IN THE MATTER OF

WALTER M. JAKWAY DOING BUSINESS AS VOGUE PRODUCTS

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

Docket 5537. Complaint, Apr. 21, 1948—Decision, May 23, 1950

Where an individual engaged in selling and distributing a preparation designed as "Tuffenail"; in advertisements in periodicals and in circulars, leaflets, pamphlets, and display cards, directly and by implication—

(*a*) Represented that said preparation was an effective aid for brittle, splitting, breaking, and chipping nails, would toughen the nails and prevent such conditions;

(*b*) Represented that application thereof to the nails constituted a competent and effective treatment for "onychosis," would stimulate nail growth, help nails to grow stronger and keep them strong; and

(*c*) Represented that said Tuffenail would penetrate the skin into the flesh of the nail bed and prevent sluggishness of the lymphatic glands;

The facts being that while said product would temporarily soften the cuticle around the nails, it had no other therapeutic property; it would have no effect on onychosis nor on the lymphatic glands, none of which are located at the matrix of the nails; and splitting and brittle nails are not due to lack of stimulation or to sluggish action of said glands at the matrix;

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

Before *Mr. Abner E. Lipscomb*, trial examiner.
Mr. R. P. Bellinger 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 Walter M. Jakway, an individual doing business as Vogue Products, 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 Walter M. Jakway is an individual trading and doing business under the name Vogue Products, with his

principal place of business located at 1149 North Seward Street, Hollywood, Calif.

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

The designation or brand name used by respondent for his said preparation and the formula and directions for its use are as follows:

Designation or brand name:

Tuffenail.

Formula:

	Percent
K I (potassium iodide)	3.5
Sulphonated fatty alcohol	.1
K O H (potassium hydroxide)	.18
Alcohol	8.3
Glycerine	4.2
Essential oils	.1
Metnail yellow	.0014
H_2O (water) Q. S. to 100 percent.	

Directions:

Use nightly. Wash and dry hands. Apply liberally around the cuticle and under nail tips.

Respondent causes his said preparation, when sold, to be transported from his place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent, subsequent to March 21, 1938, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said preparation, has disseminated and caused the dissemination of certain advertisements concerning said preparation by the United States Mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements appearing on page 81 of the February 1945 issue of Movies Magazine, headed "Tuffenail"; on page 97 of the July 1944 issue of the magazine Modern Romances, headed "Tuffenail"; on page 2 of the September 18, 1941, issue of the Hollywood, Calif., Citizen News, headed "NOW! America's Most Effective Nail Aid!"; on page 89 of the April 1946 issue of Movie Life Magazine headed "Lovelier Nails With Tuffenail"; all of which magazines and the newspaper mentioned herein 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 the prepa-

ration Tuffenail by various other means, including circulars, leaflets, pamphlets, and display cards, and including but not limited to the advertisements referred to above, for the purpose of inducing and which were likely to induce directly or indirectly the purchase of the said preparation 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 are the following:

TUFFENAIL

Scientific, proven aid for Brittle, Splitting or Thin Nails. Acts to tuffen nails and help cuticle.

TUFFENAIL

Tuffenail for healthy, lovely nails. Scientific, proven aid for "onychosis" acts to tuffen nails, prevent brittleness.

NOW! America's Most Effective
Nail Aid

TUFFENAIL

TUFFENAIL, an active complex solution tends to tuffen the nails, stimulate growth, and prevent drying up, brittleness, breaking, splitting and chipping nails.

TUFFENAIL

The Accepted Aid
For
BREAKING
SPLITTING
CHIPPING
BRITTLE
NAILS!

TESTING
LABORATORIES
Vouch For Our Claims
IT'S YOUR GUARANTEE!

Consulting and analytical chemists have examined and tested TUFFENAIL. These are some of the statements in their laboratory reports:

The principle upon which the composition and action of Tuffenail is based is in our opinion scientifically sound. The combination of materials in this product could have no harmful or deleterious affect upon the nails or the most delicate skin.

The claims made for Tuffenail by the distributors; that it is a remarkable aid for splitting, chipping, and breaking nails, we find to be well founded and true.

TUFFENAIL . . . Aids in Overcoming or Preventing Nail Brittleness . . . It Toughens; Stimulates Nail Growth; Helps Keep Them Pliant and Strong.

TUFFENAIL

For Peeling, Splitting, Brittle Nails

. . . It's the new liquid nail conditioner that toughens nails, helps them grow longer and stronger.

. . . The balanced ingredients of TUFFENAIL penetrate into the pulp where true nail cells are formed . . . TUFFENAIL tends to prevent sluggishness of the lymphatic glands which are directly responsible for the formation of true nail cells . . . TUFFENAIL tends to prevent lamination or peeling of the nail layers.

TUFFEN your NAILS with
TUFFENAIL
A MOST EFFECTIVE AID
for "Onychosis"—
BREAKING, SPLITTING
CHIPPING, PEELING
NAILS

. . . lack of proper stimulation which causes a sluggish action of the lymphatic glands at the matrix where nail cells are formed, is the principal cause of nail deficiencies. . . .

