IN THE MATTER OF

COOK-MASTER, INC.,[1] THEODORE N. GOULD, ET AL.

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

Docket 5567. Complaint, June 9, 1948—Decision, Feb. 13, 1950

Where an officer of a corporation which was engaged, prior to its withdrawal from business, in the interstate sale and distribution of "Cook-Master" stainless steel cooking utensils, in competition with others engaged in sale and distribution of utensils made from steel and other materials, and the policies and practices of which he formulated;

In selling said products through representatives who personally solicited the general public and gave demonstrations before groups of prospective purchasers, at which various pamphlets, leaflets, advertising circulars, and other written matter were exhibited and distributed, accompanied by sales talks taken from sales manuals supplied by or under his direction—

(*a*) Represented that Cook-Master cooking utensils provided a means of cooking food which was especially conducive to and did promote good health; and

(*b*) Represented that other means of cooking destroyed minerals and vitamins in food, and that by the use of his utensils they would be preserved;

The facts being that cooking in Cook-Master utensils would not promote health any more than the cooking of food in any other sanitary utensils; mineral content of food is not destroyed or materially affected by heat; and if the cooking water is utilized and not thrown away there is no significant loss of minerals in any of the procedures commonly employed in cooking;

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[1] The Commission on the same date issued an order dismissing the complaint as to Cook-Master, Inc., as follows:

This matter coming on to be heard by the Commission upon a motion filed June 22, 1949, on behalf of the respondents Cook-Master, Inc., and Theodore N. Gould, requesting that the complaint herein be dismissed as to said respondents, and the answer to such motion filed by counsel in support of the complaint; and

It appearing from said motion and from an affidavit attached thereto, executed by Phillip Markey as vice president of the respondent, Cook-Master, Inc., that the respondent, Cook-Master, Inc., at the time of the issuance of the complaint had ceased the sale and distribution of cooking utensils, that it did not then and does not now have either such utensils to sell or sales representatives or agents, and, further, that the corporation is in process of being liquidated and will soon be dissolved; and

It further appearing from the motion and from the record as a whole that the respondent, Theodore N. Gould, is now an employee of the American Stainless Steel Kitchen Co., Inc., but that he was, during the time of the operation of the corporation, Cook-Master, Inc., responsible for the policies, activities and practices of said corporation against which the complaint was directed; and

The Commission being of the opinion that in the circumstances a continuation of this proceeding as against the corporation, Cook-Master, Inc., would not be in the public interest, but that no sufficient reason has been advanced for dismissal as to the individual respondent, Theodore N. Gould:

It is ordered, That the complaint herein be, and it hereby is, dismissed as to the respondent Cook-Master, Inc.

It is further ordered, That the respondents' motion for dismissal of the complaint as to Theodore N. Gould be, and it hereby is, denied.

(*c*) Misrepresented the time of delivery of said products, through promising delivery at or near specified dates without arrangements with suppliers which would enable him to fulfill such promises; and as a result failed to make delivery within a reasonable approximation of the dates promised;

(*d*) Sought to and did cause employees and former employees of his competitors to bring vexatious and unfounded law suits against the latter, and during the pendency of such suits, circulated false and disparaging statements of and concerning the solvency and financial responsibility of said competitors;

(*e*) Sought to and did lure employees, and especially key employees, away from competitors, through the circulation of such false and disparaging statements and through offering financial and other advantages to them; and

(*f*) Sought to and did cause customers to cancel their orders for utensils of competitors and to purchase Cook-Master utensils instead, through the circulation of such false and disparaging statements, and through offering customers of competitors credit for part payments they might have made to them;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers of said stainless steel products to their injury, to unfairly divert trade to said corporation from its competitors, and to impair and destroy competition in the interstate sale of cooking utensils between said corporation and its competitors:

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

Before *Mr. Frank Hier*, trial examiner.

Mr. J. R. Phillips, Jr., for the Commission.

Mr. Maurice L. Markey, of Milwaukee, Wis., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe the Cook-Master, Inc., a corporation, Theodore N. Gould, J. Phillip Markey, Helen E. Markey, and Maurice L. Markey, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Cook-Master, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 239 West Center Street, Milwaukee, Wis. Respondents, Theodore N. Gould, J. Phillip Markey, Helen E. Markey,

and Maurice L. Markey, are the officers of and formulate and control the policies, activities, and practices of corporate respondent, including the acts and practices herein alleged. The addresses of the individual respondents are as follows:

Theodore N. Gould, 3379 South Delaware Avenue, Milwaukee, Wis.
J. Phillip Markey, 2210 North Booth Street, Milwaukee, Wis.
Helen E. Markey, 1800 East Olive Street, Milwaukee, Wis.; and
Maurice L. Markey, 1800 East Olive Street, Milwaukee, Wis.

PAR. 2. Respondents are now, and for more than 2 years last past, have been engaged in the sale and distribution of stainless steel cooking utensils in commerce between and among the various States of the United States and in the District of Columbia. Respondent cause, and have caused, said products when sold, to be transported from their aforesaid place of business in the State of Wisconsin to purchasers thereof located in other States of the United States and in the District of Columbia. There is now, and has been, at all times mentioned herein, a constant course of trade in said products sold by respondents 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, respondents are now and have been in substantial competition with other corporations and with persons, firms, and partnerships likewise engaged in the business of selling and distributing cooking utensils made from steel and other metals or materials, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. The advertising and selling of respondents' cooking utensils are conducted principally through the medium of agents, representatives, or employees through personal solicitation and contact with the general public. The method chiefly employed by said agents, representatives, or employees, at respondents' direction, is the giving of demonstrations or respondents' products before groups of prospective purchasers at which times various pamphlets, leaflets, charts, circulars, and other written matter are exhibited and distributed, accompanied by sales talks, taken from sales manuals supplied by the respondents, all with respect to the characteristics, nature, and effectiveness of said products used in the preparation of food.

PAR. 5. Among and typical of the statements and representations contained in said pamphlets, leaflets, charts, circulars, and other written matters and the sales talks of said agents, representatives or em-

ployees, used in connection with the offering for sale, sale and distribution of respondents said products, in commerce, are the following:

A lifetime of Healthful Cooking.

Cook-Master is made from Allegheny Pluramelt, Stainless Steel.

You are going to eat foods that taste a little different * * * We are under the impression that food must be boiled in order to soften. That is not true because the cellulose structure of fresh foods can be broken down with pasteurization temperatures * * * that is how Cook-Master does its job. The food is soft, you can eat it. It has retained the natural color, appearance, flavor and, the most important part, the vital food elements which, after all folks, is what you really want.

Remember, we are selling health.

Health Dinners.

The most healthful clean cooking ware known to man.

This is, of course, our way of advertising "health".

Aid to health.

Stomach or gall-bladder victims appreciate hearing about their enjoying better health.

Preserves the vital elements of your food.

Cook-Master "waterless" cooking is easier, preserves vitamins and minerals.

Stainless steel does not darken foods as other metals may—is healthier.

By means of the statements and representations immediately hereinabove quoted, respondents have represented and now represent that respondents' said utensils constitute a cooking method which is especially conducive to good health; that the cooking of food in said utensils will promote good health; that other methods of cooking destroy minerals and vitamins and that by the use of respondents' utensils the minerals and vitamins may be preserved in cooked food.

PAR. 6. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, respondents' said utensils do not constitute a cooking method which is especially conducive to health. The cooking of food in said utensils will not promote good health any more than any other sanitary utensils. The mineral content of foods is not destroyed or materially affected by heat. There is no significant loss of these substances in any of the procedures commonly employed in cooking, provided the cooking water is utilized and not thrown away.

PAR. 7. In the course of offering for sale and selling to the public their said cooking utensils, respondents have misrepresented the time of delivery, have promised delivery at or near specified dates without arrangements with suppliers that would enable them to fulfill such promises, and they have failed to make delivery within a reasonable approximation of the date promised.

PAR. 8. Respondents have sought to injure and have injured their said competitors, and have sought to impair and destroy competition in the sale of cooking utensils by the following means and methods:

(*a*) They have sought to cause, and have caused, employees and former employees of competitors of respondents to bring vexatious and unfounded law suits against said competitors and while said suits were pending, circulated and caused to be circulated, false and disparaging statements of and concerning the solvency and financial responsibility of said competitors.

(*b*) By the circulation of said false and disparaging statements and by offering financial and other advantages to the employees of said competitors, they have sought to lure, and have lured, employees, especially key employees, away from competitors.

(*c*) By the circulation of said false and disparaging statements and by offering them credit for part payment they may have made to said competitors, respondents have sought to cause, and have caused, customers of said competitors to cancel orders for such utensils and purchase instead the utensils of respondents.

PAR. 9. The foregoing acts and practices of respondents, have and have had the capacity and tendency to deceive and mislead, and have deceived and misled, purchasers and prospective purchasers to their injury, and to divert trade to respondents from their said competitors, and to impair and destroy competition between respondents and their competitors, to the injury of the public and respondents' competitors, and constitute unfair and deceptive acts and practices, and unfair methods of competition, in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 9, 1948, issued and subsequently served upon the respondents named in the caption hereof its complaint, charging said respondents with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. The respondents' joint answer to said complaint was filed on July 2, 1948.

At a hearing held June 20, 1949, before a trial examiner of the Commission theretofore duly designated by it, and pursuant to leave granted by said trial examiner, the respondents, Cook-Master, Inc., and Theodore N. Gould withdrew as to themselves the aforesaid answer and filed in lieu thereof an answer dated June 18, 1949, in which said respondents, solely for the purposes of this proceeding,

admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to said facts. At the same time a stipulation was entered into by and between counsel for the respondents, J. Phillip Markey, Helen E. Markey, and Maurice L. Markey, and counsel in support of the complaint, in which it was stipulated and agreed that the said J. Phillip Markey and Maurice L. Markey are members of the bar, practicing attorneys-at-law of the State of Wisconsin, that they are not now engaged in the sale of cooking ware or utensils and have no agents or representatives engaged in such business, and that their former association with the respondent, Cook-Master, Inc., was largely in an administrative and advisory capacity in which capacity they did not direct the sales policies of the said Cook-Master, Inc., and in which stipulation it was further stipulated and agreed that the respondent Helen E. Markey was merely one of the incorporators of the respondent, Cook-Master, Inc., and that she never had any active connection with the policies of said corporation. Acting upon said stipulation and a motion contained therein, the trial examiner dismissed the complaint as to the respondents, J. Phillip Markey, Helen E. Markey, and Maurice L. Markey.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the substitute answer of the respondents Cook-Master, Inc., and Theodore N. Gould, and a motion to dismiss the complaint on behalf of said respondents Cook-Master, Inc., and Theodore N. Gould and the answer thereto filed by counsel in support of the complaint, which motion has been disposed of by the Commission in a separate order sustaining the same as to Cook-Master, Inc., and denying it as to Theodore N. Gould; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding, insofar as it affects the respondent Theodore N. Gould, is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Cook-Master, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin. Said respondent formerly maintained its office and principal place of business at 239 West Center Street, Milwaukee, Wis., but in September 1947 it moved to 647 West Virgina Street, Milwaukee, Wis. This corporation is now out of business and the record disclosed that it will soon be dissolved, but prior to about January 1, 1948, it was en-

gaged in the sale and distribution of stainless steel cooking utensils.

PAR. 2. During the time of the operation of Cook-Master, Inc., the officers of said corporation were J. Phillip Markey, address 2210 North Booth Street, Milwaukee, Wis.; Helen E. Markey, address 1800 East Olive Street, Milwaukee, Wis.; Maurice L. Markey, address 1800 East Olive Street, Milwaukee, Wis., and the respondent, Theodore N. Gould, address 3379 South Delaware Avenue, Milwaukee, Wis., but the policies, activities and practices of the corporation were formulated and controlled by the respondent, Theodore N. Gould.

PAR. 3. While in business the corporation Cook-Master, Inc., acting by and through its officers, including the respondent, Theodore N. Gould, caused its stainless steel cooking utensils, when sold, to be transported from its place of business in the State of Wisconsin to purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia. There was during that period of time a constant course of trade in said products between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business the corporation Cook-Master, Inc., was in substantial competition with other corporations and with individuals, firms, and parnerships likewise engaged in the sale and distribution in commerce of cooking utensils made from steel and other metals or materials.

PAR. 5. The advertising and selling of the cooking utensils of Cook-Master, Inc., were conducted principally through the medium of agents, representatives, or employees of said corporation through personal solicitation and contact with the general public. The method chiefly employed by said agents, representatives and employees, at the direction of Cook-Master, Inc., acting by and through the respondent Gould, was the giving of demonstrations before groups of prospective purchasers, at which demonstrations various pamphlets, leaflets, advertising circulars, and other written matter were exhibited and distributed, accompanied by sales talks taken from sales manuals supplied by or under the direction of respondent Gould, all with respect to the characteristics, nature, and effectiveness of Cook-Master utensils used in the preparation of food.

Among and typical of the statements and representations contained in the pamphlets, leaflets, advertising circulars, and other written matter, and in the sales talks of the agents, representatives, and employees, used as aforesaid, were the following:

A lifetime of Healthful Cooking.

Cook-Master is made from Allegheny Pluramelt, Stainless Steel.

You are going to eat foods that taste a little different * * * We are under the impression that food must be boiled in order to soften. That is not true because the cellulose structure of fresh foods can be broken down with pasteurization temperatures * * * that is how Cook-Master does its job. The food is soft, you can eat it. It has retained the natural color, appearance, flavor and, the most important part, the vital food elements which, after all folks, is what you really want.

Remember, we are selling health.

Health Dinners.

The most healthful clean cooking ware known to man.

This is, of course, our way of advertising "health".

Aid to health.

Stomach or gall-bladder victims appreciate hearing about their enjoying better health.

Preserves the vital elements of your food.

Cook-Master "waterless" cooking is easier, preserves vitamins and minerals.

Stainless steel does not darken foods as other metals may—is healthier.

PAR. 6. By means of the foregoing statements and representations the respondent, Theodore N. Gould, represented, among other things, that the Cook-Master cooking utensils provided a means of cooking food which was especially conducive to good health; that the cooking of food in said utensils would promote good health; that other means of cooking destroyed minerals and vitamins in food; and that by the use of Cook-Master utensils the minerals and vitamins in the food would be preserved.

PAR. 7. The aforesaid representations were false, misleading, and deceptive. It was not true that Cook-Master utensils provided a means of cooking food which was especially conducive to good health. The cooking of food in said utensils will not promote good health any more than the cooking of food in any other sanitary utensils. The mineral content of food is not destroyed or materially affected by heat. If the cooking water is utilized and not thrown away there is no significant loss of minerals in any of the procedures commonly employed in cooking.

PAR. 8. In the course of offering for sale and selling to the public Cook-Master utensils, the respondent, Theodore N. Gould, also misrepresented the time of delivery of said products, promising delivery thereof at or near specified dates without arrangements with suppliers that would enable him to fulfil such promises. As a result he thereafter failed to make delivery of said utensils within a reasonable approximation of the dates promised.

PAR. 9. During the time Cook-Master, Inc., was in business the respondent Gould also did the following acts and things: (*a*) He sought to cause, and did cause, employees and former employees of

competitors of Cook-Master, Inc., to bring vexatious and unfounded lawsuits against said competitors and while said lawsuits were pending circulated false and disparging statements of and concerning the solvency and financial responsibility of said competitors; (*b*) by the circulation of said false and disparging statements, and by offering financial and other advantages to the employees of said competitors, he sought to lure, and did lure, employees, especially key employees, away from competitors; (*c*) by the circulation of said false and disparaging statements and by offering customers of competitors credit for part payments they may have made to said competitors he sought to cause, and did cause, such customers to cancel their orders for utensils of said competitors and to purchase instead the utensils of Cook-Master, Inc.

PAR. 10. The use by the respondent, Theodore N. Gould, of the false, misleading, and deceptive statements and representations with respect to Cook-Master products, as set forth in paragraph 5, the misrepresentations concerning the dates of delivery of such products referred to paragraph 8, and the acts and things done to injure competitors as summarized in paragraph 9, all had the capacity and tendency to mislead and deceive purchasers and prospective purchasers of Cook-Master products to their injury, to unfairly divert trade to Cook-Master, Inc., from its competitors, and to impair and destroy competition in the interstate sale of cooking utensils between the said Cook-Master, Inc., and its competitors.

CONCLUSION

The acts and practices of the respondent, Theodore N. Gould, as herein found, were all to the prejudice and injury of the public and of the competitors of Cook-Master, Inc., and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the substitute answer of the respondents Cook-Master, Inc., and Theodore N. Gould, in which answer said respondents, for the purposes of the proceeding, admitted all of the allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to said facts, and a motion to dismiss the complaint as to the respondents Cook-Master, Inc., and Theodore N. Gould, and the

answer thereto, which motion has been disposed of by the Commission in a separate order sustaining the same as to Cook-Master, Inc., and denying it as to Theodore N. Gould; and the Commission, having made its findings as to the facts and its conclusion that the respondent Theodore N. Gould has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Theodore N. Gould, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of cooking utensils, do forthwith cease and desist from:

(1) Representing, directly or by implication, that stainless steel cooking utensils provide a means of cooking food which is especially conducive to the health of the consumer, or that the cooking of food in such utensils will promote good health;

(2) Representing, directly or by implication, that the use of any of the utensils or procedures commonly employed in the cooking of food results in the destruction or material reduction of the mineral content of such food;

(3) Representing, directly or by implication, that the products sold by said respondent will be delivered at any specified time, unless and until adequate arrangements have been made with suppliers of said products to insure delivery at or reasonably near such time;

(4) Making or publishing any false or disparaging statement or representation of or concerning any competitor or the products of any competitor;

(5) Doing or engaging in any of the following acts, practices or things for the purpose or with the effect of injuring competitors: (1) causing or encouraging employees of any competitor to institute vexatious or unfounded lawsuits against such competitor, (2) inducing or attempting to induce employees of any competitor to leave the employ of such competitor, or (3) causing or attempting to cause customers of any competitor to cancel orders for cooking utensils sold by such competitor.

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

IN THE MATTER OF

THE ARMY AND NAVY PUBLISHING COMPANY, ETC., ET AL.

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

Docket 5475. Complaint, Dec. 19, 1946—Decision, Feb. 17, 1950

In considering the possibility of avoiding the absolute prohibition of such a trade name as "Army and Navy Photographic Bureau" to describe a business involving the private sale of photographs of men in military units, by requiring the use, in immediate connection therewith, of some qualifying or explanatory statement to the effect that the business involved was in fact that of a private concern, the Commission was of the view that said name was false *per se*, and that, such being the case, any additional words used in connection therewith would serve only to contradict the name rather than qualify it.

As respects the trade name "Army and Navy Publishing Company" and the question as to whether or not its absolute prohibition might not be avoided by requiring the use in immediate connection therewith of some qualifying or explanatory statement to the effect that the business involved was in fact a private business, the Commission was of the opinion that the representations implied therein were in part substantially true under the facts in the instant case, and that said trade name was not false *per se*, and that its misleading effect could be avoided by the use, in connection therewith, of an explanatory statement making it clear that the business was in fact a private one.

Where three partners engaged in the publication and interstate sale and distribution of books similar to college annuals, which contained reading matter of a descriptive and historical nature with respect to military units in the United States Armed Forces, including photographs of the personnel, and were prepared and published with the express permission and, to a substantial extent, with the cooperation and under the supervision of the military units involved, and were sold only to the men in the service—to whom the matter was usually presented in group meetings—and by mail to their families—

(*a*) Represented or implied through the use of the words "Army and Navy" in their trade name "Army and Navy Publishing Company" that their business was a part of or was connected with the Army and Navy, and that their said publications were produced by or under the auspices of the Army or Navy; when in fact said business was a private concern; and

Where the aforesaid individuals and two others, engaged in the sale to the men and their families of enlargements of photographs made incident to the aforesaid publications—

(*b*) Falsely represented and implied through the use of the trade name "Army and Navy Photographic Bureau," in connection therewith, that their business was a part of or connected with the United States Army and Navy, and that their photographs were produced by or under the auspices of the services;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their identity and business status, and the origin and nature of their products, and thereby cause it to purchase substantial quantities of said products:

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

As respects the trade name "Army and Navy Photographic Bureau" in the instant case, the Commission was of the opinion that said name was false *per se* and should be discontinued entirely, not only because the word "bureau" represented or implied that the business was a part of the Federal Government, but also because the words "Army and Navy" falsely represented that the business was a part of or connected therewith, and that the photographs were sold by or under Army or Navy auspices, and that the representation was not justified by the fact that the photographs were originally made with the consent and assistance of the military units nor by the fact that they were pictures of men in the Army and Navy.

