests show 35% longer wear on linens and cottons.

PAR. 3. Through the use of the aforesaid statements and representations, and others of similar import, the respondents have represented, among other things, that hardness of water is caused by the presence therein of "insoluble alkali" and that their said water softeners will trap or remove such substances from the water which passes through them, thereby converting hard water into soft water; that hard water is injurious to the consumer's health, more particularly the stomach, kidneys and gall bladder, and that its use is a factor in the formation of gall and kidney stones; that the consumption of soft water produces immediate beneficial healthful results; that hard water clogs the pores of the skin and is otherwise injurious to the skin and hair; that a minimum saving of 50 percent in the amount of soap ordinarily used can be effected through the use of respondents' water softeners irrespective of the locality or type of water used; that silk clothing will last twice as long and cotton and linen materials will last 35 percent longer if washed in water which passes through said water softeners; and that the use of soft water in making coffee will lessen the amount of the ground coffee bean otherwise necessary to produce a given amount and desired strength of the beverage.

PAR. 4. In truth and in fact, hardness of water is not caused by "insoluble alkali" and respondents' said water softeners will not trap or

remove alkaline substances contained in water nor will they affect the alkaline character of water passed through them to any appreciable extent. Hard water exerts no extraordinary physical strain on the system. Hard water does not constitute a strain on, nor will it injure, the kidneys or digestive organs and it is not a factor in the formation of gall or kidney stones. The consumption of water which has been treated with zeolite does not produce any unusual or immediate effect upon the body nor will it result in an unusual or extraordinary health improvement. Hard water will not, ordinarily, irritate or otherwise injuriously affect the skin nor will it clog the pores of the skin. The use of soft water in making coffee will not lessen the amount of the ground coffee bean necessary to produce a given amount and strength of the beverage. Respondents' water softeners will not effect a 50 percent saving in the amount of soap used irrespective of the locality or type of water used nor will its use prolong the life of silk clothing 50 percent and cotton and linen material 35 percent.

PAR. 5. 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 and does mislead and deceive a substantial portion of the purchasing public with respect to the qualities and characteristics of hard water and soft water and the results that can be achieved through the use of their said water softeners and to induce the purchase of a substantial quantity of said water softeners as a result of the erroneous and mistaken belief so engendered.

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 in commerce within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed without prejudice by the following order:

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

It appearing to the Commission that the complaint charges the respondents with the use of certain false and misleading statements and representations in advertising in connection with the sale and distribution of water softening devices manufactured by them; and

It further appearing from the record that the respondents are not now and since March 1939 have not been engaged in the manufacture or in the sale or advertisement of water softening devices; and

The Commission having no reason to believe that the acts and practices shown to have been in violation of the Federal Trade Commission Act will ever be resumed:

It is ordered, That the complaint herein be, and it hereby is dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding or to take such further or other action against the respondents at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. John P. Bramhall*, *Mr. L. C. Russell*, *Mr. Miles J. Furnas* and *Mr. Arthur F. Thomas*, trial examiners.

Mr. DeWitt T. Puckett for the Commission.

SOLOMON G. SPRING, MIRON SPRING and RUDOLPH SPRING, trading as SPRING WHOLESALE CIGAR CO. Complaint, May 18, 1948. Order, December 14, 1949. (Docket 5541.)

Charge: Selling and using lottery devices and schemes in merchandising.

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 Solomon G. Spring, Miron Spring, and Rudolph Spring, individuals trading and doing business as Spring Wholesale Cigar Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in regard thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Count I

PARAGRAPH 1. Respondents, Solomon G. Spring, Miron Spring, and Rudolph Spring are individuals and copartners trading as Spring Wholesale Cigar Co., with their office and principal place of business located at 2024 Fifth Avenue in the city of Seattle, Wash. All of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter alleged.

Respondents are now and for more than 3 years last past have been engaged in the sale and distribution of devices commonly known as push card and punchboards, and in the sale and distribution of said devices to dealers in various articles of merchandise in commerce between and among the various States of the United States, the Territory of Alaska, and in the District of Columbia.

Respondents cause and have caused said devices when sold to be transported from their place of business in the State of Washington to purchasers thereof at their points of location in the various States of the United States, the Territory of Alaska, and in the District of Columbia. There is now and has been for more than 3 years last past a course of trade in such devices by said respondents in commerce between and among the various States of the United States, the Territory of Alaska, and in the District of Columbia.