TUFFENAIL
America's
Most Effective Aid
for
SPLITTING
BREAKING
CHIPPING
BRITTLE NAILS

The smart vogue for longer nails creates Onychosis, nail troubles. TUFFENAIL, the accepted active, complex solution tends to tuffen the nails, stimulate growth, and prevent dehydration and brittleness . . .

Lovelier Nails with
TUFFENAIL

Beautify and strengthen your nails with Hollywood's Tuffenail.

PAR. 5. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented directly and by implication that Tuffenail is an effective aid for brittle, splitting, breaking, chipping nails and its use will toughen the nails; prevent brittleness, dryness, breaking, splitting and chipping of the nails, or peeling of the nail layers, and that its application to the nails constitutes a competent and effective treatment for onychosis; that its use will stimulate nail growth, and help nails to grow stronger and will keep them strong; that Tuffenail will penetrate the skin into the flesh of the nail bed and will prevent sluggishness of the lymphatic glands.

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 Tuffenail is not an aid for brittle, splitting, breaking, chipping, nails and its use will not toughen the nails and will not prevent brittleness, dryness, breaking, splitting, and chipping of the nails, nor peeling of the nail layers; its application does not constitute a competent and effective treatment for onychosis; its use will not stimulate the growth of nails, nor will it help nails to grow stronger or to keep strong; Tuffenail will not penetrate the skin and will not prevent sluggishness of the lymphatic glands.

PAR. 7. Respondent's preparation, when used as directed, will have no significant effect on the nails; it will temporarily soften the cuticle around the nails, which represents its sole therapeutic property. Onychosis is a broad term referring to any disease or deformity of the human nails, which may result from conditions local to the nails or from systemic causes, but, regardless of the cause, respondent's preparation would have no effect on onychosis. The use of Tuffenail would have no effect on the lymphatic glands anywhere in the human system. Splitting, brittle nails are not due to lack of proper stimulation, nor to sluggish action of the lymph glands at the matrix, and even if these conditions were due to such causes, respondent's preparation would be wholly ineffective in correcting the same. Medical science teaches that no lymph glands are located at the matrix of the nails.

PAR. 8. 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 April 21, 1948, issued and subsequently served its complaint in this proceeding upon the respondent, Walter M. Jakway, an individual doing business as Vogue Products, 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 before a trial examiner of the Commission theretofore designated by it, at which hearing testimony was introduced, and a stipulation as to the facts entered into between the respondent and counsel supporting the complaint likewise was read into and made a part of the record in

this proceeding, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Respondent having waived the filing of a recommended decision by the trial examiner, the proceeding regularly came on thereafter for final hearing before the Commission upon the complaint, the answer, testimony, and the stipulation as to the facts; and the Commission, having duly considered the same 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. Walter M. Jakway, hereinafter referred to as the respondent, is an individual who, from 1942 to September 1, 1946, was trading and doing business as Vogue Products. From 1939 until 1942, when respondent Jakway acquired the entire business, Vogue Products was conducted by the respondent in partnership with Frank Bonn, and subsequent to September 1946 the business has been conducted under the same name as a co-partnership composed of respondent Walter M. Jakway, together with William M. Jakway and Jerry W. Jakway. Respondent has continued as the directing head of the business which, since 1948, has been located at 2420 Eads Street, Los Angeles, Calif., and formerly was located at 1149 North Seward Street, Hollywood, Calif.

PAR. 2. Respondent Walter M. Jakway, trading as aforesaid, is now and since 1940 has been engaged in the business of selling and distributing a preparation designated as "Tuffenail," which preparation is a "drug" as that term is defined in the Federal Trade Commission Act. The formula and directions for use of said preparation are as follows:

	Percent
K I (potassium iodide)	3.5
Sulphonated fatty alcohol	.1
K O H (potassium hydroxide)	.18
Alcohol	8.3
Glycerine	4.2
Essential oils	.1
Metnail yellow	.0014

H_2O (water) Q. S. to 100 percent.

Use nightly. Wash and dry hands. Apply liberally around the cuticle and under nail tips.

Respondent has caused and causes said preparation, when sold, to be transported from his place of business in the State of California, to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of said business, respondent has disseminated and caused the dissemination of advertisements concerning said product 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 are likely to induce, directly and indirectly its purchase. Such advertisements have included, but are not limited to advertisements appearing in the February 1945 issue of Movies Magazine, the July 1944 issue of the magazine Modern Romances, the September 18, 1941, issue of the Hollywood, Calif., Citizen-News, and the April 1946 issue of Movie Life Magazine. Respondent has disseminated and caused the dissemination of advertisements concerning the preparation "Tuffenail" by various other means, including circulars, leaflets, pamphlets, and display cards, for the purpose of inducing, and which are likely to induce, directly or indirectly the purchase of said preparation 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 are the following:

TUFFENAIL

Scientific, proven aid for Brittle, Splitting, or Thin Nails. Acts to tuffen nails and help cuticle.

TUFFENAIL

Tuffenail for healthy, lovely nails. Scientific, proven aid for "onychosis" acts to tuffen nails, prevent brittleness.