As respects the additional charge in the complaint against certain of the respondents, that they had represented their business as a corporation: the Commission was of the opinion and found that said charge was not sustained by the evidence.

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

Mr. Morton Nesmith for the Commission.

Breazeale, Sachse & Wilson, of Baton Rouge, La., and *Cleary, Gottlieb, Friendly & Cox*, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Herbert S. Benjamin, William Andrew Benson, Porter Earl Dozier, Joan Clem Goldberger, H. S. Benjamin, Jr., and Florence Riddle Benson, copartners, doing business as the Army and Navy Publishing Co., and the Army and Navy Publishing Co., Inc., and Herbert S. Benjamin, Joan Clem Goldberger, H. S. Benjamin, Jr., Dorothy Dennis, and Ann Shendle, copartners, doing business as the Army and Navy Photographic Bureau, 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. Herbert S. Benjamin, William Andrew Benson, Porter Earl Dozier, Joan Clem Goldberger, Herbert S. Benjamin, Jr., and Florence Riddle Benson are copartners doing business as Army and Navy Publishing Co. or as Army and Navy Publishing Co., Inc., with their principal place of business in the city of Baton Rouge,

State of Louisiana. Said respondents are now, and for more than 2 years last past have been engaged in the sale and distribution in commerce between and among various States of the United States of various publications, including military histories, pictorial reviews and service publications. Respondents cause and have caused such publications, when sold, to be shipped from their place of business in the State of Louisiana to purchasers in States other than the State of Louisiana, and in the District of Columbia.

Herbert S. Benjamin, Joan Clem Goldberger, H. S. Benjamin, Jr., Dorothy Dennis, and Ann Shendle are copartners, doing business as Army and Navy Photographic Bureau, with their principal place of business in the city of Baton Rouge, La. Said respondents are now, and for more than 2 years last past, have been engaged in the sale and distribution in commerce between and among the various States of the United States, of various publications, including military histories, pictorial reviews, service publications, and portraits, causing such publications and portraits when sold to be shipped from their place of business in the State of Louisiana, to purchasers in various States of the United States other than the State of Louisiana, and in the District of Columbia.

All of the aforementioned respondents maintain, and at all times mentioned herein have maintained, a course of trade in their products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, and for the purpose of promoting the sale and distribution of their publications in commerce, respondents Herbert S. Benjamin, William Andrew Benson, Porter Earl Dozier, Joan Clem Goldberger, H. S. Benjamin, Jr., and Florence Riddle Benson, doing business as copartners as aforesaid, have adopted and used the names "Army and Navy Publishing Co.," "Army and Navy Publishing Co., Inc.," as trade names under which to conduct their business of selling their said publications and other products, in commerce, and have used said trade names on stationery, letterheads, and invoices disseminated by them.

Respondents Herbert S. Benjamin, Joan Clem Goldberger, H. S. Benjamin, Jr., Dorothy Dennis, and Ann Shendle, doing business as copartners as aforesaid, have used the name "Army and Navy Photographic Bureau" as a trade name under which to conduct their business of selling various publications, portraits, and other products in commerce, and likewise have used such name on stationery, letterheads, and invoices disseminated by them.

PAR. 3. By the use of the aforesaid trade names, Army and Navy Publishing Co., Army and Navy Publishing Co., Inc., and Army and Navy Photographic Bureau, as hereinabove set forth, the respondents have represented, directly and indirectly, to purchasers and prospective purchasers of their respective products that their businesses are conducted by or under the direction of the War or Navy Department of the United States Government; that their publications and other products are official United States Government publications or products published or produced under the auspices of the said United States Government.

Through the use of said trade names, respondents further represent and have represented, directly or indirectly, that they are representatives of the Army and Navy Departments of the United States Government, that the merchandise advertised and sold by them consists wholly or principally of merchandise made or obtained for Army and Navy use, and respondents Herbert S. Benjamin, Joan Clem Goldberger, H. S. Benjamin, Jr., Dorothy Dennis, and Ann Shendle have represented that the Army and Navy Publishing Co., Inc., is a corporation.

PAR. 4. In truth, and in fact, respondents' respective businesses are conducted for a profit and are not conducted by or for the Department of War or the Department of the Navy of the United States Government, and none of respondents' business activities are conducted under the direction or supervision of the United States Government or any department thereof. Said respondents are not representatives of the Departments of War and Navy of the United States Government, and have no affiliation, connection, or association with said departments, and the merchandise advertised and sold by respondents does not consist wholly or principally of merchandise made or obtained for Army and Navy use. Further, in truth and in fact, the said Army and Navy Publishing Co., Inc., is not a corporation, but a trade name employed by the first-named group of respondents herein.

PAR. 5. The use by respondents of the aforesaid acts and practices in connection with the sale and the offering for sale of their said publications and other products in commerce as described herein, has had and now has, a tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the beliefs that the above-described representations are true. As a result of such erroneous and mistaken beliefs, engendered as herein set forth, the purchasing public has been induced to purchase, and has purchased, substantial quantities of respondents' publications and other products.

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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 19, 1946, issued and subsequently served upon the respondents named in the caption hereof its complaint, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of the respondents' answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondents' answer thereto, the testimony and other evidence, the trial examiner's recommended decision (exceptions to which were filed by counsel in support of the complaint, but subsequently withdrawn), and briefs of counsel (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Herbert S. Benjamin, Joan Clem Goldberger, and Herbert S. Benjamin, Jr. (hereinafter sometimes referred to as the publishing company respondents), are copartners doing business under the name Army and Navy Publishing Co., with their principal place of business located in Baton Rouge, La. While three other individuals, William Andrew Benson, Porter Earl Dozier, and Florence Riddle Benson, were also joined in the complaint as respondents, these individuals severed their connection with the business in February 1948, conveying their entire interests to respondent Herbert S. Benjamin. In the circumstances the Commission is of the opinion that no purpose would be served by retaining these three individuals in the proceeding, and that as to them the complaint should be dismissed without prejudice. The terms respondents and publishing company respondents as used hereinafter will not include these

three individuals. The publishing company respondents are and for several years last past have been engaged in the business of publishing and selling books containing historical and photographic records of various military and naval units in the United States Armed Forces.

The respondents, Herbert S. Benjamin, Joan Clem Goldberger, and Herbert S. Benjamin, Jr., are also engaged, along with the respondents, Dorothy Dennis and Ann Shendle, in the making and sale of photographs of persons serving in the United States Armed Forces. These five respondents (sometimes referred to hereinafter as the photographic bureau respondents) are copartners trading under the name Army and Navy Photographic Bureau, and have their principal place of business in Baton Rouge, La.

PAR. 2. The publishing company respondents and the photographic bureau respondents cause and have caused their respective products, when sold, to be shipped from their respective places of business in the State of Louisiana to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their respective products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In form and general appearance the books published and sold by the publishing company respondents are somewhat similar to college annuals. They contain reading matters of a descriptive and historical nature with respect to the military unit involved and numerous pictures, including photographs of the personnel of the unit. Before undertaking the project, respondents contact the commanding officer of the unit, enlist his cooperation, and obtain authority or permission to take the pictures and gather the other material necessary for the book. Usually the unit cooperates closely with respondents in the preparation of the book, frequently supplying much of the material itself. On some occasions the unit has in fact supervised the entire project, even to the extent of specifying such details as the kind and weight of paper to be used in the book, the type, etc., and the price to be charged for the book. Usually a memorandum is issued by the commanding officer to the personnel of the unit stating that authority has been granted respondents to publish the book, and that the book is being prepared with the cooperation and under the supervision of the unit.

Sales of the books are solicited by respondents in two ways: Through contact with the men in the camps and by sales letters and circulars mailed to the men and to their families. In this sales material respondents' trade name Army and Navy Publishing Co. is used, to-

gether with the company's post office and street address. Insofar as solicitations for orders for the books from the personnel of the units are concerned, respondents' contacts are usually not with the men individually, nor through the mails, but in group meetings held in the camps.

Since adopting the trade name Army and Navy Publishing Co. respondents have restricted their business activities to the publishing of books such as are here involved, that is, books portraying military units.

PAR. 4. As stated above, the photographic bureau respondents are engaged in the sale of photographs of persons serving in the Armed Forces, this business being carried on under the trade name Army and Navy Photographic Bureau. This business is a sideline which grew out of the publishing of the books. In gathering the material for the books photographs are made of the men in the unit, and subsequently the men and their families are offered an opportunity to purchase enlarged copies of these same photographs. The military units have nothing at all to do with the sale of the photographs, the cooperation and supervision of the units being limited to the preparation and publishing of the books.

PAR. 5. The principal charge made in the complaint herein is that respondents' trade names Army and Navy Publishing Co., and Army and Navy Photographic Bureau are misleading and deceptive as representing or implying that respondents' businesses are a part of or are connected with the United States Army or Navy, and that respondents' publications or photographs are produced by or under the auspices of the Army or Navy. There is no charge that respondents have made any representations to this effect aside from their use of the trade names. It is the trade names and these alone which are in issue.

PAR. 6. On the question of the effect of the trade names upon the public the record contains testimony from 15 witnesses, 7 of whom testified in support of the complaint and 8 on behalf of respondents. All of the seven witnesses whose testimony was introduced in support of the complaint had purchased either the books or photographs or both. The testimony of five of the seven was to the effect that they understood from the words "Army and Navy" in respondents' trade names that the businesses were a part of or connected with the armed forces. To all five the word "Bureau" in the name of the photographic company was a further indication that this business was connected with the Federal Government. All of these five witnesses were either wives or mothers of men in the service.

The testimony of the other two witnesses in this group (a serviceman and his wife) was to the contrary. To these witnesses the trade names had little or no significance other than indicating that the companies published and sold books and pictures relating to personnel of the Army and Navy.

All of the eight witnesses testifying for respondents are former officers or enlisted men in the Army and most of them had purchased histories of their respective units which had been published by respondents. In substance, the testimony of these eight witnesses was to the effect that respondent's trade name Army and Navy Publishing Co. did not give them the impression that respondents' business was a part of or had any official connection with the Armed Forces.

PAR. 7. In the opinion of the Commission the trade name Army and Navy Photographic Bureau is false per se and should be discontinued entirely. This is true not only because of the word "Bureau," which represents or implies that the business is a part of the Federal Government, but also because of the words "Army and Navy," which represent or imply that the business is a part of or connected with the Army and Navy and that the photographs are sold by or under the auspices of the Army or Navy. There is in fact no connection between respondents' business or the photographs sold by them and the Army or Navy. True, the pictures were made originally with the consent and assistance of the military units but they were made solely for use in the book. The subsequent sale by respondents of enlarged photographs of the men has no connection with the publishing of the book and is a matter with which the military units have nothing to do. The mere fact that the photographs are pictures of men in the Army and Navy is, in the opinion of the Commission, not sufficient to warrant the use of the words "Army and Navy" in respondents' trade name.

Consideration has been given by the Commission to the possibility of avoiding the absolute prohibition of the trade name by requiring the use, in immediate connection with the name, of some qualifying or explanatory statement to the effect that respondents' business is in fact a private business concern. The Commission is of the view, however, that as the name is false per se any additional words used in connection with it could serve only to contradict the name rather than qualify it.

PAR. 8. The other trade name, Army and Navy Publishing Co., presents a much more difficult question. In the opinion of the Commission the words "Army and Navy," as in the case of the trade name considered above, represent or imply that the business is a part of

or is connected with the Army and Navy, and that the publications are produced by or under the auspices of the Army and Navy. These representations, however, are in part substantially true. While respondents' business is not a part of nor connected with the Army or Navy, the books themselves are prepared and published with the express authority and permission and, to a substantial extent, with the assistance and cooperation and under the supervision of the military units involved. In no other way could the pictures and other material for the books be obtained. The books would therefore appear to be in the nature of semiofficial publications or publications produced under the auspices of military units. Of importance, also, is the fact that respondents restrict their business operations under this trade name to these military publications. The trade name is not used in connection with other publications.

In the circumstances the Commission is of the view that this trade name is not false per se, and that its misleading effect can be avoided by the use, in connection with the name, of an explanatory statement making it clear that respondents' business is in fact a private business concern. In selling their books respondents do not employ house-to-house sales agents. As heretofore stated, the books are sold to only two groups, the men in the service, to whom the matter is usually presented in group meetings, and the families of the men, who are solicited through the mail. There would appear to be little likelihood that the men in the service would be misled. As to the families of the men, the danger of deception or misunderstanding would appear to be avoided if respondents in their sales letters, circulars, invoices, etc., would accompany their trade name with a conspicuous statement to the effect that their business is a private business concern.

PAR. 9. While the complaint contained an additional charge against certain of the respondents (that these respondents had represented their business to be a corporation) the Commission is of the opinion and finds that this charge is not sustained by the evidence.

PAR. 10. The acts and practices of the respondents as herein set forth have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' identity and business status, and with respect to the origin and nature of respondents' products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, and briefs of counsel (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents (other than the respondents William Andrew Benson, Porter Earl Dozier, and Florence Riddle Benson) have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Herbert S. Benjamin, Joan Clem Goldberger, and Herbert S. Benjamin, Jr., individually and as copartners trading under the name Army and Navy Publishing Co., and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of books or other publications in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "Army" or the word "Navy," or any simulation thereof, as a part of or in connection with said respondents' trade name, unless in immediate connection with such name other words are used which clearly and conspicuously state that said respondents' business is a private business concern.

It is further ordered, That the respondents, Herbert S. Benjamin, Joan Clem Goldberger, Herbert S. Benjamin, Jr., Dorothy Dennis, and Ann Shendle, individually and as copartners now trading under the name Army and Navy Photographic Bureau, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of pictures or photographs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "Army" or the word "Navy" or the word "Bureau" as a part of said respondents' trade name; or otherwise representing, directly or by implication, that said respondents' business is a part of or has any connection with the United States Government or the United States Army or Navy, or that said respondents' products are produced or sold by or under the auspices of the United States Government or any of its agencies.

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

It is further ordered, For the reasons set forth in the findings as to the facts in this proceeding, that the complaint herein be, and it hereby is, dismissed as to the respondents, William Andrew Benson, Porter Earl Dozier, and Florence Riddle Benson, without prejudice, however, to the right of the Commission to take such further action in the future with respect to these respondents as may be warranted by the then existing circumstances.

IN THE MATTER OF

GEORGE LUXNER TRADING AS GEENEL MOTOR PRODUCTS COMPANY

Docket 5667. Complaint, June 22, 1949—Decision, Feb. 17, 1950

Where an individual engaged in the interstate sale and distribution of breaker arms and adjustable contacts for use in connection with the ignition system of automotive motors—

Represented that said products, as packed or enclosed by him in manila envelopes and as invoiced, were original genuine parts manufactured by the Electric Auto-Lite Co. of Toledo, through placing upon said envelopes the statement "Original Auto-Lite Service Parts" and the words "Parts contained herein are *Genuine* The Electric Auto-Lite Co., Toledo, Ohio. Part No. IGP 3028–A Name of Part _____. Made in U. S. A."; and through invoicing the same to customers as "IGP 3028–A Contacts.";

The facts being that while the aforesaid number was that employed by said Electric Auto-Lite Co. to identify such particular products, those packaged and sold by said individual as above set forth were not original or genuine parts made by said Company, but were in fact produced by some other manufacturer;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, thereby causing it to purchase his said breaker arms and adjustable contacts:

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

Mr. Clark Nichols for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that George Luxner, trading as Geenel Motor Products 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 respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent George Luxner is an individual trading as Geenel Motor Products Co. with his principal place of business at Suite 1513, 80 Eighth Avenue, New York 11, N. Y.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the sale and distribution, among other things, of

breaker arms and adjustable contacts, used in connection with the ignition system of automotive motors.

In the course and conduct of his business, respondent causes his said products, when sold, to be transported from his place of business in the State of New York to the purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products, in commerce, among and between the various States of the United States.

PAR. 3. In the course and conduct of his business, respondent packs or encloses the breaker arms and adjustable contacts so sold and shipped by him in manila envelopes upon which is printed the following:

Original
Auto-Lite
Service Parts

Parts contained herein are
Genuine
The Electric Auto-Lite Co.
Toledo, Ohio.
Part No. IGP 3028-A
Name of Part ----------
Made in U. S. A.
Form No. 267

Said products are invoiced to customers by respondent as follows:

IGP 3028 A Contacts

PAR. 4. By and through the use of the aforesaid statements on the envelopes and invoices respondent represented that the breaker arms and adjustable contacts contained in the envelopes and shipped under the invoices were original genuine parts manufactured by the Electric Auto-Lite Co. of Toledo, Ohio.

PAR. 5. The aforesaid statements are false, misleading, and deceptive. In truth and in fact, while the No. IGP 3028 A is the number employed by the Electric Auto-Lite Co. of Toledo, Ohio, to identify this particular part, the products packaged and sold by respondent, as aforesaid, were not original or genuine parts manufactured by the Electric Auto-Lite Co. of Toledo, Ohio, but were in fact manufactured by some other manufacturer.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading 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 into the erroneous and mistaken belief that such statements and representations are true and into the purchase of substantial quantities of respondent's said product.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 22, 1949, issued and subsequently served its complaint in this proceeding upon respondent, George Luxner, an individual trading and doing business as Geenel Motor Products Co., charging him with the use of unfair acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the trial examiner, by order entered herein, granted request of respondent for permission to withdraw his said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission on September 7, 1949. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and substitute answer; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, George Luxner, is an individual trading and doing business as Geenel Motor Products Co., with his principal office and place of business located at Suite 1513, 80 Eighth Avenue, New York 11, N. Y. He is now, and for several years last past has been, engaged in the offering for sale, sale, and distribution, among other things, of breaker arms and adjustable contacts, used in connection with the ignition system of automotive motors.

PAR. 2. In the course and conduct of his aforesaid business, respondent causes, and has caused, his said breaker arms and adjustable

contacts, when sold, to be shipped and transported from his place of business in the State of New York to purchasers thereof at their respective points of location in other States of the United States; and maintains, and at all times mentioned herein has maintained, a course of trade in said breaker arms and adjustable contacts in commerce among and between the various States of the United States.

PAR. 3. (*a*) In carrying on his business as aforesaid, respondent packs or encloses the breaker arms and adjustable contacts offered for sale, sold, and distributed by him, in manila envelopes, upon which is printed the following:

Original
Auto-Lite
Service Parts

Parts contained herein are
Genuine
The Electric Auto-Lite Co.
Toledo, Ohio
Part No. IGP 3028-A
Name of Part _____
Made in U. S. A.
Form No. 267

Said products are invoiced to customers by respondent as follows:

IGP 3028 A Contacts.

(*b*) By and through the use of the aforesaid statements and representations on the envelopes and invoices, respondent represents, and has represented, that the breaker arms and adjustable contacts contained in the envelopes and shipped under the invoices were, and are, original, genuine parts manufactured by the Electric Auto-Lite Co. of Toledo, Ohio.

PAR. 4. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, while the No. IGP 3028 A is the number employed by the Electric Auto-Lite Co. of Toledo, Ohio, to identify these particular products, those packaged and sold by respondent as aforesaid have not been, and are not, original or genuine parts manufactured by the Electric Auto-Lite Co. of Toledo, Ohio, but have been, and are, in fact, produced and manufactured by some other manufacturer.

PAR. 5. The use by respondent of the aforesaid false, misleading, and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that these statements and representations are true; and causes, and has caused, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's breaker arms and adjustable contacts.

CONCLUSION

The acts and practices of respondent as herein found 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondent, George Luxner, in which answer said respondent admits all the material allegations of fact set forth in the complaint and waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, George Luxner, an individual trading as Geenel Motor Products Co. or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of breaker arms and adjustable contacts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly, representing that his breaker arms and adjustable contacts are the products of the Electric Auto-Lite Co. of Toledo, Ohio, or are the products of any other manufacturer which does not in fact produce them.

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

IN THE MATTER OF

ATLANTIC RESEARCH FOUNDATION, INC.,[1] REBA G. STERN, LORETTA McERLAIN, ET AL.

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

Docket 5663. Complaint, June 2, 1949—Decision, Mar. 2, 1950

Where two individuals engaged in the compounding and advertisement, and interstate sale and distribution of a drug under the name "A. R. F. 501", and formerly officers of a corporation through which, prior to its dissolution, they carried on such business; in advertisements disseminated by the mail, in circulars and pamphlets, and by other means—

(a) Represented falsely that their said preparation, used as directed, was a competent and effective treatment for arthritis, sciatica and neuritis, and would cure or arrest the progress of said diseases or conditions;

The facts being that its use would result in no more than a temporary reduction of pain in the area immediately surrounding the point of its injection; and

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[1] The Commission on the same date issued an order dismissing the complaint as to certain respondents, as follows:

"This matter came on to be heard in regular course upon motion, filed September 30, 1949, by counsel for certain respondents to dismiss the complaint as to them and the answer thereto, filed November 10, 1949, by counsel in support of the complaint, by which said motion is not opposed.