PAR. 2. In the course and conduct of their said business as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed, to said dealers in merchandise, push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used in making sales of merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed many kinds of push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

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

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' said

push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push cards and punchboard devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sales plan as described in Paragraph 2 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute said merchandise together with said devices.

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

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

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

Count II

PARAGRAPH 1. Respondents, Solomon G. Spring, Miron Spring, and Rudolph Spring are individuals and copartners trading as Spring Wholesale Cigar Co., with their office and principal place of business located at 2024 Fifth Avenue in the city of Seattle, Wash. Respond-

ents are now and for more than 3 years last past have been engaged in the sale and distribution of cigars, cigarettes, dolls, candy, peanuts, novelties, and other merchandise and have caused said merchandise when sold to be transported from their place of business in the city of Seattle, Wash., to purchasers thereof at their respective points of location in the various States of the United States other than Washington, in the Territory of Alaska, and in the District of Columbia. There is now and has been for more than 3 years last past a course of trade by respondents in such merchandise in commerce between and among the various States of the United States, the Territory of Alaska, and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and have sold to dealers certain assortments of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprises, or lottery schemes when said merchandise is sold and distributed to the purchasing public.

Said assortments include a number of articles of merchandise and a punchboard. The punchboard has printed on the face thereof a legend or instructions that explain the manner in which the said device is to be used or may be used in the sale or distribution of the various specified articles of merchandise. The prices of the sales of punches on said punchboards vary in accordance with the individual device. Each purchase entitles the purchaser to one punch from the board and when a punch is made a printed slip is separated from the punchboard and a number disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the punch completed. Certain specified numbers entitle the purchaser thereof to receive a designated article of merchandise. Persons punching a lucky or winning number receive an article of merchandise at a price much less than the normal retail price of said article. Persons who do not punch a lucky or winning number receive nothing for their money other than the privilege of making a punch from said board. The articles of merchandise are thus distributed to the consuming or purchasing public solely by lot or chance.

Respondent has sold and distributed numerous assortments of merchandise and punchboards, all of which are distributed by the dealer to the purchasing public as above described and such assortments vary only in detail as to the individual items of merchandise, the number of punches on the board and the price of each punch, the plans of all of said boards and assortments being similar to the one hereinabove described.

PAR. 3. Retail dealers who purchase respondent's punchboards and merchandise assortments directly or indirectly expose and sell merchandise to the purchasing public in accordance with the sales plans

above described. Respondents thus supply to and place in the hands of others the means of conducting lotteries or games of chance in the sale of their products in accordance with the sales plans hereinabove set forth. The use by respondents of said sales plan or method in the sale of their merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods, is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plans or methods used by respondent and the element of chance involved therein and thereby are induced to buy and sell respondents' merchandise.

The use by respondents of a sales plan or method involving distribution of merchandise by means of chance, lottery or gift enterprise is contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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

Record closed without prejudice by the following order:

This matter came on to be heard in regular course upon a memorandum, filed June 1, 1949, by Daniel J. Murphy, chief of the Commission's Trial Division, recommending that this proceeding be closed without prejudice, which recommendation is concurred in by counsel for respondents.

It appears from said memorandum and from the record herein that respondents in this proceeding, on June 23, 1949, executed and tendered to the Commission a stipulation as to the facts and agreement to cease and desist covering all of the acts and practices charged in the complaint as being in violation of the Federal Trade Commission Act. It further appears from the record that respondents were not extended an opportunity to dispose of this matter by the execution of a stipulation and agreement to cease and desist prior to the service of the complaint in accordance with the Commission's policy in such cases.

Having duly considered the matter and being now fully advised in the premises, and being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time:

It is ordered, That the stipulation as to the facts and agreement to cease and desist executed by respondents on June 23, 1949, be, and it is, hereby approved and accepted.

It is further ordered, That this case be, and it is, hereby closed without prejudice to the right of the Commission to reopen it or to take such further action at any time in the future as may be warranted by the then existing circumstances.

It is further ordered, That the memorandum, dated June 1, 1949, submitted by Daniel J. Murphy, chief of the Commission's Trial Division, and concurred in by counsel for respondents, and the stipulation as to the facts and agreement to cease and desist, on the basis of which this proceeding is being closed, be included in, and made a part of, the formal record herein.

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

Monheimer, Schermer & Mifflin, of Seattle, Wash., and *Mulliner, Prince & Mulliner*, of Salt Lake City, Utah, for respondents.