NOW! America's Most Effective

Nail Aid

TUFFENAIL

TUFFENAIL, an active complex solution tends to tuffen the nails, stimulate growth, and prevent drying up, brittleness, breaking, splitting and chipping nails.

TUFFENAIL

The Accepted Aid
For
BREAKING
SPLITTING
CHIPPING
BRITTLE
NAILS!

TESTING
LABORATORIES
Vouch For Our Claims
IT'S YOUR GUARANTEE!

836 Findings

Consulting and analytical chemists have examined and tested TUFFENAIL. These are some of the statements in their laboratory reports:

The principle upon which the composition and action of Tuffenail is based is in our opinion scientifically sound. The combination of materials in this product could have no harmful or deleterous effect upon the nails or the most delicate skin.

The claims made for Tuffenail by the distributors; that it is a remarkable aid for splitting, chipping, and breaking nails, we find to be well founded and true.

TUFFENAIL . . . Aids in Overcoming or Preventing Nail Brittleness . . . It Toughens; Stimulates Nail Growth; Helps Keep Them Pliant and Strong.

TUFFENAIL

For Peeling, Splitting, Brittle Nails

. . . It's the new liquid nail conditioner that toughens nails, helps them grow longer and stronger.

. . . The balanced ingredients of TUFFENAIL penetrate into the pulp where true nail cells are formed . . . TUFFENAIL tends to prevent sluggishness of the lymphatic glands which are directly responsible for the formation of true nail cells . . . TUFFENAIL tends to prevent lamination or peeling of the nail layers.

TUFFEN your NAILS with

TUFFENAIL

A MOST EFFECTIVE AID
for "Onychosis"—
BREAKING, SPLITTING
CHIPPING, PEELING
NAILS

. . . lack of proper stimulation which causes a sluggish action of the lymphatic glands at the matrix where nail cells are formed, is the principal cause of nail deficiencies . . .

TUFFENAIL
America's
Most Effective Aid
for
SPLITTING
BREAKING
CHIPPING
BRITTLE NAILS

The smart vogue for longer nails creates Onychosis, nail troubles. TUFFENAIL, the accepted active, complex solution tends to tuffen the nails, stimulate growth, and prevent dehydration and brittleness . . .

Lovelier Nails with

TUFFENAIL

Beautify and strengthen your nails with Hollywood's Tuffenail.

PAR. 5. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented directly and by implication that Tuffenail is an effective aid for brittle, splitting, breaking, chipping nails and its use will toughen the nails; prevent brittleness, dryness, breaking, splitting and chipping of the nails, or peeling of the nail layers, and that its application to the nails constitutes a competent and effective treatment for onychosis; that its use will stimulate nail growth, and help nails to grow stronger and will keep them strong; that Tuffenail will penetrate the skin into the flesh of the nail bed and will prevent sluggishness of the lymphatic glands.

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. On the basis of the stipulated facts contained in the record, the Commission finds that Tuffenail is not an aid for brittle, splitting, breaking, chipping nails and its use will not toughen the nails and will not prevent brittleness, dryness, breaking, splitting, and chipping of the nails, nor peeling of the nail layers; its application does not constitute a competent and effective treatment for onychosis; its use will not stimulate the growth of nails, nor will it help nails to grow stronger or to keep strong; Tuffenail will not penetrate the skin and will not prevent sluggishness of the lymphatic glands.

Respondent's preparation, when used as directed, will have no significant effect on the nails; it will temporarily soften the cuticle around the nails, which represents its sole therapeutic property. Onychosis is a broad term referring to any disease or deformity of the human nails, which may result from conditions local to the nails or from systemic causes, but, regardless of the cause, respondent's preparation would have no effect on onychosis. The use of Tuffenail would have no effect on the lymphatic glands anywhere in the human system. Splitting, brittle nails are not due to lack of proper stimulation, nor to sluggish action of the lymph glands at the matrix, and even if these conditions were due to such causes, respondent's preparation would be wholly ineffective in correcting the same. Medical science teaches that no lymph glands are located at the matrix of the nails.

PAR. 7. 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 public into the erroneous and mistaken belief that said advertisements are true, and to induce a portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's preparation.

CONCLUSION

The aforesaid acts and practices of 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, the answer of respondent, testimony, and stipulation as to the facts (filing of recommended decision by the trial examiner having been waived), and the Commission having made its findings as to the facts and, based solely on the statements appearing in said stipulation, its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Walter M. Jakway, individually and trading under the name of Vogue Products, or any other name, and his agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of the preparation designated "Tuffenail," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from:

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

(*a*) That said preparation is an effective aid for brittle, splitting, breaking, or chipping nails, or that Tuffenail has any significant effect on the nails in excess of acting to temporarily soften the cuticle around the nails;

(*b*) That said preparation will prevent brittleness, dryness, breaking, splitting, or chipping of the nails or peeling of the nail layers;

(*c*) That said preparation is a competent or effective treatment for onychosis or that its use will stimulate nail growth, toughen, or strengthen the nails or keep them strong;

(*d*) That said preparation will penetrate the skin into the flesh of the nail bed or will prevent sluggishness of the lymphatic glands.