"The complaint in this proceeding charges the corporate respondent, its officers and directors, and the individual respondents, all of whom are named in the caption hereof, with the use of unfair and deceptive acts and practices in commerce. It alleges that said respondents have disseminated and caused to be disseminated in commerce, by United States mails and by other means, certain advertisements containing false, misleading, and deceptive statements and representations with respect to a drug preparation which they offered for sale, sold, and distributed in commerce under the trade name "A. R. F. 501" for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce. It further alleges that respondents, by and through the use of the words "Research Foundation" as a part of the corporate name "Atlantic Research Foundation, Inc.," represent that the corporate respondent consists of a group or association of specialists engaged in scientific research, whereas it is, in fact, not such a group or association but a commercial enterprise operated for profit.

"From the motion to dismiss, the answer thereto, and the record herein, it appears that the respondent Atlantic Research Foundation, Inc., a former New Jersey Corporation, was dissolved on July 25, 1949, by appropriate action, taken in accordance with the laws of the State of New Jersey. By this action, respondent Reba G. Stern, its former vice president and treasurer; respondent Loretta McErlain, its former secretary; and respondents Louis St. John, Dr. Bernard Crane, and Claude E. Schlenker, its former directors, were deprived of any power or authority to act in their respective official capacities in further carrying out the business, policies, acts and practices of the dissolved respondent corporation. It further appears that the individual respondents Louis St. John, Dr. Bernard Crane, and Claude E. Schlenker, for a considerable period of time prior to the dissolution of the respondent corporation, had not actively engaged in managing its affairs, controlling its policies, or carrying out any of its acts or practices, either in their respective individual capacities or as directors of said corporation, in the offering for sale, sale, and distribution of the preparation "A. R. F. 501," and that they have submitted an affidavit executed by

(b) Falsely represented through the use of the words "Research Foundation", as included in the trade name and corporate name employed by them, and displayed on letterheads, circulars, cards and otherwise, that they operated or controlled a group or association of specialists engaged in carrying on and promoting scientific research, experiment and development, and which had been provided with an endowment for such activities; when in fact they merely operated a commercial enterprise conducted for profit;

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

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

Mr. B. G. Wilson for the Commission.

Mr. J. Harold Kilcoyne and *Mr. James M. Graves*, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Atlantic Research Foundation, Inc., a corporation, Reba G. Stern and Loretta McErlain, individually, and as officers of said corporation, and Louis St. John, Dr. Bernard Crane and Claude E. Schlenker, individually, and as directors of said Atlantic Research Foundation, Inc., hereinafter referred to as respondents, have violated the provisions of the said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Atlantic Research Foundation, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey. Reba G. Stern is president and treasurer

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each of them to the effect that they will not in the future resume the advertising, sale, or distribution of said preparation.

"The Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that in the foregoing circumstances the public interest does not require further corrective action in this matter at this time as to the dissolved corporate respondent, as to respondents Reba G. Stern and Loretta McErlain acting in their capacities as officers of the dissolved corporate respondent, or as to respondents Louis St. John, Dr. Bernard Crane, and Claude E. Schlenker acting as individuals or as directors of said dissolved corporate respondent, and that the motion to dismiss should be granted:

"It is ordered that the complaint herein be, and the same is, hereby dismissed as to the dissolved corporate respondent, Atlantic Research Foundation, Inc., as to the respondents Reba G. Stern and Loretta McErlain in their capacities as officers of the dissolved corporate respondent but not in their capacities as individuals, and as to respondents Louis St. John, Dr. Bernard Crane, and Claude E. Schlenker as individuals and directors of the dissolved corporate respondent.

and Loretta McErlain is secretary of said Atlantic Research Foundation, Inc. The corporate respondent and individual officers have their office and principal place of business located at 3 South Iowa Avenue, Atlantic City, N. J.

The addresses of the said individual directors of Atlantic Research Foundation, Inc., are as follows: Louis St. John, Central Pier, Boardwalk, Atlantic City, N. J., Dr. Bernard Crane, 306 Pacific Avenue, Atlantic City, N. J., and Claude E. Schlenker, 805 Atlantic Avenue, Atlantic City, N. J. The individual officers and individual directors direct and control the policies and practices of said corporate respondent.

PAR. 2. Respondents are now and have been for several years last past, engaged in the business of compounding, selling and distributing a drug preparation as "drug" is defined in the Federal Trade Commission Act.

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

Designation: A. R. F. 501 formerly called Arthranol and Arthronol.

Drugs used in compounding preparation:

A. R. F. 501 Salt	16.00 grams
Dextrose, U. S. P	40.00 grams
Chlorobutanol	5.00 grams

The procedure for compounding said preparation is as follows:

Dissolve the five (5) grams of chlorobutanol in 800 cc. of water. Then dissolve the A. R. F. 501 salt and the dextrose in 400 cc. of the solution. When dissolved add the balance of the water to make 800 cc. Adjust to ph 7.3

Composition of preparation: Each 1 cc. ampule has approximately the following composition—

Ammonium benzoate	6.5 milligrams
Ammonium salicylate	4.0 milligrams
Ammonium chloride	2.0 milligrams
Ammonium iodide	0.7 milligrams
Di-basic ammonium phosphate	5.0 milligrams
Chlorobutanol	6.25 milligrams
Dextrose	50. milligrams
Water, q. s	1000. milligrams

Directions for Use: Directions for use of A. R. F. 501

Formerly Arthranol

The administration of A. R. F. 501 is hypodermic.
The injection should be intramuscular to obtain best results.
An intravenous injection is unnecessary.

The dose is 1 cc. Each ampule contains a sufficient amount to permit withdrawal of 1. cc.

We have chosen the biceps as the best site for injection.

Results will be consistent if this method is used. We have observed that when injections are made in the locale of greater involvement or pain (knee, foot, planter aspect, shoulder or hip), spectacular response to the treatment has frequently been manifested. I have personally always in so-called neuritic pain of arm or shoulder, located a visible tumefaction over the cervical vertebrae from third to fifth as a rule, or a tender indurated area. Injection in this site gives relief in from two to five minutes, and continues for many hours after. The mechanism is probably twofold. Nerve block, and a correction of the underlying causative factor. In Sciatica my practice is to inject along the course of nerve, usually in gluteal area, in affected side. Here, again it is to be noted and emphasized that pes-planus is a most common causative factor. Failure to observe this state and its proper correction will contribute largely to your loss in obtaining the desired benefits.

NOTE: Inflammatory areas have been freely and safely injected with excellent results. The best results have been obtained from the above method of administration. However, injections may be given daily and increased in amount up to 4 cc. without danger or reaction, at the discretion of the physician.

The said respondents cause their said preparation when sold to be transported from their place of business in the State of New Jersey to the purchasers thereof located in various States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in said preparation between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of their business the respondents subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning their said preparation by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, by means of circular letters and respondents have disseminated and caused the dissemination of advertisements concerning the preparation "A. R. F. 501" by means of circular letters referred to above, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical of the statements and representations contained in said advertisements disseminated as aforesaid are the following:

May we invite your attention to a remedy for the treatment of arthritis, sciatica and neuritis that is almost specific in this most trying group.

PAR. 5. Through the use of the advertisements containing the statements and representations hereinabove set forth, respondents have represented that their said preparation, used as directed, is a competent and effective treatment for arthritis, sciatica, and neuritis, and that said preparation will cure or will arrest the progress of said diseases or conditions.

PAR. 6. 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, respondents' said preparation is not a competent or effective treatment for such diseases and conditions as arthritis, sciatica, and neuritis, nor will it cure or arrest their progress. The effect of this preparation in such conditions is limited to a temporary reduction of the pain immediately surrounding the area into which the preparation is injected.

PAR. 7. The respondents, by and through the use of the words "Research Foundation" as a part of the corporate name "Atlantic Research Foundation, Inc.," on letterheads, circulars, cards and otherwise, represent that the corporate respondent "Atlantic Research Foundation, Inc.," consists of a group or association of specialists having for their aim the discovery of new facts and theories; their correct interpretation from a scientific and technical standpoint; to further and promote advancement in knowledge and technique in scientific fields, and to conduct research and experiments in that respect; and that said corporate respondent has been provided with an endowment for use in carrying out scientific research. Such representations are false and misleading. In truth and in fact, said respondent is a commercial enterprise conducted for profit and is not engaged in the activities of research as described above and is not endowed with funds for carrying on such activities.

PAR. 8. The use by the respondents of the aforesaid statements and representations disseminated as aforesaid has had and now has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such statements and representations are true, and to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase said drug preparation.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 2, 1949, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Acting upon motion of certain respondents, the Commission, by order duly entered herein, dismissed the complaint as to all respondents except Reba G. Stern and Loretta McErlain acting in their individual capacities. On September 30, 1949, these respondents, in their individual capacities, filed their respective answers admitting all material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and answers, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Reba G. Stern and Loretta McErlain are individuals and were officers of Atlantic Research Foundation, Inc., before its dissolution on July 25, 1949. They have their office and principal place of business at 3 South Iowa Avenue, Atlantic City, N. J. Respondents are now, and for several years last past have been, engaged in compounding, advertising, offering for sale, selling, and distributing a drug or medicinal preparation under the trade name "A. R. F. 501."

PAR. 2. In the course and conduct of their aforesaid business, respondents cause, and have caused, their said preparation, when sold, to be shipped and transported from their place of business in the State of New Jersey to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia; and maintain, and at all times mentioned herein have maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. "A. R. F. 501" is compounded as follows:

A. R. F. 501 Salt	16.00 grams
Dextrose, U. S. P	40.00 grams
Chlorobutanol	5.00 grams

Dissolve the five (5) grams of chlorobutanol in 800 cc. of water. Then dissolve the A. R. F. 501 salt and the dextrose in 400 cc. of the solution. When dissolved add the balance of the water to make 800 cc. Adjust to ph. 7.3.

After compounding, each 1 cc. ampule contains approximately the following:

Ammonium benzoate	6.5	milligrams
Ammonium salicylate	4.0	milligrams
Ammonium chloride	2.0	milligrams
Ammonium iodide	0.7	milligrams
Di-basic ammonium phosphate	5.0	milligrams
Chlorobutanol	6.25	milligrams
Dextrose	50.	milligrams
Water, q. s	1000.	milligrams

Directions for use of this preparation are:

The administration of A. R. F. 501 is hypodermic.

The injection should be intramuscular to obtain best results.

An intra-venous injection is unnecessary.

The dose is 1 cc. Each ampule contains a sufficient amount to permit withdrawal of 1 cc.

We have chosen the biceps as the best site for injection.

Results will be consistent if this method is used. We have observed that when injections are made in the locale of greater involvement or pain (knee, foot, planter aspect, shoulder or hip), spectacular response to the treatment has frequently been manifested. I have personally always in so-called neuritic pain of arm or shoulder, located a visible tumefaction over the cervical vertebrae from third to fifth as a rule, or a tender indurated area. Injection in this site gives relief in from two to five minutes, and continues for many hours after. The mechanism is probably two-fold. Nerve block, and a correction of the underlying causative factor. In Sciatica my practice is to inject along the course of nerve, usually in gluteal area, in affected side. Here, again it is to be noted and emphasized that pesplanus is a most common causative factor. Failure to observe this state and its proper correction will contribute largely to your loss in obtaining the desired benefits.

NOTE: Inflammatory areas have been freely and safely injected with excellent results. The best results have been obtained from the above method of administration. However, injections may be given daily and increased in amount up to 4 cc. without danger or reaction, at the discretion of the physician.

PAR. 4. (*a*) In carrying on their aforesaid business, respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning their said preparation by United States mails and by various other means

in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning their said preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

(*b*) Among and typical of the statements and representations contained in said advertisements disseminated and caused to be disseminated as hereinbefore set forth, by United States mails, in circulars and pamphlets, and by other means and methods, are the following:

May we invite your attention to a remedy for the treatment of arthritis, sciatica and neuritis that is almost specific in this most trying group.

(*c*) Through the use of the foregoing statements and representations, which purport to be descriptive of the therapeutic and medicinal values of respondents' said preparation, respondents represent, and have represented, that their preparation "A. R. F. 501," when used as directed, is a competent and effective treatment for arthritis, sciatica, and neuritis and that said preparation will cure or will arrest the progress of said diseases or conditions.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false, misleading, and deceptive. In truth and in fact, said preparation is not a competent or effective treatment for such diseases or conditions as arthritis, sciatica, and neuritis and will not cure or arrest their progress. The use of said preparation, however, in such conditions will result in a temporary reduction of pain in the area immediately surrounding the point of its injection.

PAR. 6. In the course and conduct of their aforesaid business, the respondents adopted as and for one of their trade names "Atlantic Research Foundation, Inc.," under which they formerly carried on their business, which said name, including the words "Research Foundation," respondents have used during part of the time herein mentioned, in soliciting the sale of and selling their said preparation. These words have been used on letterheads, circulars, cards, and otherwise, which have been distributed in commerce among and between the various states of the United States and the District of Columbia. Through the use of the words "Research Foundation" as aforesaid, respondents have represented, directly and by implication, that they operate or control a group or association of specialists engaged in carrying on and promoting scientific research, experiment, and devel-

opment and have been provided with an endowment for use in carrying out such activities. Said representations are false, misleading, and deceptive. In truth and in fact, respondents operate, and have operated, a commercial enterprise conducted for profit and are not now, and have not, in any manner engaged in scientific research, experiment, or development and are not, and have not been, endowed with funds for carrying on such activities.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their medicinal preparation, disseminated as aforesaid, and the use by them of the foregoing false, misleading, and deceptive representations in their trade name has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase their preparation "A. R. F. 501."

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of respondents Reba G. Stern and Loretta McErlain, filed by them in their capacities as individuals, in which said answers, said respondents admit all the material allegations of fact set forth in the complaint and waive all intervening procedure and further hearing as to said facts; and the Commission, by order entered herein, having duly dismissed the complaint as to all other respondents, and having made its findings as to the facts and conclusion that the individual respondents Reba G. Stern and Loretta McErlain have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the individual respondents Reba G. Stern and Loretta McErlain, trading as individuals under their own names or under any other name or names, their agents, representatives, and employees, directly or through any corporate or other device, in connec-

tion with the offering for sale, sale, and distribution of their medicinal preparation designated "A. R. F. 501," or any other preparation or preparations of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other names, do forthwith cease and desist from directly or indirectly:

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

a. That said preparation "A. R. F. 501" constitutes a competent or effective treatment, cure, or remedy for such diseases or conditions as arthritis, sciatica, or neuritis, or that the use of said preparation will arrest the progress of such diseases or conditions or will relieve such conditions except to the extent of temporarily relieving pain in the immediate area surrounding the point of its injection.

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

3. Using the words "Research Foundation" or any other word or words of similar import or meaning as a trade name; or representing through any other means or device or in any manner that they operate or control a group or association of specialists engaged in scientific research, experiment, or development.

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

IN THE MATTER OF

ACE WINDOW SCREEN CO. OF AMERICA, INC.

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

Docket 5687. Complaint, Aug. 11, 1949—Decision, Mar. 3, 1950

Where a corporation engaged in the manufacture and interstate sale and distribution of a coated screen wire designated "Aluma-Kote"—

(a) Represented, directly and by implication, through statements on carton containers, on invoices, and in advertisements in periodicals, circulars, pamphlets and other advertising literature, that said wire was coated with pure aluminum and was therefore long lasting, and that tests had shown it to be one of the finest grades of screen wire on the market; and

(b) Represented through the use of the words "Aluma-Kote" as a term or trade name applied to its said product, that the screen was coated with pure aluminum, and through the use of the word "Everlast" in connection therewith, that it was a product of special and outstanding durability;

The facts being that said product was not coated with pure aluminum, but was sprayed with a solution of three-fourths varnish or shellac and one-fourth powdered aluminum; such coating, when exposed to the elements, peels off or is otherwise destroyed in a relatively short time and does not significantly increase the durability of the screen wire to which applied; and no reliable tests had been conducted which demonstrated that the product was one of the finest on the market, or that the coating thereon had any significant effect in increasing its durability;

With tendency and capacity to mislead and deceive a substantial number of retailers and a substantial portion of the purchasing public, into the erroneous belief that said representations were true, and of thereby inducing their purchase of said product; and with result of placing in the hands of retailers a means whereby they were enabled to mislead and deceive the purchasing public into the erroneous belief that such claims were true:

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

Mr. George M. Martin for the Commission.

Mr. Paul P. Preston, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Ace Window Screen Co. of America, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing

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

PARAGRAPH 1. Respondent is a corporation with its principal office and place of business located at 1634 South Pulaski Road, Chicago 23, Ill.

PAR. 2. Respondent is now and for more than one year last past has been engaged in the manufacture, offering for sale, sale and distribution of screen wire designated by it as "Aluma-Kote." Respondent causes its said product, when sold to be transported from its aforesaid place of business in Illinois to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said product in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of its aforesaid business, and for the purpose of promoting the sale of its said product in commerce, respondent has made certain statements, representations and claims concerning said product on the cartons in which the product is delivered and on its invoices and by means of advertisements inserted in periodicals and in circulars, pamphlets and other advertising literature. Among and typical of said statements, representations, and claims are the following:

Aluma-Kote Screen Wire
Everlast Aluma-Kote Screen Wire
Everlast Aluma-Kote is a fine mesh screen wire with a long-lasting aluminum coating. This material has been pre-tested and found to be one of the finest grades of screen wire on the market today.

PAR. 4. Through the use of the aforesaid claims and representations, respondent represented, directly or by implication that its said screen wire is coated with pure aluminum and for this reason is long lasting, that tests have shown it to be one of the finest grades of screen wire on the market. Further, respondent through the use of the trade name or term "Aluma-Kote" represented that its said product is coated with pure aluminum and through the use of the word "Everlast," represented that said product has exceptional and outstanding durability.

PAR. 5. The foregoing claims and representations are false, misleading and deceptive. In truth and in fact, said product is not coated with pure aluminum but is coated by spraying with a solution of approximately three-fourths varnish or shellac and one-fourth powdered aluminum. This coating, when exposed to the elements, peels off or is otherwise destroyed in a relatively short period of time and

the durability or lasting qualities of the screen wire are not significantly increased by said coating. No reliable or authentic tests have been made which demonstrate that this product is one of the finest grades of screen wire on the market and particularly that the coating makes said product durable or long lasting.

PAR. 6. The use by the respondent of the false, misleading and deceptive representations, statements and advertisements herein set forth has a tendency and capacity to mislead and deceive a substantial number of retail dealers and members of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and induces a substantial portion of retail dealers and members of the purchasing public because of such erroneous and mistaken belief to purchase respondent's said screen wire. The use by respondent of these aforesaid representations and statements serves also to place in the hands of retail dealers an instrumentality whereby unscrupulous dealers may be enabled to mislead and deceive the purchasing public into the erroneous and mistaken belief that such representations and statements are true.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 11, 1949, issued, and subsequently served, its complaint in this proceeding upon the respondent, Ace Window Screen Co. of America, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On November 23, 1949, respondent filed its answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Ace Window Screen Co. of America, Inc., is a corporation with its principal office and place of business located at 1634 South Pulaski Road, Chicago, Ill. It is now, and for more than 1 year last past has been, engaged in manufacturing, offering for sale, selling, and distributing a coated screen wire designated "Aluma-Kote."

PAR. 2. In the course and conduct of its aforesaid business, respondent causes, and has caused, its said coated screen wire, when sold, to be shipped and transported from its place of business in the State of Illinois to purchasers thereof at their respective points of location in other states of the United States; and maintains, and at all times mentioned herein has maintained, a course of trade in said coated screen wire in commerce among and between the various States of the United States.

PAR. 3. (*a*) In carrying on its business as aforesaid, and for the purpose of promoting the sale of its coated screen wire in commerce, respondent has made, and caused to be made, certain statements, representations, and claims concerning said product. Such statements, representations, and claims have appeared, and now appear, on cartons in which said product is delivered, on invoices of respondent, and in advertisements inserted in periodicals, circulars, pamphlets, and other advertising literature. Among and typical of said statements, representations, and claims are the following:

Aluma-Kote Screen Wire
Everlast Aluma-Kote Screen Wire
Everlast Aluma-Kote is a fine mesh screen wire with a long lasting aluminum coating. This material has been pre-tested and found to be one of the finest grades of screen wire on the market today.