ROBERT R. SANDERS, trading as GENERAL SALES CO. Complaint, July 1, 1949. Order, December 14, 1949. (Docket 5674.)

Charge: Selling and using lottery devices and schemes in merchandising.

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 Robert R. Sanders, an individual trading and doing business as General Sales Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in regard thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Count I

PARAGRAPH 1. Respondent Robert R. Sanders is an individual trading and doing business as General Sales Co. with his office and principal place of business located in the Presbyterian Building, 150 Fourth Avenue North, in the city of Nashville, Tenn. Respondent is now and has been for more than 3 years last past engaged in the sale and distribution of devices commonly known as push cards and punchboards and in the sale and distribution of said devices to dealers in various articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia and to dealers in various articles of merchandise in the various States of the United States and in the District of Columbia.

Respondent causes and has caused said devices when sold to be transported from his place of business in the State of Tennessee to purchasers thereof at their points of location in the various States of

the United States, and in the District of Columbia. There is now and has been for more than 3 years last past a course of trade in such devices by said respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, to said dealers in merchandise, push cards, and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondent sells and distributes, and has sold and distributed many kinds of push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

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

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondent on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondent's said push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push cards and punchboard devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sales plan as described in paragraph 2 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof, many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise together with said devices.

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

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

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

Count II

PARAGRAPH 1. Respondent Robert R. Sanders is an individual trading and doing business as General Sales Co. with his office and principal place of business located in the Presbyterian Building, 150 Fourth Avenue North, in the city of Nashville, Tenn. Respondent is now and for more than 3 years last past has been engaged in the sale of watches, knives, novelties, and other articles of merchandise, and has caused said merchandise when sold to be transported from their place of business in the city of Nashville, Tenn., to purchasers thereof at their respective points of location in the various States of the United States other than Tennessee and in the District of Columbia. There is now and has been for more than three years last past a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in Paragraph One hereof, respondent sells and has sold to dealers certain assortments of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprises or lottery schemes when said merchandise is sold and distributed to the purchasing public.

Said assortments include a number of articles of merchandise and a punchboard. The punchboard has printed on the face thereof a legend or instructions that explain the manner in which the said device is to be used or may be used in the sale or distribution of the various specified articles of merchandise. The prices of the sales of punches on said punchboards vary in accordance with the individual device. Each purchase entitles the purchaser to one punch from the board and when a punch is made a printed slip is separated from the punchboard and a number disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the punch completed. Certain specified numbers entitle the purchaser thereof to receive a designated article of merchandise. Persons punching a lucky or winning number receive an article of merchandise at a price much less than the normal retail price of said article. Persons who do not punch a lucky or winning number receive nothing for their money other than the privilege of making a punch from said board. The articles of merchandise are thus distributed to the consuming or purchasing public solely by a lot or chance.

Respondent has sold and distributed numerous assortments of merchandise and punchboards, all of which are distributed by the dealer to the purchasing public as above described and such assortments vary only in detail as to the individual items of merchandise, the number of punches on the board and the price of each punch, the plans of all of

said boards and assortments being similar to the one hereinabove described.

PAR. 3. Retail dealers who purchase respondent's punchboards and merchandise assortments directly or indirectly expose and sell merchandise to the purchasing public in accordance with the sales plans above described. Respondent thus supplies to and places in the hands of others the means of conducting lotteries or games of chance in the sale of their products in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plan or method in the sale of his merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods, is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of change or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plans or methods used by respondent and the element of chance involved therein and thereby are induced to buy and sell respondent's merchandise.

The use by respondent of a sales plan or method involving distribution of merchandise by means of chance, lottery or gift enterprise is contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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

Record closed without prejudice by the following order:

This matter coming on for consideration before the Commission upon the motion filed by respondent on July 27, 1949, to dismiss the complaint in this proceeding, answer in opposition thereto filed by counsel supporting the complaint, and amendment to such motion to dismiss, together with certain documents, filed on behalf of respondent on September 22, 1949, and October 4, 1949, to which no answer has been filed by counsel supporting the complaint; and

It appearing to the Commission that the business operated by respondent was discontinued prior to the institution of this proceeding and that there is adequate reason to believe that use of the acts and practices which are alleged in the complaint to be unlawful will not be resumed; and

The Commission being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time:

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding against respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

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

Mr. Louis Ferguson, of Nashville, Tenn., for respondent.