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

which contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the respondent, Walter M. Jakway, 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.

Syllabus

IN THE MATTER OF

STANLEY WEINSTEIN DOING BUSINESS AS GENERAL TACK COMPANY

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

Docket 5688. Complaint, Aug. 12, 1949—Decision, May 23, 1950

By virtue of the established practice of imprinting or otherwise labeling or marking products of foreign origin and their containers, with the name of the country of their origin, in legible English words, in a conspicuous place, and as required by law, a substantial portion of the buying and consuming public has come to rely upon such marking, and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, and when products composed in whole or substantial part of imported articles are offered and sold in the channels of trade in commerce throughout the United States, they are purchased and accepted as and for products wholly of domestic manufacture and origin, unless imprinted, labeled or marked in a manner which informs purchasers of their foreign origin.

There has been and is among members of the buying and consuming public a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from those of foreign manufacture or origin and from those which are in substantial part made of materials or parts of foreign manufacture or origin.

Where an individual engaged in purchasing, in bulk quantities, thumb tacks which had been imported from Belgium and other foreign countries, plainly stamped with the country of origin, and in plating, enameling, or lacquering the same, and mounting them on boards wrapped in cellophane, and thereafter packing them in his own containers for shipment—

Sold said products without any imprinting, labeling or marking upon the boards upon which they were mounted or the wrappers or cartons in which packed, and upon which in all cases there appeared his trade name and the words "Jersey City, New Jersey";

With tendency and capacity to mislead and deceive purchasers and members of the buying and consuming public into the false belief that said thumbtacks were wholly of domestic manufacture and origin, and thereby into the purchase thereof:

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

Mr. Morton Nesmith for the Commission.

Mr. Saul Rubin, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Stanley Weinstein, doing business as General Tack 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, Stanley Weinstein, is an individual trading and doing business as General Tack Co., with his office and principal place of business at 525 Mercer Street, Jersey City, N. J.

PAR. 2. Said respondent is now and has been for several years last past engaged in the business of purchasing thumbtacks imported from Belgium and other foreign countries, plating or otherwise coating the tacks in this country, and selling and distributing said product.

PAR. 3. The respondent causes his said product when sold to be shipped from his place of business in the State of New Jersey to jobbers and dealers located in various other States of the United States and in the District of Columbia. Said jobbers and dealers in turn sell said thumbtacks to the general public. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia. His volume of business in such commerce is substantial.

PAR. 4. In the course and conduct of his business, respondent purchases thumbtacks which are imported from Belgium and other foreign countries in bulk quantities, usually 500,000 to the case. These cases are plainly stamped with the country of origin. The respondent removes the tacks from these cases, plates, enamels, or lacquers them, mounts them on boards, ranging from 24 upward per board, wraps the boards in cellophane, and packs them in his own containers for shipment. Neither the boards upon which the tacks are mounted, the cellophane wrappers which enclose said boards, nor the cartons which package the finished product are marked or labeled with the country of origin of said thumbtacks. In some instances, the boards upon which the tacks are mounted are marked "General Tack Co., Jersey City, N. J.," and usually the style or lot number appears thereon. In all instances, the cartons in which the finished boards are packed are marked "General Tack Co., Jersey City, N. J."

PAR. 5. By virtue of the practice, heretofore and now established, of imprinting and otherwise labeling or marking products of foreign

origin, and their containers, with the name of the country of their origin, in legible English words, in a conspicuous place, and as required by law, a substantial portion of the buying and consuming public has come to rely, and now relies, upon such imprinting, labeling or marking, and is influenced thereby, to distinguish and discriminate between competing products of foreign and domestic origin, including foreign-made and imported thumbtacks. When products composed in whole or substantial part of imported articles are offered for sale and sold in the channels of trade in commerce throughout the United States and in the District of Columbia, they are purchased and accepted as and for, and taken to be, products wholly of domestic manufacture and origin unless the same are imprinted, labeled, or marked in a manner which informs purchasers that the said products, or parts thereof, are of foreign origin.

At all times material to this complaint, there has been, and now is, among said members of the buying and consuming public, including purchasers and users of thumbtacks, in and throughout the United States and in the District of Columbia, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin and from products which are in substantial part made of materials or parts of foreign manufacture or origin.

PAR. 6. The practice of respondent as aforesaid in offering for sale, selling, and distributing his thumbtacks of foreign origin without any imprinting, labeling, or marking on the boards upon which said tacks are mounted or the cartons in which they are packed to indicate to purchasers that said thumbtacks are of Belgian or other foreign origin, has had and now has the tendency and capacity to mislead and deceive purchasers and members of the buying and consuming public into the false and erroneous belief that said thumbtacks are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief.

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 August 12, 1949, issued and thereafter served upon the respondent, Stanley Weinstein, an individual doing business as General Tack Co., its complaint in this proceeding,

charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. The respondent's answer to said complaint was filed on October 14, 1949, but on February 28, 1950, he filed with the Commission a motion for leave to withdraw said original answer and to file in lieu thereof a substitute answer dated February 25, 1950, in which he admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearings as to said facts, and said motion was subsequently granted. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and the substitute answer thereto; 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, Stanley Weinstein, is an individual trading and doing business as General Tack Company, with his office and principal place of business located at 525 Mercer Street, in the City of Jersey City, State of New Jersey.