(*b*) By and through the use of the aforesaid statements, representations, and claims, respondent represents, and has represented, directly and by implication, that its said screen wire is coated with pure aluminum and that for this reason it is long-lasting, and that tests have shown it to be one of the finest grades of screen wire on the market. By and through the use of the word "Aluma-Kote" as a term or trade name applied to its coated screen wire, respondent represents, and has represented, directly and by implication, that its said product is coated with pure aluminum, and through the use of the word "Everlast" in connection therewith has represented that it is a product of exceptional and outstanding durability.

PAR. 4. The foregoing statements, representations, and claims are false, misleading, and deceptive. In truth and in fact, respondent's coated screen wire is not coated with pure aluminum. A solution composed of approximately three-fourths varnish or shellac and one-fourth powdered aluminum is sprayed on as a coating. Such a coating, when exposed to the elements, peels off or is otherwise destroyed in a relatively short period of time and does not significantly increase the durability or lasting qualities of the screen wire to which it is applied. No reliable or authentic tests have been conducted which prove or demonstrate that respondent's coated screen wire is one of the finest grades of screen wire on the market or that the coating thereon has any significant effect in increasing the durability or lasting qualities of said product.

PAR. 5. The use by respondent of the aforesaid false, misleading, and deceptive statements, representations, and claims has had, and now has, the tendency and capacity to mislead and deceive a substantial number of retail dealers purchasing respondent's product for resale and a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations, and claims are true, and causes a substantial portion of said dealers and of said purchasing public, because of such erroneous and mistaken belief, to purchase respondent's coated screen wire. By said acts and practices respondent also places in the hands of retail dealers a means and instrumentality whereby they are enabled to mislead and deceive the purchasing public into the erroneous and mistaken belief that said statements, representations, and claims are true.

CONCLUSION

The acts and practices of respondent as herein found 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, Ace Window Screen Co. of America, Inc., a corporation, in which answer said respondent admits all the material allegations of fact set forth in the complaint and waives all intervening procedure and further hearing as to said facts; and the Commission having made

its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Ace Window Screen Co. of America, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its coated screen wire designated "Everlast Aluma-Kote" or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name or names, do forthwith cease and desist from directly or indirectly:

1. Representing that said screen wire is coated with aluminum.

2. Representing that the coating on said screen wire materially increases its durability or lasting qualities.

3. Representing that any tests have been conducted to prove or demonstrate that said screen wire is one of the finest grades of screen wire on the market or that the coating thereon has any significant effect in increasing the durability or lasting qualities thereof.

4. Using the word "Aluma-Kote" or any other word or words of similar import or meaning, either alone or in combination with any other word or words, to designate, describe, or refer to screen wire or any other similar product which is not, in fact, coated with aluminum.

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

IN THE MATTER OF

ELIZABETH Y. COUNCILL DOING BUSINESS AS BAKER POTTERY COMPANY

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

Docket 5706. Complaint, Oct. 26, 1949—Decision, Mar. 3, 1950

Where an individual with place of business in Salisbury, N. C., engaged in the interstate sale and distribution of chinaware, earthenware, and other kinds of pottery through traveling salesmen whose orders were forwarded by her to one of several Ohio pottery factories, and filled by shipment to the purchaser under her trade name—

Represented that she owned, controlled, or operated factories in which her products were made, and maintained offices at locations elsewhere than in Salisbury, through letterheads on which were printed, in connection with her said trade name, the words "Southern Office: Salisbury, North Carolina," and through use of a printed invoice form bearing same legend, and the words "Factories: Sebring, Ohio; Scio, Ohio; Minerva, Ohio; Salem, Ohio;

When in fact she was a jobber only, had always purchased her products from others and resold them, and maintained no office other than that in Salisbury;

With tendency and capacity to mislead and deceive a substantial number of retail dealers—among whom a substantial portion prefers to deal directly with manufacturers in the belief that better prices and service and other advantages may thus be obtained—and thereby to cause them to purchase substantial quantities of her products:

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

Mr. Edward F. Downs for the Commission.

Linn & Shuford, of Salisbury, N. C., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Elizabeth Y. Councill, doing business as Baker Pottery 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 respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Elizabeth Y. Councill, is now and since about 1940, has been, engaged as a jobber in the business of selling chinaware, earthenware, and other pottery of various kinds. Her place of business is Room 417, Wachovia Bank Building, Salisbury, N. C.

PAR. 2. Respondent causes and has caused such pottery when sold to be shipped from factories in the State of Ohio, where it is made and where respondent purchases it, to the puchasers thereof, many of whom were and are located in States of the United States other than the points of origin of such shipments.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said chinaware, earthenware, and other pottery of various kinds 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 her business as aforesaid, respondent sells and has sold the usual line of domestic pottery to retailers in various assortments principally through the agency of traveling salesmen or solicitors whose practice is and has been to secure orders for the same. Such orders are then sent to respondent's place of business where they are typed up on order blanks and forwarded by respondent to one of several pottery factories located in the State of Ohio. Upon receipt of the order the factory fills it, making shipment to purchasers in respondent's trade name, Baker Pottery Co.

PAR. 4. It is and has been the practice of respondent to use stationery, in soliciting orders and in her general business correspondence, on which is printed the words "Southern Offices: Salisbury, North Carolina," and to use a printed invoice form on which appears, among other things, "The Baker Pottery Company," "Southern Office: Salisbury, North Carolina," and "Factories: Sebring, Ohio, Scio, Ohio, Minerva, Ohio, Salem, Ohio."

PAR. 5. Respondent, through the use of the said statements appearing on the stationery and invoice forms, represents and has represented that she has more than one office and that she owns, operates, and controls factories located in the State of Ohio.

PAR. 6. The representations of respondent as aforesaid are false, misleading, and deceptive in that respondent has had and now has only one office or place of business and neither owns, controls nor operates and has never owned, controlled, nor operated any factory or pottery wherein the products sold by her were or are made. On the contrary, it is and has been her practice to purchase such products from others for resale to the purchasing public.

PAR. 7. A substantial portion of retailers have a preference for dealing direct with a factory and manufacturer of merchandise, such preference being based upon the belief that better prices and service and other advantages result from such dealings.

PAR. 8. The use by respondent of the foregoing false, misleading and deceptive representations, has had and now has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are and were true, and to induce a substantial portiton of the purchasing public, because of such mistaken and erroneous belief, to purchase the merchandise sold by respondent.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 26, 1949 issued and subsequently served its complaint in this proceeding upon the respondent, Elizabeth Y. Councill, doing business as Baker Pottery Co., charging her with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by respondent of her answer to the complaint, a stipulation of facts was entered into between respondent and counsel supporting the complaint wherein it was stipulated and agreed that the facts set forth in such stipulation might be taken as the facts in his proceeding, and that the Commission might proceed upon such statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and might enter its order disposing of the proceeding without hearings or other intervening procedure. Thereafter, the proceeding regularly came on for final consideration by the Commission upon the complaint, answer and stipulation, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that the proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion based thereon.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Elizabeth Y. Councill, is now, and for a number of years last past has been, engaged in the sale of china-

ware, earthenware, and various other kinds of pottery, with her place of business located in Salisbury, N. C.

PAR. 2. Respondent causes and has caused her pottery, when sold, to be shipped from factories in the State of Ohio where it is made and where respondent purchases it, to the purchasers thereof, many of whom are located in States of the United States other than the State of origin of such shipments. Respondent maintains and has maintained a course of trade in her products in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. Respondent sells most of her pottery through the medium of traveling salesmen or solicitors who obtain orders for it. Such orders are then sent to respondent's place of business where they are typed on order blanks and forwarded by respondent to one of several pottery factories located in the State of Ohio. Upon receipt of the order the factory fills it, making the shipment to the purchaser under respondent's trade name, Baker Pottery Co.

PAR. 4. In her general business correspondence it has been the practice of respondent to use letterheads on which are printed, in connection with the respondent's trade name, the words "Southern Office: Salisbury, North Carolina." Respondent also uses a printed invoice form on which there appears, in connection with respondent's trade name, the legend quoted above and also the words "Factories: Sebring, Ohio; Scio, Ohio; Minerva, Ohio; Salem, Ohio."

PAR. 5. Through the use of the words and legends quoted above respondent has represented that she owns, controls or operates factories in which her products are made, and that she maintains offices at locations other than her place of business in Salisbury, N. C. Actually, respondent is a jobber only; she has never owned, controlled or operated any factory or manufacturing plant. It has always been her practice to purchase her products from others and to resell them as set forth above. Nor does respondent maintain any office other than that in Salisbury, N. C.

PAR. 6. There is a preference on the part of a substantial portion of retail dealers for dealing directly with manufacturers of merchandise, such preference being due to the belief on the part of such dealers that thereby better prices and service and other advantages may be obtained.

PAR. 7. The use by respondent of the misleading representations set forth above has the tendency and capacity to mislead and deceive a substantial number of retail dealers with respect to respondent's identity and business status, and the tendency and capacity to cause

such dealers to purchase substantial quantities of respondent's products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That respondent, Elizabeth Y. Councill, doing business under the name Baker Pottery Co., or under any other name, and her agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of pottery products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using in connection with respondent's trade name the word "Factories" or the words "Southern Office"; or otherwise representing, directly or by implication, that respondent manufactures the products sold by her or that respondent maintains any office other than that located in Salisbury, N. C.

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

Syllabus

IN THE MATTER OF

W. L. ABT

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

Docket 5455. Complaint, July 25, 1946—Decision, Mar. 8, 1950

Where an individual engaged in the interstate sale and distribution of nine food and drug products designated Tasty Soup Mix, Erbecell, Garlic-Tabs, Laxa-Tabs, Carrot Tabs, Mucin Oide, Iron-X, Vitamin B Ration and Wheatex-B;

In advertising his said preparations through circulars entitled "Presenting 10 Dietary Aids to Health and Vigor" and "Break the Chains that Sap your Health," sent to food stores dealing in his products for distribution to the public, and through advertisements in the magazines "Vita Health News," "Foods for Health and Enjoyment" and "Nature's Path", and otherwise, directly and by implication—

(*a*) Falsely represented that his "Tasty Soup Mix" would "energize" the eater by increasing the capacity for exertion in some manner other than supplying nutrition, through the statement "* * * a delightful soup mix that nourishes and energizes";

(*b*) Falsely represented that his "Erbecell" would relieve the discomfort of dyspepsia and griping bowels; when in fact it had no more than a limited effect in the relief of flatulence;

(*c*) Falsely represented that "Garlic-Tabs" were an effective treatment for the symptoms of some types of high blood pressure; would relieve the associated symptoms of dullness, fatigue, nervousness, dizziness, ringing in the ears, and throbbing in the head; make abnormal blood normal; and impart vim and vigor; that it possessed tonic qualities and would reduce "intestinal putrefaction"; and that one was benefited by reducing such "putrefaction";

The facts being said "Garlic Tabs" possessed no other therapeutic or tonic properties than those of a carminative agent; reduction of "intestional putrefaction" of food, which is a normal part of the digestive process, would be highly detrimental; and accepted treatment for abnormal putrefaction is to eliminate the material itself; and said tabs would be wholly without effect for either;

(*d*) Falsely represented that as a consequence of the use of "Laxa-Tabs" the bowels would regularly evacuate themselves without assistance; that they induced the natural bowel movements, and were "natural" regulators and eliminants; that their action was prompt and non-irritating; that they possessed tonic and astringent properties; and that the longer they were used the less they would be needed;

(*e*) Falsely represented that their "Carrot-Tabs" were an aid to digestion, possessed antiseptic qualties, and would limit or reduce putrefaction changes in the body to the benefit of the user; and that their "Mucin-Oide" was soothing to nervous or irritated stomachs, would palliate the pain incident to peptic ulcers or gastritis, and form a protective coating of the stomach which protected it against stomach acids;

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(*f*) Represented that a deficiency of iron in the system might produce anemia and result in impaired energy, unnatural thinness, impaired power and weak resistance to disease, and that such anemia and the said manifestations thereof would be cured or substantially benefited by the use of "Iron-X", taken as directed;

The facts being that in the relatively rare cases in which conditions above set forth are due to iron deficiency, effective therapy requires an iron dosage far greater than is provided by said "Iron-X";

(*g*) Represented that fatigue, irritability, nervousness, lack of vitality, lack of appetite, digestive disturbances and graying of the hair are due to deficiences in various components of the Vitamin B-Complex and would be cured or substantially benefited by the use of "B-Ration"; that, taken as directed, it would supply the normal daily adult requirements of Vitamin B-Complex, supply the user with 1000 International units per day of the components thereof, assure the user against dietary deficiency therein and contribute to body health, vitality and well-being; and that it would promote the tone of the intestinal muscles and help to digest carbohydrates, and that all persons would be benefited by taking it;

The facts being that in the infrequent cases in which aforesaid ailments are attributable to a deficiency in said Complex, they would not be substantially benefited by the use of "B-Ration", since effective vitamin therapy requires a dosage far greater than is provided by said product; with the exception of Vitamin B_1, none of its components are measured in terms of "International Units", and the product cannot be described in terms of such units; used as directed it assures only against deficiency in Vitamins B_1 and B_2; and its only value is as a dietary supplement to persons whose usual diet is deficient in one or more of its components;

(*h*) Represented that nervousness, constipation, loss of appetite and consequent listlessness are due to deficiencies in Vitamin B-Complex, iron, calcium or phosphorous, and would be cured or substantially benefited by the use of "Wheatex-B"; that said product contained therapeutically significant amounts of said Complex and minerals, and that by its use the capacity for exertion would be increased in some manner other than by supplying nutrition; and that all persons would be benefited by taking it;

The facts being that in the relatively rare cases in which the above conditions are due to such a deficiency, they would not be cured or substantially benefited by the use of said product, which does not contain said Complex or minerals in therapeutic amounts, and its only value is as a dietary supplement in cases of deficient diet;

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

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

As respects the charge in the complaint that the use of the preparation "Laxa-Tabs," as an irritant laxative—which contained senna and rhubarb root—was not always safe and harmless to all individuals, used under prescribed or customary conditions, the Commission, subsequent to the issuance of the complaint, administratively determined that the potential danger resulting

from the use of such preparations under such conditions are not of sufficient seriousness to justify a requirement that the respondent affirmatively disclose in advertising all facts material with respect to the consequences which might result from its use; and therefore no findings of facts were made with respect thereto.

In said proceeding the record contained no evidence with respect to the charges in the complaint concerning the product "Papaya-Lets," and consequently no findings of facts in regard thereto were made.

Before *Mr. Everett F. Haycraft*, trial examiner.
Mr. Randolph W. Branch for the Commission.
Kegan & Kegan, of Chicago, Ill., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, W. L. Abt, is an individual with an office and principal place of business at 188 West Randolph Street, Chicago, Ill. He trades and does business under his own name, and also the names Abt Laboratories, Abt Institute, Abt Products, Abt Institution of Natural Therapy, and Abt Products Co.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of selling and distributing various food and drug products, as "food" and "drug" are defined in the Federal Trade Commission Act.

The designations used by respondent for the said products, and the formulas and directions for use thereof, are as follows:

Designation:	"Tasty Soup Mix"
Formula:	Dehydrated Okra, Parsnips, Turnips, Celery, Kelp, Carrots, Leek, Rutabaga, Tomatoes, Beans, Parsley, Soya Beans, Potatoes, potato peelings, wheat germ, salt.
Directions:	Use to make soup by adding water, or on salad, in salad dressing or on buttered bread or toast.
Designation:	"Erbecell"
Formula:	Golden Seal Root, Fennel Seed.
Directions:	One tablet before noon and evening meals.
Designation:	"Garlic-Tabs"
Formula:	Garlic, Parsley.
Directions:	1 or 2 tablets twice a day just before meal time.

Designation: "Papaya-Lets"
Formula: Papain (2½ grains), Alfalfa.
Directions: 1 or 2 tablets after each meal.

Designation: "Laxa-Tabs"
Formula: Powdered dehydrated Okra, Irish Moss, Parsley, Rhubarb Stalk and Root, Senna and Asparagus. Each tablet contains 8 grains.
Directions: Adults 2 tablets with evening meal, 2 upon retiring. Infants and small children, as prescribed by physician.

Designation: "Carrot Tabs"
Formula: Dehydrated Raw Carrots—each tablet contains 7 grains.
Directions: Four tablets twice a day just before mealtime.

Designation: "Mucin-Oide"
Formula: Okra, Persimmon, Alfalfa, Celery Root.
Directions: 4 tablets before meals, 3 times a day.

Designation: "Iron-X"
Formula: Alfalfa, Carrot Leaves, Sea Dulce, Mustard Greens, Parsley, Turnip Leaves, Water Cress, Ferric Citrate (organic). Each Tablet contains 10 grains of organic iron.
Directions: Adults, one to four tablets daily (Two with noon meal, one or two with evening meal.)
Children under five, one tablet daily with noon or evening meal.

Designation: "Vitamin B Ration"
Formula: Vitamin B_1, 85 U. S. P. units
Riboflavin (B_2 or G), 250 gamma
Niacin, 250 gamma
Pyridoxine (B_6), 42 gamma
Pantothenic Acid, 135 gamma
Directions: Five or six tablets daily.

Another formula for "Vitamin B Ration":

Vitamin B_1	250 micrograms
Vitamin B_2	500 micrograms
Vitamin B_6	42 micrograms
Pantothenic Acid	115 micrograms
Niacin	250 micrograms

plus all other B-complex factors.

The directions for this formula are:

"Four tablets daily will supply the daily minimum requirements of both Vitamin B_1 and B_2"

Designation: "Wheatex-B"
Formula: Natural Wheat Germ
Directions: One or more tablespoons daily.

Respondent causes the said products, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof located in other States of the United States and in the District of

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

PAR. 3. In the course and conduct of his business, respondent, subsequent to March 21, 1938, has disseminated and caused the dissemination of certain advertisements concerning his said products by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, their purchase, including, but not limited to, certain circulars entitled "Presenting 10 Dietary Aids to Health and Vigor" and "Break the Claims that Sap your Health," sent by respondent to food stores in various States of the United States which deal in his products, for distribution to members of the public, and advertisements in "Vita Health News" magazine, January 1942 and March and April 1944 issues, "Foods for Health and Enjoyment" magazine, May 1943 issue, and "Nature's Path" magazine, May 1944 issue, all of which magazines are distributed by the United States mails, and by other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent has disseminated and caused the dissemination of advertisements concerning his said products by various means including, but not limited to, the circulars and advertisements referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of his said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the statements and representations contained in the said advertisements disseminated as aforesaid with respect to "Tasty Soup Mix," and specifically in the circular "Presenting 10 Dietary Aids to Health and Vigor," is the following:

* * * a delightful soup mix that nourishes and energizes.

PAR. 5. Through the use of the advertisements containing the statement and representation hereinabove set forth in paragraph 4, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that his "Tasty Soup Mix" will "energize" the eater by increasing the capacity for exertion in some manner other than supplying nutrition.

PAR. 6. 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 "Tasty Soup Mix" possesses no "energizing" properties beyond those of a nutrient.

PAR. 7. Among the statements and representations contained in the said advertisements disseminated as aforesaid with respect to "Erbecell," and specifically in the circular "Presenting 10 Dietary Aids to Health and Vigor" and in the advertisement in "Foods for Health and Enjoyment," May 1943 issue, are the following:

* * * to relieve the discomfort of dyspepsia—or griping bowel.

Anyone who knows the true value of Golden Seal and Fennel to dyspepsia sufferers will appreciate Erbecell.

PAR. 8. Through the use of the advertisements containing the statements and representations hereinabove set forth in paragraph 7, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that "Erbecell" will relieve the discomfort of dyspepsia and griping bowls.

PAR. 9. 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 "Erbecell" will not relieve the discomfort of dyspepsia or griping bowels. The only value of the preparation is for flatulence, where it has a limited effect.

PAR. 10. Among the statements and representations contained in said advertisements, disseminated as aforesaid, with respect to "Garlic-Tabs" and specifically in the circular "Presenting 10 Dietary Aids to Health and Vigor," and in the advertisements in "Vita Health News," March and April 1944 issues, are the following:

Sufferers from some types of high blood pressure have found garlic an effective normalizer.

Also known to reduce intestinal putrefaction.

Results observed for relief of:

Dullness	Fatigue
Nerves	Dizziness
Ear Ringing	Head throbs

associated with high blood pressure.

Observe the effects it has as a blood normalizer and builder upper.

Feel more fit. Take Garlic-Tabs.