GEORGE W. COOK AND FLOYD HANSEN, doing business as NORTH COAST SALES CO. Complaint, June 25, 1948. Order, January 10, 1950. (Docket 5568.)

Charge: Selling and using lottery devices and schemes in merchandising.

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 George W. Cook and Floyd Hansen, individuals and copartners trading as North Coast Sales Co., 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:

Count I

PARAGRAPH 1. Respondents George W. Cook and Floyd Hansen are individuals and copartners trading as North Coast Sales Co. with their office and principal place of business located at 805 Union Street, in the city of Seattle, Wash. Respondents are now and for more than 3 years last past have been engaged in the sale and distribution of devices commonly known as push cards and punch boards, and in the sale and distribution of said devices to dealers in various articles of merchandise in commerce between and among the various States of the United States, in the Territory of Alaska and in the District of Columbia.

Respondents cause and have caused said devices when sold to be transported from their place of business in the State of Washington to purchasers thereof at their points of location in the various States of the United States, in the Territory of Alaska, and in the District of Columbia. There is now and has been for more than 3 years last past a course of trade in such devices by said respondents in commerce between and among the various States of the United States, in the Territory of Alaska, and in the District of Columbia.

PAR. 2. In the course and conduct of their said business as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed, to said dealers in merchandise, push cards and punch

boards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed many kinds of push cards and punch boards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

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

Others of said push card and punch board devices have no instructions or legends thereon but have blank spaces provided therefor. On those punch cards and punch boards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said push card and punch board devices first hereinabove described. The only use to be made of said push card and punch board devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States, the Territory of Alaska, and in the District of Columbia, purchase and have purchased respondents' said push card and punch board devices, and pack and assemble, and have packed and assembled, assortments

comprised of various articles of merchandise together with said push cards and punch board devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punch boards in accordance with the sales plan as described in paragraph 2 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punch boards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise together with said devices.

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

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

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

Count II

PARAGRAPH 1. Respondents George W. Cook and Floyd Hansen are individuals and copartners trading as North Coast Sales Co. with their office and principal place of business located at 805 Union Street, in the city of Seattle, Wash. Respondents are now and for more than three years last past have been engaged in the sale and distribution of dolls, fountain pens, knives, compacts, fishing tackle, and other articles of

merchandise, and have caused said merchandise when sold to be transported from their place of business in the city of Seattle, Washington, to purchasers thereof at their respective points of location in the various States of the United States other than Washington, in the Territory of Alaska and in the District of Columbia. There is now and has been for more than three years last past a course of trade by respondents in such merchandise in commerce between and among the various States of the United States, the Territory of Alaska and the District of Columbia.

PAR. 2. In the course and conduct of their business as described in Paragraph One hereof, respondents sell and have sold to dealers certain assortments of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprises or lottery schemes when said merchandise is sold and distributed to the purchasing public.

Said assortments include a number of articles of merchandise and a punch board. The punch board has printed on the face thereof a legend or instructions that explain the manner in which the said device is to be used or may be used in the sale or distribution of the various specified articles of merchandise. The prices of the sales of punches on said punch boards vary in accordance with the individual device. Each purchase entitles the purchaser to one punch from the board and when a punch is made a printed slip is separated from the punch board and a number disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the punch completed. Certain specified numbers entitle the purchaser thereof to receive a designated article of merchandise. Persons punching a lucky or winning number receive an article of merchandise at a price much less than the normal retail price of said article. Persons who do not punch a lucky or winning number receive nothing for their money other than the privilege of making a punch from said board. The articles of merchandise are thus distributed to the consuming or purchasing public solely by lot or chance.

Respondents have sold and distributed numerous assortments of merchandise and punch boards, all of which are distributed by the dealer to the purchasing public as above described and such assortments vary only in detail as to the individual items of merchandise, the number of punches on the board and the price of each punch, the plans of all of said boards and assortments being similar to the one hereinabove described.

PAR. 3. Retail dealers who purchase respondents' punch boards and merchandise assortments directly or indirectly expose and sell merchandise to the purchasing public in accordance with the sales plans above described. Respondents thus supply to and place in the hands of others the means of conducting lotteries or games of chance in the

sale of their products in accordance with the sales plans hereinabove set forth. The use by respondents of said sales plan or method in the sale of their merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods, is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plans or methods used by respondents and the element of chance involved therein and thereby are induced to buy and sell respondents' merchandise.