PAR. 2. Said respondent is now and for several years last past he has been engaged in the business of purchasing thumbtacks imported from Belgium and other foreign countries, plating or otherwise coating the tacks in this country, and selling and distributing said product.

PAR. 3. The respondent causes his said product, when sold, to be shipped from his place of business in the State of New Jersey to jobbers and dealers located in various other States of the United States and in the District of Columbia. Said jobbers and dealers in turn sell said thumbtacks to the general public. Respondent maintains, and at all times mentioned herein he has maintained, a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia. His volume of business in such commerce is substantial.

PAR. 4. In the course and conduct of his business, respondent purchases thumbtacks which are imported from Belgium and other foreign countries in bulk quantities, usually 500,000 to the case. These cases are plainly stamped with the country of origin. The respondent removes the tacks from these cases, plates, enamels, or lacquers them, mounts them on boards, ranging from 24 upward per board, wraps the boards in cellophane, and packs them in his own containers for shipment. When said tacks are so mounted, wrapped and packaged,

however, the country of origin thereof is not shown on the boards upon which they are mounted, the cellophane wrappers which enclose said boards, or the cartons which package them. In some instances, the boards upon which the tacks are mounted are marked "General Tack Co., Jersey City, N. J.," and usually the style or lot number appears thereon. In all instances, the cartons in which the finished boards are packed are marked "General Tack Co., Jersey City, N. J."

PAR. 5. By virtue of the practice, heretofore and now established, of imprinting and otherwise labeling or marking products of foreign origin, and their containers, with the name of the country of their origin, in legible English words, in a conspicuous place, and as required by law, a substantial portion of the buying and consuming public has come to rely, and now relies, upon such imprinting, labeling, or marking, and is influenced thereby, to distinguish and discriminate between competing products of foreign and domestic origin, including foreign-made and imported thumbtacks. When products composed in whole or substantial part of imported articles are offered for sale and sold in the channels of trade in commerce throughout the United States and in the District of Columbia, they are purchased and accepted as and for, and taken to be, products wholly of domestic manufacture and origin unless the same are imprinted, labeled, or marked in a manner which informs purchasers that the said products, or parts thereof, are of foreign origin.

At all times mentioned herein there has been, and now is, among said members of the buying and consuming public, including purchasers and users of thumbtacks, in and throughout the United States and in the District of Columbia, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin and from products which are in substantial part made of materials or parts of foreign manufacture or origin.

PAR. 6. The practice of respondent in offering for sale, selling, and distributing his thumbtacks of foreign origin without any imprinting, labeling, or marking on the boards upon which said tacks are mounted or on the wrappers in which they are enclosed to indicate to purchasers that said thumbtacks are of Belgian or other foreign origin, has had and now has the tendency and capacity to mislead and deceive purchasers and members of the buying and consuming public into the false and erroneous belief that said thumbtacks are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief.

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 and the substitute answer of the respondent, in which answer said respondent admits all of the material allegations of fact set forth in the complaint and waives all intervening procedure and further hearings as to said facts, 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, Stanley Weinstein, individually and trading as General Tack Co., or trading under any other name or trade designation, and said respondent's 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 thumbtacks or other similar products, do forthwith cease and desist from:

Offering for sale or selling any such products of foreign origin without clearly and conspicuously disclosing on the boards on which such products are mounted, or other packages or containers in which they are sold to the consuming public, the country or origin of such products.

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 this order.

Modified Order

IN THE MATTER OF

P. LORILLARD CO.

Modified Cease and Desist Order

Docket 4922. Order, May 24, 1950

Order modifying prior cease and desist order issued on March 31, 1950, 46 F. T. C. 734 at 752—which prohibited respondent from misrepresenting the qualities or properties, etc., of its Beech-Nut, Sensation, or Old Gold cigarettes, or of its Friends smoking tobacco, or the smoke therefrom—so as to provide that nothing in the order with respect to respondent's Beech-Nut cigarettes, or other cigarettes of substantially the same length, shall be construed to prohibit it from representing "that during the time the extra length of any such cigarette is being smoked the smoke therefrom will contain less irritating properties and will be cooler than the smoke from standard length cigarettes"; and in certain other respects as below set forth.

Before *Mr. Webster Ballinger*, trial examiner.

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

Perkins, Daniels & Perkins, of New York City, and *Bingham, Collins, Porter & Kistler*, of Washington, D. C., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding was heard by the Federal Trade Commission upon the complaint, answer of the respondents, testimony, and other evidence taken before trial examiners of the Commission theretofore duly designated by it, recommended decision of the trial examiner and exceptions filed thereto by counsel supporting the complaint, and brief of counsel supporting the complaint (no brief having been filed by counsel for respondent and oral argument not having been requested), and the Commission, having considered the matter, made and issued its findings as to the facts, conclusion, and order to cease and desist on March 31, 1950.