PAR. 11. Through the use of the advertisements containing the statements and representations hereinbefore set forth in paragraph 10 and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that "Garlic-Tabs" are an effective treatment for high blood pressure; will relieve the associated symptoms of dullness, fatigue, nervousness, dizziness, ringing in the ears, and throbbing in the head; will make abnormal blood normal, and impart vim and vigor; that said product possesses tonic qualities and will reduce "intestinal putrefaction"; that one is benefited by reducing "intestinal putrefaction."

PAR. 12. 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 "Garlic-Tabs" are not an effective treatment for hypertension or will they relieve any of its associated symptoms. They have no effect whatever upon abnormal blood conditions, nor will they increase vim or vigor. They possess no tonic properties nor any therapeutic properties except as a carminative agent. "Intestinal putrefaction" of food is a normal part of the digestive process and its reduction would be highly detrimental. In the presence of a disease condition there may be an abnormal putrefaction in the intestine for which the accepted treatment is to eliminate the material itself and not to "reduce putrefaction," for either of which "Garlic-Tabs" would be wholly without effect.

PAR. 13. Among the statements and representations contained in said advertisements, disseminated as aforesaid with respect to "Papaya-Lets," and specifically in the circular "Presenting 10 Dietary Aids to Health and Vigor," and in the advertisement in "Nature's Path," May 1944 issue, are the following:

Marvelous for sour stomach, poor digestion, gas pains.

Papaya-Lets contains 2½ full grains of papain, a digestive ferment from papaya melons.

Papain is capable of digesting up to 3000 times its own weight of protein.

For digestive relief, try Papaya-Lets.

PAR. 14. Through the use of the advertisements containing the statements and representations hereinabove set forth in paragraph 13 and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that "Papaya-Lets" are of value in the treatment of and for the relief of sour stomach, poor digestion, indigestion and gas pains, and that papain acts in the body as a digestant of protein.

PAR. 15. 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 "Papaya-Lets" are of no therapeutic value in the treatment of the causes of or in the relief of any ailment of the digestive system or the symptoms thereof, including sour stomach, poor digestion, indigestion and gas pains. Papain possesses the power to digest protein under certain conditions, but these conditions do not obtain in the human body.

PAR. 16. Among the statements and representations contained in said advertisement, disseminated as aforesaid, with respect to "Laxa-Tabs," and specifically in the circular "Presenting 10 Dietary Aids to Health and Vigor," in the advertisement in "Foods for Health and

Enjoyment," May 1943 issue, and in the circular "Break the Chains That Sap Your Health," are the following:

The new modern way to regularity.
Works gently * * *.
* * * a natural regulator * * *.
The more you take, the less you need.
Natural eliminant for the bowel.
* * * the gentle, natural action of Dr. Abt's Laxa-Tabs.
Compounded from 7 natural vegetables, known for their tonic, astringent and laxative properties.
Laxa-Tabs furnish a gentle activator for the torpid bowel.

PAR. 17. Through the use of the advertisements containing the statements and representations hereinabove set forth in paragraph 16, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, the "Laxa-Tabs" are an effective treatment for the underlying causes of constipation, and that as a consequence of their use the condition of the bowels will be such that they will regularly and spontaneously evacuate themselves without assistance; that the bowel movements which they induce are "natural," and that they are "natural" regulators and eliminants; that their action is gentle and nonirritant; that they possess tonic and astringent properties, and that the longer they are used the less they will be needed.

PAR. 18. 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 "Laxa-Tabs" are not an effective treatment for the underlying causes of constipation. Their use will not promote or induce such a condition of the bowels that they will regularly and spontaneously evacuate themselves. The bowel movements which they induce are not natural but artificial, and they are neither a natural eliminant nor a natural regulator. Said preparation contains senna and rhubarb root, both of which are irritant laxatives, and the action of "Laxa-Tabs" is neither gentle nor nonirritant. They possess no tonic properties, and their astringent properties are insignificant.

PAR. 19. The said advertisements of "Laxa-Tabs" are further misleading and constitute "false advertisements," as that term is defined in the Federal Trade Commission Act, for the reason that they fail to reveal facts material in the light of the representations set forth in said advertisements and material with respect to the consequences which may result from the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are

customary or usual. In truth and in fact, this preparation is an irritant laxative, and is potentially dangerous when taken by one suffering from abdominal pains, nausea, vomiting or other symptoms or appendicitis.

PAR. 20. Among the statements and representations contained in said advertisements, disseminated as aforesaid, with respect to "Carrot-Tabs," and specifically in the circular "Presenting 10 Dietary Aids to Health and Vigor" is the following:

Carrots—serve many as a digestive aid and is known to possess "antiseptic" qualities which help limit putrefactive changes in the body. A real health help to nutrition.

PAR. 21. Through the use of the advertisements containing the statements and representations hereinabove set forth in paragraph 20, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that "Carrot-Tabs" are an aid to digestion, possess antiseptic qualities and will limit or reduce "putrefactive changes" in the body to the benefit of the user.

PAR. 22. 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 "Carrot-Tabs" are not an aid to digestion nor do they possess antiseptic properties. They are of no therapeutic value where there is a putrescent condition of body tissue, either present or potential. The putrefaction of food in the intestine is a normal part of the digestive process and its reduction would be highly detrimental. In the presence of a disease condition there may be an abnormal putrefaction in the intestine for which the accepted treatment is to eliminate the material itself and not to "reduce putrefaction," for either of which "Carrot-Tabs" would be wholly without benefit.

PAR. 23. Among the statements and representations contained in said advertisements, disseminated as aforesaid, with respect to "Mucin-Oide" and specifically in the circulars "Break the Chains that Sap Your Health" and "Presenting 10 Dietary Aids to Health and Vigor," and the advertisement in "Foods for Health and Enjoyment," May 1943 issue, are the following:

Kind to nervous, irritated stomachs.

Peptic Ulcers, Gastritis. To help control the pains of peptic ulcers and gastritis. * * * forms a protective coating against the hydrochloric acid of the stomach, often relieves irritated membranes and aids in binding excess stomach acids.

PAR. 4. Through the use of the advertisements containing the statements and representations hereinabove set forth in paragraph 23, and

other similar thereto not specifically set out herein, respondent has represented, directly and by implication, that "Mucin-Oide," is soothing to nervous or irritated stomachs, will palliate the pain incident to peptic ulcers or gastritis and forms a protective coating of the stomach which protects it against stomach acids.

PAR. 25. 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 "Mucin-Oide" will not soothe "nervous" or irritated stomachs. Taken as directed it will afford no significant relief to the pain incident to peptic ulcers or gastritis. It will not neutralize stomach acids, and the amount of protective mucilaginous substance which is available for deposit on the stomach wall is insignificant.

PAR. 26. Among the statements and representations contained in said advertisements, disseminated as aforesaid with respect to "Iron-X," and specifically in the circulars "Presenting 10 Dietary Aids to Health and Vigor" and "Break the Chains that Sap Your Health," are the following:

Lack of Iron in the blood may cause simple anemia, impaired energy, * * * It takes iron to make rich red blood.

Iron * * * Lack of it causes simple anemia, which results in poor energy, unnatural thinness, pallor and weak resistance to disease.

PAR. 27. Through the use of the advertisements containing the statements and representations hereinabove set forth in paragraph 26, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that impaired energy, unnatural thinness, pallor and weak resistance to disease are due to anemia caused by a deficiency of iron in the system, and that such anemia and the said manifestations thereof will be cured or substantially benefited by the use of "Iron-X," taken as directed, and that from the presence of such conditions the existence of a deficiency in iron can be determined by the general public with a reasonable degree of certainty.

PAR. 28. The said advertisements are misleading in material respects, and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact the causes of impaired energy, unnatural thinness, pallor and weak resistance to disease are numerous, and these conditions are only infrequently due to an iron deficiency and subject to correction or improvement by its use. In the relatively rare cases where the said conditions are due to iron deficiency, adequate and effective therapy by the use of iron requires a dosage far greater than is provided by respondent's prepara-

tion, taken as directed, and such iron deficiency, and its manifestations, will not be cured or substantially benefited by the use of "Iron-X" as directed. It is impossible for members of the general public, from the common symptoms to which respondent refers, to determine the existence of a deficiency in iron with any reasonable degree of certitude.

PAR. 29. Among the statements and representations contained in said advertisements, disseminated as aforesaid, with respect to "B-Ration," and specifically in the advertisement in "Vita Health News," January 1942 issue, and the circulars "Presenting 10 Dietary Aids to Health and Vigor," and "Break the Chains that Sap your Vigor," are the following:

Gain * * * Retain * * * Health with Dr. Abt's Dietary Aids.

Have you a hidden hunger for the B vitamins? Then let B-Ration be your body builder. Don't allow a shortage in your system to make you tired, irritable, nervous, cause lack of appetite or possible gastro-intestinal disturbances when 1000 International units per day will go a long way in helping you capture permanent vitality.

To promote intestinal muscle tone, help restore jaded appetite, return vitality to your system and contribute to an above average nutritional condition, buy the natural Vitamin B Complex, B-Ration.

It contains * * * pyrodoxine, pantothenic acid * * * all necessary for body building.

Vitamin B tends to aid the nerves and appetite, help digest carbohydrates. Abt's Vitamin B Ration contains * * * 135 gamma of Pantothenia (sometimes called the "anti-gray hair factor").

Vitamin B is not merely one vitamin, but actually several vitamins, known as B-Complex, * * * 5 tablets daily supply the normal daily requirement of Vitamin B.

Be sure of your health—be sure of the vitamins and minerals you take. Join the thousands who depend on Abt products.

PAR. 30. Through the use of the advertisements and representations containing the statements and representations hereinabove set forth in paragraph 29, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that fatigue, irritability, nervousness, lack of vitality, lack of appetite, digestive disturbances and changing of the color of the hair to gray are due to deficiencies in various components of the vitamin B-complex, and will be cured or substantially benefited by the use of "B-Ration"; that from the presence of said conditions the existence of a deficiency in Vitamin B-complex can be determined by members of the general public with reasonable certitude; that "B-Ration," taken as directed, will supply the normal daily adult requirement of Vitamin B-complex, will supply the user with 1,000 international units per day of the components of vitamin B-complex, assure the user against dietary

deficiency in vitamin B-complex, and contribute to bodily health, vitality and well-being; that it will promote the tone of the intestinal muscles and help to digest carbohydrates and that all persons will be benefited by taking it.

PAR. 31. The said advertisements are misleading in material respects, and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact the causes of fatigue, irritability, nervousness, lack of vitality, and lack of appetite are numerous and they are only infrequently attributable to a deficiency in vitamin B-complex. When due to such deficiency they will not be cured nor substantially benefited by the use of "B-Ration," since effective and adequate vitamin thereapy requires a dosage far greater than is provided by respondent's product, taken as directed. "B-Ration," taken as directed, gives the user the minimum daily adult requirement of vitamins B_1 and B_2, and smaller amounts of the other components of the B-complex but in such amounts it is of no therapeutic value in the correction or relief of developed symptoms of vitamin deficiency. It is impossible for members of the general public, from the common symptoms to which respondent refers, to determine the existence of a deficiency in vitamin B-complex with any reasonable degree of certitude. "B-Ration" has no effect on graying hair. With the exception of vitamin B_1, none of the components of "B-Ration" are measured in terms of "international units," and "B-Ration" cannot be described in terms of such units. The product, used as directed, will not assure against dietary deficiency in B-complex, but only against deficiency in vitamins B_1 and B_2. The product will not promote better tone in the intestinal muscles nor does it function in connection with the digestion of carbohydrates. The product possesses no therapeutic properties, and its only value is as a dietary supplement to persons whose usual diet is deficient in one or more of its components; it is impossible for members of the general public to determine the existence of such deficiencies with any reasonable degree of certainty.

PAR. 32. Among the statements and representations contained in said advertisements disseminated as aforesaid with respect to "Wheatex-B" and specifically in the circular "Presenting 10 Dietary Aids to Health and Vigor" is the following:

Gain . . . Retain . . . Health with Dr. ABTS Dietary Aids

A splendid energy "lift". . . . If nervousness, constipation, lost appetite keep you all "fagged out" perhaps your diet is low in Vitamin B and minerals. This delicious wheat germ food gives you the bracing Vitamin B complex, together

with blood and body building minerals—iron, calcium, phosphorous. Discover New Wheatex-B. It's new LIFE for you!

PAR. 33. Through the use of the advertisements containing the statements and representations hereinbefore set forth in paragraph 32 and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that nervousness, constipation, lost appetite and consequent listlessness are due to deficiencies in vitamin B-complex, iron, calcium or phosphorous, and will be cured or substantially benefited by the use of "Wheatex-B," that from the presence of such conditions the existence of a deficiency in vitamin B-complex, iron, phosphorous or calcium can be determined by members of the general public with reasonable certitude; that said product contains therapeutically significant amounts of vitamin B-complex, iron, calcium and phosphorous; that by its use the capacity for exertion will be increased in some manner other than by supplying nutrition, and that all persons will be benefited by taking it.

PAR. 34. 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 "Wheatex-B" possesses no "energizing" properties beyond those of a nutrient. The causes of nervousness, constipation, lack of appetite and consequent listlessness are numerous, and those conditions are only infrequently due to deficiencies in vitamin B-complex, iron, calcium or phosphorous, and only then are subject to correction or improvement by their use. In the relatively rare cases where these conditions are due to deficiency in vitamin B-complex, or said minerals, they will not be cured or substantially benefited by the use of "Wheatex-B." Effective and adequate vitamin or mineral therapy requires a dosage far greater than is provided by respondent's preparation which does not contain vitamin B-complex, iron, calcium, or phosphorous in therapeutic amounts. It is impossible for members of the general public, from the common symptoms to which respondent refers, to determine the existence of a deficiency in vitamin B-complex, iron, calcium, or phosphorous, with any reasonable degree of certitude. The product will not supply the user with amounts of iron, calcium, or phosphorous significant to blood and body building. The product possesses no therapeutic properties, and its only value is as a dietary supplement in cases where the usual diet is deficient in one or more of its components; it is impossible for members of the general public to determine the existence of such deficiencies with any reasonable degree of certitude.

PAR. 35. The use by the respondent of the said false advertisements containing materially misleading statements and representations with

respect to his said preparations has had the capacity and tendency to, and has, misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and that the preparation "Laxa-Tabs" may be taken under all conditions without ill effects, and into the purchase of substantial quantities of said preparations by reason of said erroneous and mistaken belief.

PAR. 36. The aforesaid acts and practices herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 25, 1946, issued and subsequently served its complaint in this proceeding upon the respondent, W. L. Abt, an individual, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing by respondent of his answer to the complaint, a hearing was held on May 12, 1947, before a trial examiner of the Commission theretofore duly designated by it, at which hearing a written stipulation as to the facts, entered into between counsel supporting the complaint and counsel for the respondent, was made a part of the record. Said stipulation as to the facts contained the provision, among others, that the statement of facts contained therein may be considered in this proceeding in lieu of evidence in support of and in opposition to the charges in the complaint, except insofar as they relate to the product "Papaya-Lets," concerning which no facts were stipulated. Subsequently the matter regularly came on for final consideration by the Commission upon the complaint, answer, stipulated facts, and recommended decision of the trial examiner (no briefs having been filed and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, W. L. Abt, is an individual with an office and principal place of business at 188 West Randolph Street, Chicago, Ill. He trades and does business under his own name, and

also the names of Abt Laboratories, Abt Institute, Abt Products, Abt Institute of Natural Therapy, and Abt Products Co.

PAR. 2. Respondent is now, and has been for more than two years last past, engaged in the business of selling and distributing various food and drug products, as "food" and "drug" are defined in the Federal Trade Commission Act.

The designations used by respondent for the said products, and the formulas and directions for use thereof, are as follows:

Designation:	"Tasty Soup Mix"
Formula:	Dehydrated Okra, Parsnips, Turnips, Celery, Kelp, Carrots, Leek, Rutabaga, Tomatoes, Beans, Parsley, Soya Beans, Potatoes, potato peelings, wheat germ, salt.
Directions:	Use to make soup by adding water, or on salad, in salad dressing or on buttered bread or toast.
Designation:	"Erbecell"
Formula:	Golden Seal Root, Fennel Seed and dehydrated alfalfa.
Directions:	One tablet before noon and evening meals.
Designation:	"Garlic-Tabs"
Formula:	Garlic, Parsley.
Directions:	1 or 2 tablets twice a day just before meal time.
Designation:	"Papaya-Lets"
Formula:	Papain (2½ grains), Alfafa.
Directions:	1 or 2 tablets after each meal.
Designation:	"Laxa-Tabs"
Formula:	Powdered dehydrated Okra, Irish Moss, Parsley, Rhubarb Stalk and Root, Senna and Asparagus. Each tablet contains 8 grains.
Directions:	Adults 2 tablets with evening meal, 2 upon retiring. Infants and small children, as prescribed by physician.
Designation:	"Carrot Tabs"
Formula:	Dehydrated Raw Carrots—each tablet contains 7 grains.
Directions:	Four tablets twice a day just before meal time.
Designation:	"Mucin-Oide"
Formula:	Okra, Persimmon, Alfalfa, Celery Root.
Directions:	4 tablets before meals, 3 times a day.
Designation:	"Iron-X"
Formula:	Alfalfa, Carrot Leaves, Sea Dulce, Mustard Greens, Parsley, Turnip Leaves, Water Cress, Ferric Citrate (organic). Each tablet contains 10 milligrams of organic iron.
Directions:	Adults, one to four tablets daily (Two with noon meal, one or two with evening meal). Children under five, one tablet daily with noon or evening meal.
Designation:	"Vitamin B Ration"
Formula:	Vitamin B_1, 85 U. S. P. units Riboflavin (B_2 or G), 250 gamma Niacin, 250 gamma Pyridoxine (B_6), 42 gamma Pantothenic Acid, 135 gamma

Directions: Five or six tablets daily.

Another formula for "Vitamin B Ration":

Vitamin B_1	250 micrograms
Vitamin B_2	500 micrograms
Vitamin B_6	42 micrograms
Pantothenic Acid	115 micrograms
Niacin	250 micrograms

plus all other B-complex factors.

The directions for this formula are:

"Four tablets daily will supply the daily minimum requirements of both Vitamin B_1 and B_2"

Designation: "Wheatex-B"

Formula: Natural Wheat Germ

Directions: One or more tablespoons daily.

Respondent causes the said products, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in his said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, respondent, subsequent to March 21, 1938, has disseminated and caused the dissemination of certain advertisements concerning his said products by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, their purchase, including, but not limited to, certain circulars entitled "Presenting 10 Dietary Aids to Health and Vigor" and "Break the Chains that Sap your Health," sent by respondent to food stores in various States of the United States which deal in his products, for distribution to members of the public, and advertisements in "Vita Health News" magazine, January 1942 and March and April 1944 issues, "Foods for Health and Enjoyment" magazine, May 1943 issue, and "Nature's Path" magazine, May 1944 issue, all of which magazines are distributed by the United States mails, and by other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent has disseminated and caused the dissemination of advertisements concerning his said products by various means, including, but not limited to, the circulars and advertisements referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of his said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. The

dissemination of the circular "Break the Chains that Sap your Health" was stopped in November 1943 and the dissemination of the circular "Presenting 10 Dietary Aids to Health and Vigor" was stopped in May 1946. None of the representations hereinafter set forth have been made since May 1946.

PAR. 4. Among the statements and representations contained in the said advertisements disseminated as aforesaid with respect to "Tasty Soup Mix," and specifically in the circular "Presenting 10 Dietary Aids to Health and Vigor," is the following:

* * * a delightful soup mix that nourishes and energizes.

PAR. 5. Through the use of the advertisements containing the statement and representation hereinabove set forth in paragraph 4, respondent has represented, directly and by implication, that his "Tasty Soup Mix" will "energize" the eater by increasing the capacity for exertion in some manner other than supplying nutrition.

PAR. 6. "Tasty Soup Mix" will energize by supplying nutrition but possesses no energizing properties beyond those of a nutrient.

PAR. 7. Among the statements and representations contained in the said advertisements disseminated as aforesaid with respect to "Erbecell," and specifically in the circular "Presenting 10 Dietary Aids to Health and Vigor" and in the advertisement in "Foods for Health and Enjoyment," May 1943 issues, are the following:

* * * to relieve the discomfort of dyspepsia—or griping bowel.

Anyone who knows the true value of Golden Seal and Fennel to dyspepsia sufferers will appreciate Erbecell.

PAR. 8. Through the use of the advertisements containing the statements and representations hereinabove set forth in Paragraph Seven, respondent has represented, directly and by implication, that "Erbecell" will relieve the discomfort of dyspepsia and griping bowels.