The use by respondents of a sales plan or method involving distribution of merchandise by means of chance, lottery, or gift enterprise is contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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

Record closed without prejudice by the following order:

This matter came on to be heard in regular course upon memoranda, filed June 28, 1949, by Daniel J. Murphy, Chief of the Commission's Trial Division, recommending that this proceeding be closed without prejudice, which recommendation is concurred in by respondents.

It appears from said memoranda and from the record herein that respondents in this proceeding executed and tendered to the Commission a stipulation as to the facts and agreement to cease and desist covering all of the acts and practices charged in the complaint as being in violation of the Federal Trade Commission Act. It further appears from the record that respondents were not extended an opportunity to dispose of this matter by the execution of a stipulation and agreement to cease and desist prior to the service of the complaint in accordance with the Commission's policy in such cases.

Having duly considered the matter and being now fully advised in the premises, and being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time:

It is ordered, That the stipulation as to the facts and agreement to cease and desist executed by respondents be, and it is, hereby approved and accepted.

It is further ordered, That this case be, and it is, hereby closed without prejudice to the right of the Commission to reopen it or to

take such further action at any time in the future as may be warranted by the then existing circumstances.

It is further ordered, That the memoranda filed June 28, 1949, by Daniel J. Murphy, Chief of the Commission's Trial Division, and concurred in by respondents, and the stipulation as to the facts and agreement to cease and desist, on the basis of which this proceeding is being closed, be included in, and made a part of, the formal record herein.

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

MERCK & CO., INC., AND AMUNO, INC. Complaint, December 1, 1944. Order, January 12, 1950. (Docket 5256.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results of product; in connection with the licensing and sale of a patented product designated Amuno, intended for use as a treatment by mills manufacturing fabrics and other merchandise composed wholly or partly of wool or other animal fibers, to prevent damage to such materials from moths and beetles.

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 Merck & Co., Inc., a corporation, and Amuno, 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 thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Merck & Co., Inc., and Amuno, Inc., are two separate corporations organized under and existing by virtue of the laws of the State of New Jersey, both having their principal places of business in Rahway, N. J. Respondent Amuno, Inc., is a wholly owned and controlled subsidiary of respondent Merck & Co., Inc.

PAR. 2. Respondents are now and have been for more than 2 years last past jointly and cooperatively engaged in the sale and distribution of a patented product designated as Amuno. Said product is intended for use as a treatment by mills manufacturing fabrics and other merchandise composed wholly or partly of wool or other animal fibers, to prevent damage to such materials from moths and beetles. The use of said product is authorized by respondent Amuno, Inc., in license agreements with various licensees who may be either mills or retailers. Control over advertising fabrics or merchandise as having been treated with Amuno is retained by respondent Amuno, Inc., in said license agreements. The retailer-licensees are authorized to license a particular mill to process fabrics or materials with Amuno. Sales of Amuno pursuant to said license agreements are made by respondent Merck & Co., Inc.

In the course and conduct of their business, the respondents cause said product, when sold, to be transported from Rahway, N. J., to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of said product in commerce, respondents have made, and are now making, certain false, deceptive and misleading statements and representations regarding the value of said product and the results to be obtained from its use, by means of statements in said license agreements, advertisements inserted in trade publications, booklets, circulars and leaflets distributed to mills and retailers and in various other ways. Said false, deceptive and misleading statements and representations in said license agreements and in advertisements distributed to mills and retailers are designed and intended to be used and are used by mills and retailers as means to induce the purchase by the ultimate consumers of fabrics and merchandise which have been treated with Amuno. Typical representations are as follows:

It (Amuno) is designed for the treatment of goods or merchandise composed wholly or partly of wool or other animal fibers to protect such goods against attack of certain insects commonly known as clothes moths and carpet beetles. * * *.

AMUNO—A chemical compound developed to protect fabrics or merchandise composed wholly or partially of wool or other animal fibers against damage by clothes moths or carpet beetles.

AMUNO-treated fabrics or merchandise will withstand moth attack even after repeated dry cleanings; and will withstand moth attack under home conditions after five wet dry cleanings or washings.

AMERICANS PAY over $200,000,000 a year to feed clothes moths and carpet beetles (buffalo moths). These pests invade thousands of homes and do irreparable damage.

But "it can't happen here." Blankets treated with AMUNO will resist voracious attacks by moths or carpet beetles. * * * starvation confronts moths hatched on materials treated with AMUNO.