Thereafter the Commission, acting upon its own motion, reconsidered the matter and on May 12, 1950, issued its rules to show cause why said order to cease and desist should not be modified to read as set forth therein. In response to said rule to show cause, counsel supporting the complaint filed a statement acquiescing in the proposed modification and respondent, by its counsel, filed a statement containing additional proposals for modifying said order to cease and desist; and the Commission having considered such additional proposals and having rejected same for the reason that an order to cease and desist embodying such proposals would not adequately protect the public against a continuation or resumption of the practices found to be unfair and deceptive, and being of the opinion that the order to cease and desist heretofore issued in this proceeding should be modified in the respects set forth in said rule to show cause:

Now, therefore, it is ordered, That said order to cease and desist be, and the same hereby is, modified to read as follows:

"*It is ordered*, That the respondent, P. Lorillard Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale, and distribution in commerce, as 'commerce' is defined in the Federal Trade Commission Act, of its products Beech-Nut cigarettes, Sensation cigarettes, Old Gold cigarettes, and Friends smoking tobacco, do forthwith cease and desist from representing by any means, directly or indirectly:

"(1) That Beech-Nut cigarettes, or any other cigarette composed of substantially the same blend of tobaccos, or the smoke therefrom, will not harm or irritate the throat, or will provide any defense against throat irritation; or that the extra length of Beech-Nut cigarettes, or of any other cigarette of substantially the same length, will filter out or eliminate the harmful properties in the smoke from such cigarettes or will cause the smoke from such cigarettes to be cooler than the smoke from cigarettes of standard length; *Provided, however*, That nothing herein shall be construed to prohibit the respondent from representing that during the time the extra length of any such cigarette is being smoked the smoke therefrom will contain less irritating properties and will be cooler than the smoke from standard length cigarettes;

"(2) That Sensation cigarettes, or any other cigarette composed of substantially the same blend of tobaccos, are made of extra-choice imported and domestic tobaccos, or are top quality cigarettes, or are made from the finest tobacco that can be bought;

"(3) That Old Gold cigarettes or the smoke therefrom contains less nicotine, or less tars and resins, or is less irritating to the throat than the cigarettes or the smoke therefrom of any of the six other leading brands of cigarettes; or

"(4) That Friends smoking tobacco, or any other smoking tobacco manufactured in substantially the same manner, is rum-cured, or that the process by which a rum flavoring is added to such tobacco enriches the tobacco or causes the smoke therefrom to be any less irritating to the throat or any cooler than if such rum flavoring were not added; or that the smoke from Friends smoking tobacco, or from any other smoking tobacco composed of substantially the same blend of tobaccos, will not irritate the mouth or throat of a smoker, or is cool, or is free from bite, burn, or harshness.

"*It is further ordered*, That 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

WESTERN BATT & BEDDING CO., INC., ET AL.

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

Docket 5682. Complaint, July 15, 1949—Decision, May 24, 1950

Where a corporation and its secretary-treasurer and general manager, who dominated its affairs and was responsible for its acts and practices, engaged in the manufacture for introduction into commerce, and in the sale, transportation and distribution in commerce, of wool products as defined in the Wool Products Labeling Act—

Misbranded wool batts by failing to affix thereto stamps, tags, labels or other means of identification or a substitute in lieu thereof showing the percentage of the fiber weight of wool, fiber other than wool and other information called for under the act and rules and regulations thereunder, including the name of the manufacturer or the manufacturer's identification number, and that of a seller or reseller of the products or of one or more persons subject to sec. 5 of the act with respect thereto:

Held, That such acts and practices were in violation of the Wool Products Labeling Act and the rules and regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Before *Mr. Abner E. Lipscomb*, trial examiner.
Mr. Jesse D. Kash for the Commission.

COMPLAINT

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

PARAGRAPH 1. Respondent, Western Batt & Bedding Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at Stayton, Oreg.

Respondent, Lee Brown, is secretary-treasurer and general manager of respondent Western Batt & Bedding Co., Inc., with his office and principal place of business located at Stayton, Oreg. This individual dominates the affairs of corporate respondent and is responsible for its acts and practices, including those hereinafter referred to. Respondents Western Batt & Bedding Co., Inc., a corporation, and Lee Brown are engaged in the manufacture for introduction and in the introduction into commerce and in the sale, transportation and distribution in commerce of wool products as such products are defined in the Wool Products Labeling Act of 1939, as "commerce" is defined in said act and in the Federal Trade Commission Act.

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

PAR. 3. Among the wool products manufactured for introduction into commerce by respondents and introduced into commerce, sold, transported and distributed in commerce by respondents, are woolen batts. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid wool products in violation of the provisions of said act and the said rules and regulations by failing to affix to said wool products a stamp, tag, label or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (*a*) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentum by weight of such fiber was five percentum or more, and (5) the aggregate of all other fibers; (*b*) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling, or adulterating matter; (*c*) the percentages in words and figures plainly legible by weight of the wool content of such wool product where said wool product contains a fiber other than wool; (*d*) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller of the product as provided for in the rules and regula-

tions promulgated under such Act, or the name of one or more persons subject to section 3 of said act with respect to such wool product.