PAR. 9. "Erbecell" will not relieve the discomfort of dyspepsia or griping bowels. The preparation is of value in the relief of flatulence, where it has a limited effect.

PAR. 10. Among the statements and representations contained in said advertisements, disseminated as aforesaid, with respect to "Garlic-Tabs" and specifically in the circular "Presenting 10 Dietary Aids to Health and Vigor" and in the advertisement in "Vita Health News," March and April 1944 issues, are the following:

Sufferers from some types of high blood pressure have found garlic an effective normalizer.

Also known to reduce intestinal putrefaction.

Results observed for relief of:

Dullness	Fatigue
Nerves	Dizziness
Ear Ringing	Head Throbs associated with high blood pressure.

Observe the effects it has as a blood normalizer and builder upper.
Feel more fit. Take Garlic-Tabs.

PAR. 11. Through the use of the advertisements containing the statements and representations hereinabove set forth in paragraph 10, respondent has represented, directly and by implication, that "Garlic-Tabs" are an effective treatment for the symptoms of some types of high blood pressure; will relieve the associated symptoms of dullness, fatigue, nervousness, dizziness, ringing in the ears, and throbbing in the head; will make abnormal blood normal; and impart vim and vigor; that said product possesses tonic qualities and will reduce "intestinal putrefaction"; that one is benefited by reducing "intestinal putrefaction."

PAR. 12. "Garlic-Tabs" are a carminative agent, but they possess no other therapeutic or tonic properties. They are not an effective treatment for hypertension, nor will they relieve any of its associated symptoms. They have no effect whatever upon abnormal blood conditions, nor will they increase vim or vigor. "Intestinal putrefaction" of food is a normal part of the digestive process and its reduction would be highly detrimental. In the presence of a disease condition there may be an abnormal putrefaction in the intestine for which the accepted treatment is to eliminate the material itself and not to "reduce putrefaction," for either of which "Garlic-Tabs" would be wholly without effect.

PAR. 13. Among the statements and representations contained in said advertisements, disseminated as aforesaid, with respect to "Laxa-Tabs," and specifically in the circular "Presenting 10 Dietary Aids to Health and Vigor," in the advertisement in "Foods for Health and Enjoyment," May 1943 issue, and in the circular "Break the Chains that Sap Your Health," are the following:

The new modern way to regularity.
Works gently * * *.
*** * * a natural regulator * * *.**
The more you take, the less you need.
Natural eliminant for the bowel.
*** * * the gentle, natural action of Dr. Abt's Laxa-Tabs.**
Compounded from 7 natural vegetables, known for their tonic, astringent and laxative properties.
Laxa-Tabs furnish a gentle activator for the torpid bowel.

PAR. 14. Through the use of the advertisements containing the statements and representations hereinabove set forth in paragraph 13, respondent has represented, directly and by implication, that as a consequence of the use of "Laxa-Tabs" the condition of the bowels will be such that they will regularly and spontaneously evacuate themselves without assistance; that the bowel movements which they induce are "natural," and that they are "natural" regulators and eliminants; that their action is gentle and non-irritant; that they possess tonic and astringent properties, and that the longer they are used the less they will be needed.

PAR. 15. The use of "Laxa-Tabs" will not promote or induce such a condition of the bowels that they will regularly and spontaneously evacuate themselves. The bowel movements which they induce are not natural but artificial, and they are neither a natural eliminant nor a natural regulator. Said preparation contains senna and rhubarb root, both of which are irritant laxatives, and the action of "Laxa-Tabs" is neither gentle nor nonirritant. They possess no tonic properties, and their astringent properties are insignificant.

PAR. 16. Among the statements and representations contained in said advertisements, disseminated as aforesaid, with respect to "Carrot-Tabs," and specifically in the circular "Presenting 10 Dietary Aids to Health and Vigor," are the following:

Carrots—serve many as a digestive aid and is known to possess "antiseptic" qualities which help limit putrefactive changes in the body.

A real health help to nutrition.

PAR. 17. Through the use of the advertisements containing the statements and representations hereinabove set forth in paragraph 16, respondent has represented, directly and by implication, that "Carrot-Tabs" are an aid to digestion, possess antiseptic qualities, and will limit or reduce "putrefactive changes" in the body to the benefit of the user.

PAR. 18. "Carrot-Tabs" are not an aid to digestion nor do they possess antiseptic properties. They are of no therapeutic value where there is a putrescent condition of body tissue, either present or potential. The putrefaction of food in the intestine is a normal part of the digestive process, and its reduction would be highly detrimental. In the presence of a disease condition there may be an abnormal putrefaction in the intestine for which the accepted treatment is to eliminate the material itself and not to "reduce putrefaction," for either of which "Carrot-Tabs" would be wholly without benefit.

PAR. 19. Among the statements and representations contained in said advertisements, disseminated as aforesaid, with respect to "Mucin-Oide," and specifically in the circulars "Break the Chains that Sap Your Health" and "Presenting 10 Dietary Aids to Health and Vigor," and the advertisement in "Foods for Health and Enjoyment," May 1943 issue, are the following:

Kind to nervous, irritated stomachs.

Peptic Ulcers, Gastritis. To help control the pains of peptic ulcers and gastritis.

* * * forms a protective coating against the hydrochloric acid of the stomach, often relieves irritated membranes and aids in binding excess stomach acids.

PAR. 20. Through the use of the advertisements containing the statements and representations hereinabove set forth in paragraph 19, respondent has represented, directly and by implication, that "Mucin-Oide" is soothing to nervous or irritated stomachs, will palliate the pain incident to peptic ulcers or gastritis and forms a protective coating of the stomach which protects it against stomach acids.

PAR. 21. "Mucin-Oide" will not soothe "nervous" or irritated stomachs. Taken as directed it will afford no significant relief to the pain incident to peptic ulcers or gastritis. It will not neutralize stomach acids, and the amount of protective mucilaginous substance which is available for deposit on the stomach wall is insignificant.

PAR. 22. Among the statements and representations contained in said advertisements disseminated as aforesaid in the circular "Presenting 10 Dietary Aids to Health and Vigor," is the following:

"Gain . . . Retain . . . Health with Dr. Abt's Dietary Aids."

With respect to "Iron-X" in said circular is the following:

Lack of iron in the blood may cause simple anemia, impaired energy. Each tablet of "Iron-X" contains 10 milligrams of organic iron, helps fortify body iron reserve. Iron-X is derived from 8 separate vegetables, all recognized as being rich in food iron. It takes iron to make rich red blood.

Among the statements and representations contained in said advertisements disseminated as aforesaid in the circular "Break the Chains that Sap Your Health" with respect to "Iron-X" are the following:

"Iron-X"

Food Iron Tablets

Iron is one of the most essential minerals in the body. Lack of it causes simple anemia, which results in poor energy, unnatural thinness, pallor and

weak resistance to disease. For iron is a vital constituent of the blood, its chief mineral element, which gives blood its red color and used for building an abundance of vigorous red corpuscles that race through the body carrying on the process of metabolism. Hence, every normal adult should receive a minimum of 12 to 15 milligrams of iron daily. Iron-X is a concentrated mineral preparation extracted from 8 natural vegetables, all recognized as being rich in vital food iron. Each tablet supplies 10 milligrams of iron citrate and furnishes an excellent supply of that precious iron.

PAR. 23. Through the use of the advertisements containing the statements and representations hereinabove set forth in paragraph 22, respondent has represented, directly and by implication, that a deficiency of iron in the system may produce anemia and may result in impaired energy, unnatural thinness, pallor and weak resistance to disease, and that such anemia and the said manifestations thereof will be cured or substantially benefited by the use of "Iron-X," taken as directed.

PAR. 24. The preparation taken as directed will provide from one to three times the adult minimum daily requirement for iron. A normal person taking the preparation as directed will not become anemic from lack of iron. The causes of impaired energy, unnatural thinness, pallor and weak resistance to disease are numerous and these conditions are only infrequently due to an iron deficiency. In the relatively rare cases where the said conditions are due to iron deficiency, adequate and effective therapy by the use of iron requires a dosage far greater than is provided by respondent's preparation, taken as directed, and such iron deficiency, and its manifestations, will not be cured or substantially benefited by the use of "Iron-X" as directed.

PAR. 25. Among the statements and representations contained in said advertisements, disseminated as aforesaid, with respect to "B-Ration," and specifically in the advertisement in "Vita Health News," January 1942 issue, and the circulars "Presenting 10 Dietary Aids to Health and Vigor," and "Break the Chains that Sap your Vigor," are the following:

Gain * * * Retain * * * Health with Dr. Abt's Dietary Aids.

Have you a hidden hunger for the B vitamins? Then let B-Ration be your body builder. Don't allow a shortage in your system to make you tired, irritable, nervous, cause lack of appetite or possible gastro-intestinal disturbances when 1000 International units per day will go a long way in helping you capture permanent vitality.

To promote intestinal muscle tone, help restore jaded appetite, return vitality to your system and contribute to an above average nutritional condition, buy the natural vitamin B Complex, B-Ration.

It contains * * * pyrodoxine, pantothenic acid * * * all necessary for body building.

Vitamin B tends to aid the nerves and appetite, help digest carbohydrates. Abt's Vitamin B Ration contains * * * 135 gamma of Pantothenia (sometimes called the "anti-gray hair factor").

Vitamin B is not merely one vitamin, but actually several vitamins, known as B-Complex, * * * 5 tablets daily supply the normal daily requirement of Vitamin B.

Be sure of your health—be sure of the vitamins and minerals you take. Join the thousands who depend on Abt products.

PAR. 26. Through the use of the advertisements and representations containing the statements and representations hereinabove set forth in paragraph 25, respondent has represented, directly and by implication, that fatigue, irritability, nervousness, lack of vitality, lack of appetite, digestive disturbances and changing of the color of the hair to gray are due to deficiencies in various components of the Vitamin B-complex, and will be cured or substantially benefited by the use of "B-Ration"; that "B-Ration," taken as directed, will supply the normal daily adult requirement of Vitamin B-complex, will supply the user with 1,000 international units per day of the components of vitamin B-complex, assure the user against dietary deficiency in vitamin B-complex, and contribute to bodily health, vitality and well-being; that it will promote the tone of the intestinal muscles and help to digest carbohydrates and that all persons will be benefited by taking it.

PAR. 27. The causes of fatigue, irritability, nervousness, lack of vitality, and lack of appetite are numerous and they are only infrequently attributable to a deficiency in vitamin B-complex. When due to such deficiency they will not be cured nor substantially benefited by the use of "B-Ration," since effective and adequate vitamin therapy requires a dosage far greater than is provided by respondent's product, taken as directed. "B-Ration," taken as directed, gives the user the minimum daily adult requirement of vitamins B_1 and B_2, and smaller amounts of the other components of the B-complex but in such amounts it is of no therapeutic value in the correction or relief of developed symptoms of vitamin deficiency. "B-Ration" has no effect on graying hair. With the exception of vitamin B_1, none of the components of "B-Ration" are measured in terms of "international units," and "B-Ration" cannot be described in terms of such units. The product, used as directed, will not assure against dietary deficiency in B-complex, but only against deficiency in vitamins B_1 and B_2. The product will not promote better tone in the intestinal muscles nor does it function in connection with the digestion of carbohydrates. The

product possesses no therapeutic properties, and its only value is as a dietary supplement to persons whose usual diet is deficient in one or more of its components.

PAR. 28. Among the statements and representations contained in said advertisements disseminated as aforesaid with respect to "Wheatex-B" and specifically in the circular "Presenting 10 Dietary Aids to Health and Vigor" are the following:

Gain . . . Retain . . . Health with Dr. ABT'S dietary aids.

A splendid energy "lift" . . . If nervousness, constipation, lost appetite keep you all "fagged out" perhaps your diet is low in Vitamin B and minerals. This delicious wheat germ food gives you the bracing Vitamin B complex, together with blood and body building minerals—iron, calcium, phosphorous. Discover New Wheatex-B. It's new LIFE for you!

PAR. 29. Through the use of the advertisements containing the statements and representations hereinbefore set forth in paragraph 28, respondent has represented, directly and by implication, that nervousness, constipation, lost appetite and consequent listlessness are due to deficiencies in vitamin B-complex, iron, calcium or phosphorous, and will be cured or substantially benefited by the use of "Wheatex-B"; that said product contains therapeutically significant amounts of vitamin B-complex, iron, calcium, or phosphorous; that by its use the capacity for exertion will be increased in some manner other than by supplying nutrition, and that all persons will be benefited by taking it.

PAR. 30. "Wheatex-B" possesses no "energizing" properties beyond those of a nutrient. The causes of nervousness, constipation, lack of appetite, and consequent listlessness are numerous, and those conditions are only infrequently due to deficiencies in vitamin B-complex, iron, calcium, or phosphorous. In the relatively rare cases where these conditions are due to deficiency in vitamin B-complex, or said minerals, they will not be cured or substantially benefited by the use of "Wheatex-B." Effective and adequate vitamin or mineral therapy requires a dosage far greater than is provided by respondent's preparation which does not contain vitamin B-complex, iron, calcium, or phosphorous in therapeutic amounts. The product will not supply the user with amounts of iron, calcium, or phosphorous significant to blood and body building. The product possesses no therapeutic properties, and its only value is as a dietary supplement in cases where the usual diet is deficient in one or more of its components.

PAR. 31. For the reasons stated and in the particulars indicated herein, the Commission finds that the representations made by respondent with respect to the aforesaid preparations are erroneous and misleading and constitute false advertisements.

PAR. 32. While the complaint alleges that the use of the preparation "Laxa-Tabs," an irritant laxative, is not always safe and harmless to all individuals if used under the conditions prescribed for its use or under such conditions as are customary or usual, the Commission, subsequent to the issuance thereof, has administratively determined that the potential dangers resulting from the use of preparations which are irritant laxatives under such conditions are not of sufficient seriousness to justify a requirement that respondent affirmatively disclose in advertising all facts material with respect to the consequences which may result from its use, and therefore no findings of facts have been made with respect thereto.

The record contains no evidence with respect to the charges in the complaint concerning the product "Papaya-Lets," and consequently, no findings of facts with respect thereto have been made.

PAR. 33. The use by the respondent of the aforesaid false advertisements has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the said advertisements are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, respondent's answer thereto, stipulation as to the facts entered into by and between counsel supporting the complaint and respondent, and recommended decision of the trial examiner (no briefs having been filed and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered That the respondent, W. L. Abt, individually and trading as Abt Laboratories, Abt Institute, Abt Products, Abt Institute of Natural Therapy, and Abt Products Co., or trading under any other name, his agents, representatives, and employees, directly or

through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondent's products designated "Tasty Soup Mix," "Erbecell," "Garlic-Tabs," "Laxa-Tabs," "Carrot Tabs," "Mucin-Oide," "Iron-X," "Vitamin B Ration," and "Wheatex-B," or any other products of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from:

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

(*a*) That the preparation "Tasty Soup Mix" will provide energy in any manner other than by supplying nutrition or that it possesses any energizing properties beyond those of a nutrient.

(*b*) That the preparation "Erbecell" will relieve the discomforts of dyspepsia or griping bowels.

(*c*) That the preparation "Garlic-Tabs"—

(1) Is a competent or effective treatment for any of the symptoms of high blood pressure or will afford any relief from dullness, fatigue, nervousness, dizziness, ringing in the ears, throbbing in the head, or any other associated symptom of high blood pressure;

(2) Will have any effect upon abnormal blood conditions;

(3) Will increase vim or vigor;

(4) Possesses any tonic properties;

(5) Posses any therapeutic properties other than as a carminative agent; or

(6) Will reduce intestinal putrefaction, or that one is benefited by a reduction of intestinal putrefaction.

(*d*) That the preparation "Laxa-Tabs"—

(1) Will cause the bowels to regularly and spontaneously evacuate themselves without assistance;

(2) Will induce bowel movements that are natural;

(3) Is a natural regulator or eliminant;

(4) Is gentle and non-irritant in its action; or

(5) Possesses any tonic or significant astringent properties.

(*e*) That the preparation "Carrot-Tabs"—

(1) Is an aid to digestion;

(2) Possesses any antiseptic properties; or

(3) Has any therapeutic value where there is a putrescent condition of body tissue either present or potential.

(*f*) That the preparation "Mucin-Oide" will—

(1) Soothe nervous or irritated stomachs;

(2) Alleviate the pain incident to peptic ulcers or gastritis; or

(3) Form a protective coating of the stomach which protects it against stomach acids.

(*g*) That the preparation "Iron-X," when taken as directed by respondent, will—

(1) Have any therapeutic effect upon an iron deficiency in the system, or upon any manifestations of such an iron deficiency; or

(2) Have any beneficial effect in the treatment if impaired energy, unnatural thinness, pallor, or weak resistance to disease.

(*h*) That the preparation "Vitamin B Ration," when taken as directed by respondent, will—

(1) Provide any therapeutic benefits;

(2) Cure, or constitute an adequate or effective treatment of, fatigue, irritability, or nervousness;

(3) Restore vitality or appetite;

(4) Have any effect on the color of the hair;

(5) Except for Vitamins B_1 and B_2, provide the minimum daily adult nutritional requirements of the components of Vitamin B-complex;

(6) Promote better one in the intestinal muscles or aid in the digestion of carbohydrates; or

(7) Have any beneficial value except as a dietary supplement to persons whose usual diet is deficient in one or more of its components.

(*i*) That the components of the Vitamin B-complex, with the exception of Vitamin B_1, are measured in terms of International Units.

(*j*) That the preparation "Wheatex-B"—

(1) Contains therapeutically significant amounts of Vitamin B-complex, iron, calcium, or phosphorus, or will supply the user with amounts of iron, calcium, or phosphorus significant to blood or body building;

(2) Will cure or substantially benefit nervousness, constipation, lack of appetite, and consequent listlessness;

(3) Possesses any therapeutic properties; or

(4) Will increase the capacity for exertion in any manner other than by supplying nutrition, or have any beneficial value except as a dietary supplement in cases where the usual diet is deficient in one or more of its components.

2. Disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing, or which is likely to induce,

directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparations, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

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

IN THE MATTER OF

SAMUEL WORTH DOING BUSINESS AS WORTHMORE SALES COMPANY

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

Docket 5203. Complaint, Aug. 10, 1944—Decision, Mar. 10, 1950

Where lottery schemes are devised and sold in connection with disclaimers which pretend to offer them as straight sales promotion plans, free of the lottery element, prudence requires that the Commission's remedy should reach any variations of the plans which, as a result of their design, readily lend themselves to the operation of a lottery scheme; and such a remedy obviously would not reach or be intended to reach a plan which was in fact free of the lottery element, but which might be so changed or corrupted by customers of the seller as to be used in connection with lotteries.

As examination of pertinent decisions of the several Circuit Courts of Appeal with respect to orders of the Commission enjoining the use of merchandising plans or sales promotion plans which reasonably anticipate or suggest a lottery, or are of such a nature that a lottery is likely to occur therefrom, make it clear that there is no difference in the purpose or scope of the orders intended by the Commission and those approved by said courts, and that the only differences between the opinions of the several Circuit Courts and between certain of said courts and the Commission involved construction of the language used rather than the proper scope of the orders themselves.

As respects orders in such cases it seems clear from the decisions concerned, and it is the opinion of the Commission, that such orders should be sufficient to enjoin the use of such merchandise plans or sales promotion plans as above described. It is not the intent of the Commission, however, to go beyond such point, and no Court has held that the Commission's orders in such cases were too broad when construed as the Commission intended they should be construed, it appearing, as above noted, that differences involved question of construction only.

A type of order in such cases, adopted in 1942 for general use in appropriate matters, as a result of a study directed to the possibility of choosing language which would eliminate the uncertainty of construction found by the courts, but would still be sufficiently broad to accomplish the purposes intended, and which requires a respondent engaged in lottery schemes of the nature concerned, to cease and desist from "selling or distributing any merchandise so packed and assembled that sales of said merchandise to the public are to be made or, *due to the manner in which such merchandise is packed and assembled at the time it is sold by respondent* may be made by means of a game of chance, gift enterprise or lottery scheme," was designed, through the addition of the *underscored* language, to make it clear that such orders were intended to apply only to those plans which might

be used as lottery schemes as a result of the manner in which the merchandise was packed and assembled at the time it was sold by the party charged with the violation.