Respondents' customer trade was advised in a circular as follows:

With regard to statements, claims or guarantees made in advertisements or catalogues and on labels or tags in connection with merchandise treated with AMUNO it is believed that phraseology along the following lines would be constructive and effective:

We guarantee that this blanket (or other properly designated types of merchandise) has been treated with AMUNO to prevent moth damage. In our opinion this treatment provides the best available protection against attack by moths or carpet beetles. In the event of moth or beetle damage within _____ years (or prior to _____ washings or_____ dry cleanings) adjustment will be made on the following basis: _____.

PAR. 4. Through the use of the foregoing statements and representations and others of the same import and meaning, the respondents have represented, and are now representing, that Amuno, as a treatment for materials containing wool or other animal fibers, renders such materials moth resistant and immune to attack by moths and carpet beetles; that it insures complete protection of the treated materials against damage by moths or beetles for several years, during which time the treated materials may be subjected to repeated dry cleanings or as many as five wet dry cleanings or washings.

PAR. 5. The foregoing representations are false, deceptive, and misleading. Amuno treatment of materials containing wool or other animal fibers does not render such materials moth resistant or immune to attack by moths or beetles. It does not insure complete protection of the treated materials against damage by moths or beetles for any period of time or after dry cleaning or wet dry cleaning or washing.

PAR. 6. Respondents by their statements in license agreements, advertisements in trade publications, and by the distribution of booklets, circulars, and leaflets as aforesaid, and in various otherways, supply to and place in the hands of retailers and mill operators means and instrumentalities designed to cause, and capable of causing, and which have caused, said retailers and mill operators to mislead and deceive the ultimate purchasers of merchandise containing wool or other animal fibers, as to the value of and the results to be obtained by the treatment of such merchandise with Amuno.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations disseminated as aforesaid in connection with the offering for sale and sale of their said product in commerce has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and into the purchase of substantial quantities of merchandise treated with Amuno because of such erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of the respondents 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.

Record closed without prejudice by the following order:

This matter came on to be heard in regular course upon motion to close this case without prejudice filed April 8, 1949, by counsel in support of the complaint, to which no answer has been filed.

The complaint herein, issued December 1, 1944, charges respondents with unfair and deceptive acts and practices in commerce in the offering for sale, sale, and distribution of "Amuno," a preparation

designated, designed, and intended for use as a treatment by mills manufacturing fabrics and other merchandise composed wholly or partly of wool or other animal fibers to prevent damage to such materials from moths and beetles, through the use and dissemination of certain statements and representations relating to its effectiveness which are alleged to be false, deceptive, and misleading and made, or caused to be made, and disseminated and placed in the hands of retailers and mill operators for their use and dissemination for the purpose of inducing the purchase of merchandise treated with said preparation.

On June 25, 1947, subsequent to the issuance of the aforesaid complaint, the Federal Insecticide, Fungicide, and Rodenticide Act was approved. It appears to the Commission that the preparation involved in this proceeding is an "economic poison" within the meaning of said act, and that in accordance with the provisions thereof the Secretary of Agriculture is vested with primary jurisdiction over certain claims, statements, and representations with regard to its effectiveness, in view of which the Commission is of the opinion that under its policy of cooperation with other Federal agencies in connection with practices and commodities concerning which such other Federal agencies also have jurisdiction, no further corrective action should be taken in this matter at this time with respect to these statements and representations.

From the motion to close it appears that respondents have terminated and abandoned the use and dissemination of other claims, statements, and representations alleged to be false, deceptive and misleading and that their use and dissemination will not be resumed. The Commission is therefore of the opinion that with resepct to these the public interest does not require further corrective action in this matter at this time.

The Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that in the circumstances the motion to close this proceeding without prejudice should be granted:

It is ordered, That this case be, and it is hereby, closed without prejudice to the right of the Commission to reopen it or to take such further action at any time in the future as may be warranted by the then existing circumstances.

Mr. Joseph Callaway for the Commission.

Hughes, Hubbard & Ewing, of New York City, for respondents.

CROUSE-HINDS CO., GENERAL ELECTRIC CO., EAGLE SIGNAL CORP., AUTOMATIC SIGNAL CORP., SIGNAL SERVICE CORP., AND HORNI SIGNAL MANUFACTURING CORP. Complaint, October 9, 1941. Order and opinion, January 23, 1950. (Docket 4610.)