The misbranded wool products referred to above were introduced, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, by each of the respondents.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission, on the 15th day of July 1949, issued and subsequently served its complaint in this proceeding upon respondents Western Batt & Bedding Co., Inc., a corporation, and Lee Brown, individually and as an officer of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Acts. After the filing of answer by respondents to said complaint, the trial examiner, theretofore designated by the Commission to perform all duties authorized by law in this proceeding, granted respondents' motion for permission to withdraw the answer previously filed and to substitute therefore an answer by respondents dated October 31, 1949, admitting all material allegations of fact set forth in said complaint and waiving all intervening procedure, including the filing of a recommended decision by the trial examiner and further hearing as to said facts, which substitute answer was duly recorded in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint, and the 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, Western Batt & Bedding Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at Stayton, Oreg.

Respondent, Lee Brown, is secretary-treasurer and general manager of respondent, Western Batt & Bedding Co., Inc., with his office

and principal place of business located at Stayton, Oreg. This individual dominates the affairs of corporate respondent and is responsible for its acts and practices, including those hereinafter referred to. Respondents, Western Batt & Bedding Co., Inc., a corporation, and Lee Brown are engaged in the manufacture for introduction and in the introduction into commerce and in the sale, transportation, and distribution in commerce of wool products as such products are defined in the Wool Products Labeling Act of 1939, as "commerce" is defined in said Act and in the Federal Trade Commission Act.

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

PAR. 3. Among the wool products manufactured for introduction into commerce by respondents and introduced into commerce, sold, transported, and distributed in commerce by respondents, are woolen batts. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid wool products in violation of the provisions of said act and the said rules and regulations by failing to affix to said wool products a stamp, tag, label, or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (*a*) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said per centum by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers; (*b*) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling, or adulterating matter; (*c*) the percentages in words and figures plainly legible by weight of the wool content of such wool product where said wool product contains a fiber other than wool.

In further violation of said act and of rule 4 of the rules and regulations promulgated thereunder by the Commission as such rule existed at the time this proceeding was instituted, respondents have engaged in misbranding by failing to affix to the aforesaid wool products a

stamp, tag, or label or other means of identification showing the name of the manufacturer or the manufacturer's identification number and the name of a seller or reseller of the products, as then provided for in said rule 4 of the rules and regulations. or the name of one or more persons subject to section 3 of the act with respect to such products.

PAR. 4. The misbranded wool products referred to above were introduced, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, by each of the respondents.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the answer of respondents, in which joint answer respondents admit all the material allegations of fact set forth in said complaint and waive all intervening procedure, including the filing of recommended decision by the trial examiner and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939:

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

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

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

(*c*) The name or the registered identification number of the manufacturer of such wool product, or of one or more persons engaged in introducing such wool product into commerce, or in the sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939.

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

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

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

Syllabus

IN THE MATTER OF

AUTOMATIC CANTEEN CO. OF AMERICA

COMPLAINT, FINDINGS, ORDER AND OPINION IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3 AND SEC. 2 (f) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 4933. Complaint, March 19, 1943—Decision, June 6, 1950

Competition among the manufacturers and jobbers of candy, gum, nuts and other confectionery products is and has been such that any differential or discrimination in the price of such products of like grade and quality may result in a substantial diversion of business to those manufacturers and jobbers who grant such differential or discrimination and substantially reduce the sales of those who do not grant them.

Where a corporation engaged in (1) purchasing nationally known candy and confectionery products of standard weight and quality from many manufacturers in various States, and in reselling them to some 83 "canteen distributors" (including two which were owned or controlled by the chairman of its board and his brother and accounted for over one-third of all retail sales reported by said distributors), for resale to the public by means of automatic vending machines leased from it and located in offices, factories and other commercial establishments in 112 separate territories in 33 States and in the District of Columbia; and in (2) acquiring, owning, operating and leasing such machines—substantially all of which were in the possession of its distributors through the operation of its lease agreements with them—and developing, as a part of its primary function of selling confectionery products, the automatic retailing of such items through leased vending machines;

In leasing both the standard machines and the selective machines, which it developed and which permitted the customer to select different kinds of candy, gum or nuts, and which, as with the standard it caused to be manufactured for it by others—

(*a*) Entered into exclusive dealing contracts with its said distributors which required said distributors (1) to purchase from it their requirements of confectionery and other merchandise for sale in its machines, (2) not to use or sell any merchandise thus purchased in any machine other than those leased by it, (3) not to offer or sell in such machines any merchandise not purchased from it, and (4) not to make, possess or operate any such machine not leased from it;

(*b*) Prohibited its distributors, under said exclusive dealing contracts, following their termination through lapse of time or for breach of any of the aforesaid conditions, from owning, licensing, leasing, or dealing in any automatic vending machine and from selling any merchandise by means of any such machine within the territory specified for a period of five years;