While said type of order has been used in many subsequent cases and has not thus far been disapproved by any court, appropriate changes in language are necessary to fit the facts of each case, and such a modification as involved in an order requiring a respondent, who had devised and sold lottery schemes in connection with disclaimers which pretended to offer them as straight sales promotion plans, free of the lottery element, to cease and desist from selling sales promotion plans and similar articles "so designed that their use in connection with the distribution of merchandise constitutes, *or due to such design may constitute*, the operation of a game of chance, gift enterprise or lottery scheme," and in which the language *underscored* clearly limited the order to sales plans and merchandise so designed by the respondent that they might or were likely to constitute a game of chance, in the opinion of the Commission met the criticisms which had been raised by some of the Circuit Courts, without narrowing or impairing the effectiveness of the order.

Where an individual engaged in the manufacture and interstate sale and distribution of sales promotion plans, trade cards and similar devices, including several groups of plans—sold in units of 500, or multiples thereof—with trade cards to be distributed by the retailer-purchaser to his customers designed to secure to the consumer, when his purchases aggregated the total displayed on the card a "dividend" (in trade or otherwise, as the case might be) as determined by the number concealed under the card's "Secret Panel" and the schedule of dividends or prizes as arranged and displayed by the merchant concerned (the superiority of which over ordinary trade cards—where the holder knows from the beginning what he will get—he stressed)—

Sold his said stimulator plans with their explanatory advertising matter, posters, "secret panel" trade cards, trade card punches, and award sheets setting out the numbers concealed in the different panels (which had been so arranged by him that the higher the number, the fewer there were) to each of his retail merchant customers, who distributed the cards to their customers and thereby entitled them, upon the punching out of the cards, in trade, without choice—and in disregard of said individual's instructions as to how, if each holder had his choice of awards, the use of the plan could not be considered a lottery, and was not so intended—to merchandise of varying value as set out by the particular merchant on blank lines on the award sheet opposite the different numbers displayed and arranged as aforesaid, and as determined by the concealed number secured by the particular customer;

Whereby the awards received were thus determined and distributed wholly by chance, through the operation of said game of chance or lottery scheme in the sale of merchandise to the purchasing public; and he supplied to and placed in the hands of retail merchants, as intended, the means through which they conducted games of chance, gift enterprises, and lottery schemes in the sale of merchandise to the public, contrary to the established public policy of the United States Government;

With tendency and capacity to induce members of the purchasing public to deal with or purchase merchandise from dealers using such plans in preference to

those using sales promotion plans of competitors which did not contain an element of chance; and with the result that retail merchants and dealers were attracted to his sales plans by their element of chance, and were thus induced to purchase said plans in preference to those offered by competitors; and with capacity and tendency thereby to unfairly divert trade from his competitors to him:

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

Under such schemes no reasonable person could feel any real suspense, in trading out his card, to learn what his concealed number might be unless that number had some influence in determining what award he would receive, and the only consideration that gave point and purpose to the number concealed in the "secret panel" was that it served to identify specifically the award or bonus which the holder of the number would receive, and inspired the hope that through it by chance the holder might receive one of the larger awards. Should the holder know that, regardless of his secret number, he might receive his choice of any of the listed prizes it is wholly unreasonable to believe that he would have any curiosity as to what that number might be. The Commission, accordingly, found it surprising that respondent in the above matter should seriously argue that the plan was not designed or intended to be used as a lottery, that the element of chance had been entirely eliminated by instructions to the merchants to give any listed prize which their customers might select regardless of the hidden number on the customer's card, and that while the hidden number provided an attractive element of suspense, the customer was nevertheless not limited in his choice of awards as above set forth, and that respondent's instruction to the retailer relieved him of responsibility for any lottery which might be employed by the retailer in actual operation; or, that such arguments, having been offered, should be seriously considered.

Before *Mr. John P. Bramhall* and *Mr. Frank Hier*, trial examiners.
Mr. J. W. Brookfield, Jr. for the Commission.
Nash & Donnelly, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Samuel Worth, an individual trading and doing business under the name of Worthmore 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 respect thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Samuel Worth, is an individual trading and doing business under the name of Worthmore Sales Co., with his

principal office and place of business located at 221 East Cullerton Street, Chicago, Ill. Respondent is now and for more than 6 months last past has been engaged in the manufacture of sales promotion cards and in the sale and distribution thereof to dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused his sales cards, when sold, to be transported from his place of business in the city of Chicago, Ill., to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. There is now and has been for more than 6 months last past a course of trade by respondent in such sales promotion cards 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 respondent is in competition with other individuals and with corporations and firms engaged in the manufacture of sales promotion cards, trade cards, discount cards, premium cards, coupons and trading stamps and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business as described in paragraph 1 hereof respondent sells and has sold cards so designed and arranged as to involve the use of a lottery scheme or gift enterprise when used by dealers in promoting and increasing sales of their merchandise to the consuming public. The respondent manufactures and distributes several groups of sales promotion cards but they all involve a lottery scheme or gift enterprise and vary only in detail. The sales promotion cards in one such group are herein described for the purpose of showing arrangement, design and principle involved:

Gas	2 2 2 2 2 2 2 2 2 3 3 3 3 3 3 3 3 3	Gas
Sales		Sales
	THIS CARD IS VALUABLE—Use it and Discover YOUR HIDDEN TREASURE	
Mystery!	Under This SECRET PANEL	No blanks
Thrills!	is Your Award	
Surprises!	Warning! Void if Opened	
	Every Card a Winner!	
	Read Rules on Other Side	
Gas	Oil 1 1 1 Oil	Gas
Sales	5 5 5 5 5 Sales 223 Sales 5 5 5 5 5	Sales

Under the secret panel appears various legends, some of which have the numbers 400, 300, etc., and the words "See Chart for Award." On the reverse or back of said sales card appears the following legend:

Customers Dividend Club
Membership Card

Name Address

Each purchase you make will be punched out. When entirely punched out, we will open the "Secret Panel" revealing a hidden number which entitles you to a valuable dividend award absolutely free. See selection of awards in our place. Should you open "Secret Panel" card becomes void.

Mfd. by Worthmore, 221 E. 20th St., Chicago
U. S. Pat. No. 2,109,603.

Each set of the sales promotion cards sold by respondents is accompanied by a poster, typical of which is the one bearing the following legend:

JOIN OUR
CUSTOMER'S DIVIDEND CLUB

$ Trade Here — It Pays $

ask for a
"Secret Panel" Treasure Card
It's Free

When your card is fully punched out we will open "Secret Panel" revealing your hidden dividend number which entitles you to choice of gifts below.

No.	*Dividends below are absolutely free*
950	Receives
900	Receives
800	Receives
700	Receives
600	Receives
500	Receives
400	Receives
300	Receives
200	Receives
150	Receives

The secret panel referred to on said card is partially perforated indicating where the panel may be opened, but until the panel is opened, the legend thereunder is effectively concealed from the holder of said card. The legends under the secret panel contain numbers corresponding to some of those shown on the poster. The legend under the secret panel is effectively concealed under the panel except when opened, and the number which the holder of said card has drawn is effectively concealed and determined wholly by lot or chance. Respondent furnishes his customers various posters and advertising matter explaining the operation of the sale plan, and in his literature and by his representations suggests various methods for the use of

his sales cards by dealers, all of which methods involve a lottery or game of chance.

PAR. 4. Each of the cards included in one of the groups of sales cards embodying respondent's sales plan is intended for use in the sale of various amounts of merchandise, and others manufactured and sold to filling stations are intended for use by proprietors of service stations in sales of oil and gas aggregating specified amounts and provide for various awards as determined by the proprietors of said stations. The retail merchandise and service station operators to whom respondent sells and has sold assortments of such sales promotion cards distribute the same to their customers and prospective customers and, on the poster furnished by respondent for the purpose opposite the various numbers, list prizes or awards in varying amounts as determined by said merchants. The cards are distributed free to customers and prospective customers of said retail merchants and filling station operators and, when purchases are made, numbers corresponding to the amount of such purchase are punched from the margin of said card. And when all the numbers around the said margin are punched, the secret panel is opened and the customer is entitled to merchandise in the amount shown on the poster opposite the number corresponding to the number appearing under the secret panel without additional charge. In few or no cases are the retail customers of said merchants given their choice of the various prizes listed on the poster.

PAR. 5. There are in competition with respondent various manufacturers and distributors of sales promotion cards, premium cards, price concession cards, coupons and trading stamps, which, when used by dealers, do not involve a lottery scheme, game of chance, or gift enterprise. Many persons, firms and corporations who sell and distribute various cards or devices for promoting or increasing the sales of dealers do not offer for sale or sell cards or devices so designed and arranged as above alleged, or otherwise designed and arranged, as to involve a game of chance, lottery scheme, or gift enterprise.

PAR. 6. The use by respondent of said methods in designing and arranging his said cards and distributing the same for redistribution to the public is a practice which is contrary to an established public policy of the Government of the United States. The consuming public is induced to deal with or purchase merchandise from dealers using respondent's cards in preference to purchasing merchandise from dealers using the devices of respondent's competitors, because of the lottery scheme, game of chance, or gift enterprise connected with respondent's said cards. By reason thereof, dealers are induced to purchase respondent's said cards in preference to devices of respondent's

competitors. The sale and distribution of the aforesaid sales cards has the tendency and capacity to unfairly divert trade to respondent from its said competitors.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 10, 1944, issued and subsequently served its complaint in this proceeding upon the respondent Samuel Worth, an individual trading as Worthmore Sales Co., charging him with the use of unfair methods of competition in commerce and unfair acts and practices in commerce in violation of the provisions of said act. After the respondent filed his answer, testimony and other evidence in support of and in opposition to the allegations of the complain were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the answer thereto, testimony and other evidence, recommended decision of the trial examiner, and briefs and oral argument in support of and in opposition to the complaint; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Samuel Worth, is an individual trading and doing business under the name of Worthmore Sales Co., with his office and place of business located at 1825 South Michigan Avenue, Chicago, Ill. He is now, and since 1942 has been, engaged in the manufacture of sales promotion plans, including trade cards and other similar devices, which have been distributed to retail dealers located at points in the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, respondent causes and has caused his sales plans, trade cards, and other similar devices,

when sold, to be transported from his place of business in the State of Illinois to purchasers thereof located in the various States of the United States and in the District of Columbia. Respondent maintains, and has maintained, a course of trade in his products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, respondent sells, and has sold and distributed, several groups of sales promotion plans, trade cards, and similar devices which involve the same general principle and vary only in detail, typical and illustrative of which are the following:

Gas 2 2 2 2 2 2 2 2 2 3 3 3 3 3 3 3 3 3 Gas
Sales Sales

THIS CARD IS VALUABLE—Use it and
Discover YOUR HIDDEN TREASURE

Mystery! Under This SECRET PANEL No Blanks
Thrills! is Your Award
Surprises! Warning! Void if Opened
Every Card a Winner!
Read Rules on Other Side

Gas Oil 1 1 1 Oil Gas
Sales 5 5 5 5 5 Sales 223 Sales 5 5 5 5 5 Sales

Under the secret panel appear various legends, some of which have the numbers 400, 300, etc., and the words "See Chart for Award." On the reverse or back of said sales card appears the following legend:

Customers Dividend Club

Membership Card

Name Address

Each purchase you make will be punched out. When entirely punched out, we will open the "Secret Panel" revealing a hidden number which entitles you to a valuable dividend award absolutely free. See selection of awards in our place. Should you open "Secret Panel" card becomes void.
Mfd. by Worthmore, 221 E. 20th St., Chicago
U.S. Pat. No. 2,109,603.

Each set of the above cards is accompanied by the following poster:

JOIN OUR
CUSTOMER'S DIVIDEND CLUB

$ Trade It $
Here Pays

ask for a
"Secret Panel" Treasure Card
It's Free

When your card is fully punched out we will open "Secret Panel" revealing your hidden dividend number which entitles you to choice of gifts below.

No.	*Dividends below are absolutely free*
950	Receives
900	Receives
800	Receives
700	Receives
600	Receives
500	Receives
400	Receives
300	Receives
200	Receives
150	Receives
100	Receives

PAR. 4. These sales stimulator plans are sold in units consisting of 500 or multiples thereof, "secret panel" trade cards, several award sheets, window posters, and a trade card punch. The secret panel referred to on said trade card is partially perforated, indicating where the panel may be opened, but until the panel is opened, the legend thereunder is effectively concealed from the holder of said card and the number held is determined by lot or chance. The numbers on the award chart match the concealed numbers on the cards according to a schedule fixed by the respondent so that the higher the number, the fewer the cards bearing that number. Thus, there are only two cards having the highest number concealed, while there are 140 cards with secret panels concealing the lowest number on the award sheet.

Respondent supplies each of his customers with posters and advertising matter which describe the operation of the sales plan and the use of cards by them to attract customers and increase sales. He also sends to each customer a sheet showing a photographic facsimile of the patent on his sales plan, on the reverse side of which are printed instructions to them that so long as the card holder has his choice of awards the use of the plan cannot be considered a lottery and that it is intended to be so used.

PAR. 5. The respondent's sales plans, trade cards, and similar devices are all designed and arranged for use by retail merchants in the sale and distribution of their merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme. The retail merchants to whom respondent sells his plans distribute the sales cards to their customers without charge and without knowledge on the part of either as to the numbers concealed on the cards. On the award poster furnished by respondent for this purpose, retailers list prizes or awards opposite the various numbers in varying amounts which are determined solely by said retailers. As purchases are made by the card holders from the retailer, the latter punches out the value of each purchase

from the sales or trade card until all the numbers around the margin, equaling the face value of the card, are punched out. The retailer then opens the secret panel on the trade or punch card, and the customer is entitled to merchandise in the amount shown on the poster opposite the number corresponding to the number appearing under the secret panel, without additional charge. Such customer is not given a choice of the awards listed but must take the one listed opposite the same number as his card bears. The award received is thus determined and distributed wholly by chance.

PAR. 6. Retail merchants who purchase respondent's sales plans and cards use them to operate a game of chance, gift enterprise, or lottery scheme in the sale of merchandise to the purchasing public. That these plans and cards are designed, arranged, and sold by the respondent for that purpose is evident from the make-up of the plan and the cards themselves; from respondent's description of the superiority of his plans with concealed numbers to ordinary trade cards, where the holder knows from the beginning what he will get; from the literature advertising his plans; and from his instructions to his retailer-customers as to how, if used as directed, they do not involve a lottery but if otherwise used they do.

PAR. 7. Respondent supplies to and places in the hands of retail merchants the means by which they have been, and are, conducting games of chance, gift enterprises, and lottery schemes in the sale of merchandise to the public. The sale of merchandise by and through such means is a practice which is contrary to the established public policy of the government of the United States, and the respondent, through the supplying of such means, assists and participates in a violation of said policy.

PAR. 8. Respondent is in competition with other individuals, firms, or corporations who sell and distribute trade cards, sales plans, premium cards, etc., which are not designed, arranged, sold, or used to sell merchandise by games of chance, gift enterprises, or lottery methods. The lot or chance feature of respondent's sales plans has the tendency and capacity to induce members of the purchasing public to deal with or purchase merchandise from merchants using such plans in preference to merchants or others using sales promotion plans of competitors which do not contain an element of lot or chance. Therefore, retail merchants and dealers are attracted to respondent's sales plans or methods by the element of chance involved in the sale of merchandise by the use of said plans and are thereby induced to purchase said plans in preference to sales promotion plans offered by competitors which do not contain an element of chance. Thus, the offering for sale, sale, and

distribution by respondent of said sales plans have the capacity and tendency, because of the lot or chance feature, unfairly to divert trade to respondent from his competitors who do not sell, or offer for sale, sales plans containing an element of chance.

CONCLUSION

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

Commissioner Mason concurring in part and dissenting in part.

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Samuel Worth, trading as Worthmore Sales Company or under any other name, his agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, sales stimulator plans, trade cards, sales cards, premium cards, or other articles so designed that their use in connection with the distribution of merchandise constitutes, or due to such design may constitute, the operation of a game of chance, gift enterprise, or lottery scheme.

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

Commissioner Mason concurring in part and dissenting in part.

OPINION OF THE COMMISSION

AYRES, COMMISSIONER: Respondent sells various sales promotion plans which involve the same general principle. Typical of such

plans are cards which respondent sells to retailers for free distribution among their customers. The cards are intended to stimulate the business of the retailer by providing bonuses to his customers upon their purchase of merchandise from him aggregating the amount shown on each card. Figures around the edge of the card are punched in an amount corresponding with the amount of each purchase. Some of the cards are punched out in full when purchases amount to $5, and others when they amount to $10. In the center of each card is a "secret panel," containing a hidden number, which is opened by the retailer when the card has been completely punched out. The customer then becomes entitled to a bonus corresponding with the number in the panel according to a schedule posted in the retailer's store.

On the printed form for the schedule of bonuses, which form is supplied by respondent, appears the following information for the retailer's customers:

> When your card is fully punched out we will open "Secret Panel" revealing your hidden dividend number which entitles you to choice of gifts below.

The form showing the schedule of bonuses has blank spaces in which the retailer lists the bonuses to be awarded for each of 11 numbers. In each unit of 500, the "secret panel" of only two cards conceals the highest of the eleven numbers, the lower numbers appearing in the "secret panel" of progressively more cards.

Evidence concerning the actual operation of the plan discloses that merchants give a larger award, usually an amount in trade, for the highest numbers, and progressively smaller awards for the lower numbers, and that the customer is entitled to receive only the award listed for his number. On this basis of operation, it is clear that the amount of the award received by each customer is determined wholly by lot or chance.

Respondent argues that this plan is not designed or intended to be used as a lottery; and that the element of chance has been entirely eliminated by instructions to the merchants to give any listed prize which their customer may select, regardless of the hidden number on the customer's card. It is contended that the "secret panel" or hidden number provides an element of suspense which is attractive, but that the customer is not limited in his choice of awards to that listed for his number on the schedule, and may select any one of the awards listed. Respondent urges that its instructions to the retailer relieves it of responsibility for any lottery which may be employed by the retailer in actual operation.

It is surprising that respondent's arguments should be seriously offered or considered. No reasonable person could feel any real suspense in trading out his card to learn what his concealed number may be unless that number had some influence in determining what award he would receive. If the customer knows, as respondent contends that he should know, that regardless of the number in his "secret panel" he may receive his choice of any one of the listed prizes, it is wholly unreasonable to believe that he has any curiosity as to what his number may be. The only consideration that gives point and purpose to the concealed number is that it serves to identify specifically the award or bonus which the holder of the number will receive, and inspires the hope that through it the finger of chance will fall upon one of the larger awards.

It is clear that the plans are designed to be used in connection with lottery schemes and the Commission has no difficulty in reaching such a conclusion from the plans themselves and from the evidence of their use. This method of competition has previously been condemned as unfair, and the circumstances in this case require an order to cease and desist.

Having decided that corrective action is required, we come to the scope of the remedy which is needed. The order in this matter requires respondent to cease and desist from:

> Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, sales stimulator plans, trade cards, sales cards, premium cards, or other articles so designed that their use in connection with the distribution of merchandise constitutes, or due to such design may constitute, the operation of a game of chance, gift enterprise, or lottery scheme.

There has been disagreement particularly with respect to including in the order the phrase, "or due to such design may constitute."

The respondent has devised and sold lottery schemes in connection with disclaimers which pretend to offer them as straight sales promotion plans, free of the lottery element. Prudence requires that the Commission's remedy should reach any variations of the plans which, as a result of their design, readily lend themselves to the operation of a lottery scheme. Obviously such a remedy would not reach, and is not intended to reach, a plan which is in fact free of the lottery element but which may be so changed or corrupted by respondents' customers as to be used in connection with lotteries.

It has been urged that there is disagreement among the United States circuit courts of appeal concerning provisions of this nature in orders to cease and desist. We do not find such differences in the opinions of the circuit courts.

In May 1942 the Circuit Court of Appeals for the Ninth Circuit considered an order of the Commission which required respondents to discontinue selling merchandise "so packed and assembled that sales of said merchandise to the public are to be made or may be made by means of a game of chance, gift enterprise, or lottery scheme," and modified the order by striking the words "or may be made." (*Lee Boyer's Candy* v. *Federal Trade Commission*, 128 F. (2d) 261). In that opinion the Court specifically reaffirmed its 1939 decision in *Helen Ardelle, Inc.* v. *Federal Trade Commission*, 101 F. (2d) 718, and refused to follow the action of other Circuit Courts which had approved the inclusion of similar language in cease and desist orders.

In explaining the reason for its decision in the *Ardelle* case *supra*, the court stated in part as follows:

> The orders, as drawn, would prevent petitioners from selling any candy which any person might thereafter sell by means of a lottery, gaming device, or gift enterprise, or might thereafter use in conducting a lottery, gaming device, or gift enterprise, even though such sale or use was not designed, intended, caused, procured, or consented to by petitioners. This, obviously, was not the intention of Congress.

In reaching this decision, the Court relied upon *Federal Trade Commission* v. *A. McLean & Son*, 84 F. (2d) 910, decided by the Circuit Court of Appeals for the Seventh Circuit in 1936, and upon *Federal Trade Commission* v. *Charles N. Miller Company*, 94 F. (2d) 563, decided by the Circuit Court of Appeals for the First Circuit in 1938.

The *Miller* case relied in turn almost wholly upon the *McLean* case from which it quoted with approval the following language:

> We are convinced, however, that paragraphs (1) and (2) of the cease and desist order are too broad in that they prevent the sale and distribution to jobbers and wholesalers for resale to the retailers of any candy so packed and assembled that retail sales may be made by means of a lottery, or gaming device. This clearly would prevent the sale of any candy which might afterwards be sold by the retailer by means of a lottery, gaming device, or gift enterprice. Obviously, this was not the intention of Congress, and we think it was not the intention of the Commission. We have, therefore, stricken the word "may" from paragraphs (1) and (2) of the orders and substituted the words "are designed to," and as thus modified, the orders of the Commission are affirmed, and respondents, their officers, directors, agents, representatives, and employees are hereby ordered to comply therewith.

The *McLean* decision which was relied upon in both the *Ardelle* and *Miller* cases, was specifically overruled by the Court of Appeals for the Seventh Circuit in 1939 in its decision in *National Candy Co. et al.* v. *Federal Trade Commission*, 104 F. (2d) 999. In that case, the Court

stated that this particular question had but scant attention in the argument of the McLean case but, referring to the Commission, said:

It now presents authorities in support of its construction of the present order and urges us to approve the present order on the theory that it cannot reasonably be construed to apply to the sale and distribution of straight candy, that is to say, to candy that is not "so packed and assembled that sales of such candy to the general public are to be made or may be made by means of a lottery, gaming device, or gift enterprise."

We deem this suggestion worthy of consideration in view of the fact that the development of plans calculated to evade the intent of the statute, as illustrated by those here presented, convinces us that the substitution we made in the *McLean* case lacks effectiveness in carrying out the intention of Congress. A further consideration convinces us that the language of the order in the light of the allegations of the complaint and findings of the Commission cannot reasonably be construed to be applied to the sale of "straight" candy. Regardless of the substitution made by us in the *McLean* case, we affirm the order of the Commission as here presented. We regard it as inapplicable to "straight" candy or to any candy that does not carry an unfair appeal to retail dealers and retail purchasers because of the element of chance involved in the sale thereof. We had no intention of holding otherwise in the *McLean* case.

In a decision in 1940 the United States Circuit Court of Appeals for the Second Circuit modified a similar order of the Commission (*Sweets Company of America, Inc.*, v. *Federal Trade Commission*, 109 F. (2d) 296), with the following explanation:

We think that an innocent vendor will not be subjected to the risk of violating the order if it be modified so that the words "are likely to be made" are substituted for "may be made" * * *. The order as thus modified would only preclude sales where a lottery system was known to be practiced or where the packing of the candy carried an unfair appeal to the purchasers. It would not preclude a manufacturer from selling its candies when so packed that a lottery was neither reasonably anticipated nor suggested nor likely to occur.

In some of the other cases in which this question was specifically considered, the United States circuit courts of appeal affirmed the board language used by the Commission. In *Ostler Candy Company et al.*, v. *Federal Trade Commission*, 106 F. (2d) 962, for example, which was decided in 1939, the Circuit Court of Appeals for the Tenth Circuit carefully considered the decisions of the other circuit courts and elected to follow the Seventh Circuit in the *National Candy Company* case, *supra*. There, the court said, among other things:

These orders must be construed in the light of the allegations contained in the complaint and the findings of the Commission. And when construed in that manner it is reasonably clear that the first and second paragraphs apply exclusively to candy which is so packed or arranged as to be especially suited to sale at retail in a manner which makes an unfair appeal to retail dealers and retail purchases on account of the element of chance involved, and to candy

which is peculiarly adapted in some other manner to sale at retail by chance method. With these paragraphs thus construed, the orders are not objectionably broad in scope and effect.

In *Hill* v. *Federal Trade Commission*, 124 F. (2d) 104, decided in 1941, the Circuit Court of Appeals for the Fifth Circuit sustained the broad form of order, stating in part as follows:

> It is our view that those decisions which declare that the order is not subject to the construction which petitioners fear (citing cases); are more soundly based than those on which petitioners rely (citing cases). These latter, we think, as a result of yielding to an unfounded apprehension, have the effect of leaving a loophole for evasion which is certainly closed and no more than closed, by the use of the words in controversy. For we think they must be construed as intending to prohibit and as prohibiting only those practices which petitioners have in some way, made themselves a party to, in some way assisted in carrying out.

From the foregoing references, it will be seen that there is no difference in the purpose or scope of the orders intended by the Commission and those approved by all of the courts referred to. The only differences between the opinions of the several circuit courts and between certain of the Courts and the Federal Trade Commission involve construction of the language used rather than the proper scope of the orders themselves. It seems clear from the decisions, and it is the opinion of the Commission, that when merchandise plans or sales promotion plans reasonably anticipate or suggest a lottery or from which a lottery is likely to occur, the order should be sufficiently broad to enjoin their use. It is not the intention of the Commission to go beyond this point.

No court has held that the orders in question were too broad when construed as we intended that they should be construed. In the light of the decisions discussed above and other decisions of a similar nature, the Commission believed that since the differences involved questions of construction only, they could be resolved by modifying the language of the orders to meet the objections of the courts. We considered carefully, therefore, the possibility of choosing language which would eliminate the uncertainty of construction found by the courts, but which would still be sufficiently broad to accomplish the purposes intended. As guides in this study we gave particular attention to the language "are designed to" which was substituted by the courts in the *Miller* and *McLean* cases, *supra*, and the language "are likely to" which was substituted by the court in the *Sweets Company* case, *supra*.

The study we made of this problem resulted in our adopting, in 1942, for general use in appropriate matters, language which will

require respondents who are proved to be engaged in lottery schemes of this nature, to cease and desist from:

Selling or distributing any merchandise so packed and assembled that sales of said merchandise to the public are to be made, or, *due to the manner in which such merchandise is packed and assembled at the time it is sold by respondent*, may be made by means of a game of chance, gift enterprise or lottery scheme.

The underscored language was added before the words "may be made," so as to make it clear that such orders are intended to apply only to those plans which may be used as lottery schemes as a result of the manner in which the merchandise is packed and assembled at the time it is sold by the party charged with the violation. This type of order has been used in many subsequent cases and has not thus far been disapproved by any court.

Appropriate changes in language are necessary to fit the facts of each case and such a change was required in the present matter. As indicated above, the order here prohibits respondent from selling sales promotion plans and similar articles "so designed that their use in connection with the distribution of merchandise constitutes, *or due to such design may constitute*, the operation of a game of chance, gift enterprise or lottery scheme." The underscored language here clearly limits the order to merchandise so designed by the respondent that it may or is likely to constitute a game of chance, gift enterprise, or lottery scheme. It is the opinion of the Commission that this modification meets the criticisms which have been raised by some of the circuit courts, without narrowing or impairing the effectiveness of the order.

OPINION OF COMMISSIONER LOWELL B. MASON CONCURRING IN PART AND DISSENTING IN PART

I concur in the findings of fact entered by the majority, but I cannot concur in the form of an order that gives effect to the so-called "possibility" rule.

First, as to the facts, the public records of the Commission (which we may judicially notice when determining judgments in other cases) disclose that respondent corporation here is but a thinly veiled substitute for one Samuel Worth against whom we have already entered an order.[1] Worth's defiance of this Commission's mandate is evidenced from the fact that on March 28, 1949, the Government obtained

[1] Civil penalties of $10,000 were awarded the Government by the United States District Court for the Northern District of Illinois in a civil action against Worthmore Sales Promotion Service, Samuel Worth, president, 221 East Twentieth Street, Chicago, for two violations of a Federal Trade Commission cease and desist order, Docket No. 2946.

a judgment of $10,000 for violation of our order in the above entitled cause.

But, as the Supreme Court has often shown, neither the evil nature of a charge nor the low estate of a defendant taken alone is sufficient grounds on which to base sanctions. Regardless of who the defendant is, sanctions may be issued only on a finding of guilt, and even then, must not exceed the authority granted by Congress to the court or administrative agency entering the order.

We are an administrative agency devoted to the elimination of unfair practices in commerce. To accomplish this, we delineate what are unfair acts through fact findings as to what constitutes unfair commercial practices, and we base our order on such findings.

In the first case, Docket 2946, we told the Worthmore corporation that it must not sell boards or cards that are so designed that their use by retail merchants constitutes or may constitute the operation of a lottery, or selling plans or schemes which may be used *without alteration or rearrangement* to conduct a lottery.

Samuel Worth, the present respondent (president and owner of the former corporation), apparently trying to purge himself of selling cards that were designed for lotteries, made his new product so that they could not be so used unless changed. The findings of fact and testimony show that it was the Government's own witnesses who changed the cards, not the defendant. In order to reach the defendant's present practices, we would have to extend the scope of our order to prohibit the selling of cards that *may* be used as a lottery, even if changed by someone else not a party to the suit.

In my opinion, the decision in the *Brewer* case does not support this order. The *Brewer* decision rests on certain essential conclusions which cannot be drawn in this case because the facts do not support the same. The conclusion in the *Brewer* case which I believe we are unable to parallel in the *Worthmore* case is as follows:

> That the boards and cards are designed and sold by respondents for that *specific* purpose is evident not only from the make-up of the boards and cards themselves, but also from statements made by the respondents in the catalogs advertising their devices. [Italics supplied.] (*Federal Trade Commission* v. *Brewer, Docket* 3952.)

These findings were commented on with approval by the Sixth Circuit Court in its opinion, as follows:

> The Commission found specifically that, among the various types of punch boards and push cards manufactured and sold by petitioners, many are designed for use by retail dealers in the sale and distribution of merchanidse to the public "by means of a game of chance, gift enterprise or lottery scheme." * * * The

Commission found, further, that * * * the boards and cards of petitioners are designed and sold for that *specific* purpose, as evidenced, not only from the make-up of the boards and cards, but also from statements contained in the catalogs advertising petitioners' devices. [Italics supplied.] (C. C. A. 6th, Oct. Term 1945, Docket 9993.)

In this case the Sixth Circuit Court relied on the Supreme Court's opinion in the *Winsted Hosiery* case (258 U. S. 483) where the manufacturer (the respondent) placed in the hands of the retailer an "unlawful instrument." In the instant matter, the respondent's product, the sales stimulator, did not become unlawful until after the Government's own witnesses altered it to make it so. So the same conclusions cannot be correctly drawn paralleling those in the *Brewer* or *Winsted* cases.

The Commission, in drafting the order here, has not followed the pattern set down by the Second Circuit Court of Appeals in its decision of *Sweets* v. *Federal Trade Commission.* The order in that case as originally issued by the Commission required the defendant to cease and desist from "selling and distributing candy so packed and assembled that sales of such candy to the general public are to be made *or may be made* by means of a lottery," etc. The court criticized the use of the words "or may be made," saying that any box of candies might be used for gambling purposes, and indicated that the order should be modified by substituting the words "are likely to be used." Thus the Second Circuit would require something more than a mere possibility of an illegal use of the defendant's products before banning them.

The order as drawn does not agree with the Second Circuit, and in all fairness, it should be added that neither do the Seventh or Tenth Circuits, though on the other hand, the First and Ninth seem to go along with the Second.

I concede that it is difficult to frame an order that will prevent manufacturers of games of chance from marketing an instrumentality that may be used as a lottery. But hard cases make bad law. From apples to zithers (including dominoes, parcheesi and playing cards), there is nothing produced that cannot be diverted to illegal use. Thus, in the instant case, chasing a man with a bad name, we have thrown ourselves past the bounds of accepted legal sanctions.

Sometimes hunters riding to hounds become so intent on catching their quarry they trample the farmers' grain. I feel the same about administrative orders based on the "possibility" rule. We may catch a fox but we endagner the concept of freedom. The burden of the

law needs more justification than the prevention of the possibility of wrong. Its hand should rest lightly except on the guilty.

While we need waste no sympathy on this respondent nor fear that this order which overreaches itself will be used by the present Commissioners as an instrument of oppression, some day, some time, those who seek to ban any product can use the precedent set by this case to demonstrate the legality of their prohibitions.

I am against it.

Cases cited: *In the Matter of Kenneth E. Brewer, Everette R. Brewer and Nelson C. Brewer, trading under the name of Chas. A. Brewer & Sons* (Docket 3952. Complaint November 16, 1939—Decision February 1, 1945) 40 F. T. C. 65. *Chas. A. Brewer & Sons.* v. *Federal Trade Commission* (C. C. A., 6th Circuit, December 5, 1946) 158 F. (2d) 74. *Sweets Company of America, Inc.* v. *Federal Trade Commission* (C. C. A., 2nd Circuit, January 29, 1940) 109 F. (2d) 296. *Federal Trade Commission* v. *Winsted Hosiery Co.* (Supreme Court, April 24, 1922) 258 U. S. 483, 42 S. Ct. 184, 66 L. Ed. 729.

IN THE MATTER OF

BENJAMIN HOLIN AND HARRY RICHTER TRADING AS BOND TRADING COMPANY

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

Docket 5535. Complaint, Apr. 7, 1948—Decision, Mar. 14, 1950

Where an individual engaged in purchasing old, soiled, worn, or previously used hat bodies which had been cleaned and dyed, and were thereafter converted into finished hats, some of which had the appearance of new—

Offered and sold said products in interstate commerce without any label, marking, or designation to indicate that they were reconditioned or second-hand hats;

With the result that a substantial portion of the purchasing public was led to believe that said hats were in fact new products, made entirely from new materials, and purchased substantial quantities; and that there was placed in the hands of purchasers for resale a means of misleading the public in regard thereto:

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

In said proceeding against the two respondent partners, in which it developed that over a year prior to the complaint one partner severed his connection with the partnership, and did not thereafter engage as partner in any of the alleged acts or practices, and in which it further appeared that the record contained no evidence concerning the extent to which he had participated in the affairs of the partnership or engaged in the acts or practices charged, and that he filed no answer and was not represented at the hearing in person or by council: the Commission was of the opinion that the complaint as to him should be dismissed without prejudice.

Before *Mr. William L. Pack*, trial examiner.
Mr. DeWitt T. Puckett for the Commission.
Barshay & Frankel, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Benjamin Molin and Harry Richter, individually and as copartners trading as Bond Trading 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:

PARAGRAPH 1. Respondents Benjamin Molin and Harry Richter are copartners, trading as Bond Trading Co., and have their principal office and place of business at 201 Greene Street, New York, N. Y. The respondents are now and for more than 1 year last past, have been engaged in manufacturing and selling new, used, made-over and second-hand hats.

Respondents cause said products when sold to be transported from their aforesaid place of business in the State of New York, to purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as aforesaid, the respondents purchase old, soiled, worn or previously used hat bodies that have been cleaned and dyed and convert said hat bodies into finished hats, which they offer for sale and sell in commerce as aforesaid.

PAR. 3. Some of the aforesaid hats when offered for sale and sold by respondents, have the appearance of new hats. When such hats, having the appearance of new hats, are offered to the purchasing public and are not clearly and conspicuously labeled as being reconditioned or second-hand hats, they are readily accepted by members of the purchasing public as being new products.

PAR. 4. Respondents' aforesaid hats are sold to purchasers without any labeling, marking or designation stamped thereon or attached thereto, to indicate to the purchasing public that said hats are in fact second-hand or reconditioned products that have undergone certain processes which have given them the appearance of new products. As a result, a substantial portion of the purchasing public has been led to believe and is now being led to believe, that respondents' said hats are in fact new hats manufactured entirely from new material. As a result of this erroneous and mistaken understanding and belief, substantial quantities of respondents' said hats have been purchased and are now being purchased by members of the public. By said acts and practices, respondents also place in the hands of purchasers of their merchandise for resale, a means and instrumentality whereby they may and do mislead and deceive the purchasing public as to the true facts in regard to respondents' said hats.

PAR. 5. The aforesaid acts and practices of the respondents as herein alleged, are all to the prejudice and injury of the public and constitute

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 7, 1948, issued, and subsequently served, its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After respondent Benjamin Molin filed his answer, a hearing was held before a trial examiner of the Commission theretofore duly designated by it, for the purpose of receiving testimony and other evidence in support of, and in opposition to, the allegations of the complaint. At said hearing held on April 8, 1949, a stipulation of facts previously agreed upon between counsel for respondent Benjamin Molin and counsel in support of the complaint was read into the record in lieu of evidence in support of, and in opposition to, the allegations of the complaint. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the answer thereto, the stipulation of facts, and the recommended decision of the trial examiner (no briefs having been filed and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, accepts and approves the stipulation of facts, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Prior to February 1947, respondents Benjamin Molin and Harry Richter were partners engaged in business and trading as Bond Trading Co. The record discloses that on the aforesaid date, the respondent Harry Richter severed his connection with said partnership and since that date has not, in any manner as a partner of respondent Benjamin Molin, engaged in any of the acts or practices alleged in the complaint. The record contains no evidence concerning the extent to which the respondent Richter participated in the affairs of the partnership or engaged in the acts and practices charged in the complaint. He failed to file an answer to the complaint and was not represented at the hearing either in person or by counsel. In view of these circumstances, the Commission is of the

opinion that the complaint herein should be dismissed without prejudice as to the respondent Harry Richter. The respondent Benjamin Molin (hereinafter referred to as "respondent") is an individual trading and doing business as Bond Trading Co., with his office and place of business located at 201 Greene Street, New York, N. Y. He is now, and for several years last past has been, engaged in manufacturing, offering for sale, selling, and distributing new, used, made-over, and second-hand hats.

PAR. 2. In the course and conduct of his aforesaid business, respondent causes, and has caused, his said hats, when sold, to be shipped and transported from his place of business in the State of New York to purchasers thereof at their respective points of location in other States of the United States; and maintains, and at all times mentioned herein has maintained, a course of trade in said hats in commerce among and between the various States of the United States.

PAR. 3. In carrying on his business as aforesaid, respondent purchases, and has purchased, old, soiled, worn, or previously used hat bodies which have been cleaned and dyed. Thereafter, said hat bodies have been, and are, converted into finished hats, which are, and have been, offered for sale, sold, and distributed in commerce as aforesaid. Some of these hats have been sold to purchasers without any label, marking, or designation stamped thereon, or attached thereto, which would indicate or disclose to the purchasing public that said hats were, in fact, second-hand or reconditioned products which had undergone processes that gave them the appearance of new products. Some of such hats, when offered for sale and sold by respondent, had the appearance of new hats, and when offered to the purchasing public without being clearly and conspicuously labeled as being reconditioned or second-hand hats, they were readily accepted by members of the purchasing public as being new hats.

PAR. 4. By and through the aforesaid acts and practices, a substantial portion of the purchasing public has been led to understand and to believe that said hats were, in fact, new hats manufactured entirely from new materials. Because of this erroneous and mistaken understanding and belief, substantial quantities of respondent's said hats have been purchased by members of the public. Said acts and practices of respondent also place in the hands of purchasers of said hats for resale a means and instrumentality whereby said purchasers may, and do, mislead and deceive the purchasing public as to the true facts in regard to such hats.

CONCLUSION

The acts and practices of the respondent as herein found 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent Benjamin Molin, a stipulation of facts agreed upon between counsel for said respondent and counsel in support of the complaint and read into the record in lieu of evidence, and the recommended decision of the trial examiner (no briefs having been filed and oral argument not having been requested); and the Commission having accepted and approved said stipulation of facts and having made its findings as to the facts and its conclusion that respondent Benjamin Molin has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent Benjamin Molin, an individual trading as Bond Trading Company or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of hats in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly representing:

1. That hats composed in whole or in part of old, used, or second-hand materials are new or are composed of new materials, by failing to stamp on the exposed surface of the sweatbands thereof, in legible and conspicuous terms which cannot be removed or obliterated without mutilating the sweatbands, a statement that such products are composed of second-hand or used material (e. g., "second-hand," "used," or "made-over"), provided that, if sweatbands are not affixed to such hats, then such stamping shall appear on the exposed surface of the inside of the body of the hats in conspicuous and legible terms which cannot be removed or obliterated without mutilating said bodies.

2. That hats made in whole or in part from old, used, or second-hand materials are new or are composed of new materials.

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

It is further ordered, That, for the reasons set forth in the findings as to the facts herein, the complaint herein be, and it is, hereby dismissed as to respondent Harry Richter without prejudice to the right of the Commission to take such further action at any time in the future with respect to said respondent as may be warranted by the then existing circumstances.