(*c*) Reserved to it the right to terminate without notice the lease and all interest of the distributor thereunder in the event that he failed or refused to observe and fulfill certain terms, covenants and guarantees, or defaulted

in the performance of any of the other agreements, etc., or if his interest should be transferred or pass to another except as permitted in the agreement;

(*d*) Included provisions whereby the distributor guaranteed to meet certain requirements with respect to the number and type of machines maintained on active sales locations during the period of operation, and the sales volume to be maintained, failing which it was entitled to terminate the lease and all of the title of the distributor under the agreement;

(*e*) Among other miscellaneous requirements related to those above set out, included provisions binding the distributor to follow certain specified standard practice, to make reports on the conditions of its business, and to buy all repair parts from it; but reserved to itself the right to make arrangements for the use of the machines and sale of merchandise in the distributor's territory where chain organizations, interstate concessionaires and public utility transportation systems were involved; and prohibited the distributor for disposing of his business without its consent; and

While modifying from time to time its aforesaid basic agreements, due primarily to wartime conditions, so as to give various distributors permission to make certain purchases from local jobbers or from certain manufacturers and processors upon payment to it of a fee as rental for use of its machines, based upon the amount of such purchases—

(*f*) Reserved the right to terminate such permission in whole or in part, and with or without cause; and

(*g*) As an aid in carrying out its said exclusive dealing contracts, organized a company as its wholly owned subsidiary, with identical officers and located in the same office, and directed some of its distributors to purchase from said company all merchandise desired of certain suppliers, and directed certain suppliers to sell to its distributors only through said company;

With the result that—

(1) There was a substantial lessening of competition (1) between its suppliers of confectionery products and their competitors, (2) between it and its competitors, and (3) between its distributors and their competitors, thereby tending to create a monopoly in it and its distributors in the resale of the products concerned, and several of its suppliers who received limited orders from it and many of their competitors were prohibited from supply its distributors with their requirements;

(2) Competition was substantially lessened between its suppliers of vending machines and their competitors who were able to sell only to other purchasers, tending thereby to create a monopoly in its suppliers; other manufacturers refrained from attempting to sell their machines to its distributors; and the distributors refrained from using or dealing in such machines of any one other than it, due to the litigation, trouble and loss encountered in cases where such transactions had been attempted; and

(3) Effect of its said exclusive dealing contracts had been and might be to substantially lessen competition or tend to create a monopoly in both lines of commerce in which it was engaged, namely, the sale and purchase of such packaged merchandise suitable for use in automatic vending machines, and

the development, acquisition, ownership, leasing, licensing, or selling of such machines; and,

Where said corporation, which, since its incorporation in 1931 and particularly since 1936, had enjoyed a rapid growth in business and attained a dominant position in the sale and distribution of confectionery products through automatic vending machines, due primarily to the aforesaid exclusive dealing contracts and to the receipt of lower prices or preferential discounts which accounted for almost all of its gross confectionery profits, on said standard price items (variations in which are brought about only by means of discounts, free deals, or other promotional aids made available by manufacturers and suppliers)—

Through such methods as informing prospective suppliers of the prices and terms of sale which would be acceptable to it, without consideration or inquiry as to whether the supplier could justify such a price on a cost basis or whether it was being offered to other customers of the supplier; refusing to buy unless the price to it was reduced below prices to others; and claiming that certain alleged savings would accrue to the supplier in selling to it, or that certain elements of cost could be eliminated which would justify a lower price—

(*b*) Knowingly induced and knowingly received, and knowingly sought to induce and receive, differentials in price from its suppliers which consistently ranged from approximately 1.2 to 33 percent lower than the prices paid by its competitors for products of like grade and quality, which it did not attempt to justify as making only due allowance for differences in cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such products were sold or delivered to it, and which constituted discriminations in price between purchasers of commodities of like grade and quality who had been and were competitively engaged with each other, in the sale and distribution of such commodities or whose ultimate purchasers or customers had been and were so engaged;

With the result that—

(1) Manufacturers and processors who were unable to sell their products at the lower prices demanded by it, to vending machine operators, jobbers and retailers who competed with it or its distributors in the same trade area suffered a loss of business;

(2) Its distributors, by reason of the special services which said discriminatory prices and additional income enabled it to render them, could and did offer larger commissions in the intense competition for locations than other vending machine operators were able to meet, or which they were forced to meet at a decrease in sales and profits, and such competing operators in many instances were forced to remove their machines from various locations as a result of the higher commissions paid by its distributors;

(3) Candy jobbers and wholesalers were adversely affected by competitive sales of its products in their local territories, jobbers were unable to sell products concerned to its distributors who received the ultimate benefit of its lower prices through the medium of additional services and aids which

enabled them to replace other retail outlets, and such jobbers and wholesalers lost business also due to the fact that it and its distributors were able to procure more and better vending machine locations which substantially reduced the business of competing operators who ordinarily purchased their merchandise from jobbers;

(4) Manufacturers engaged in selling such machines to retailers other than vending machine operators, who competed with it and its distributors, and who suffered a loss of sales or detraction of trade in the neighborhood where said distributors were able to place their machines, were either forced to reduce their sale of such machines to such retailers or required to increase their services and expenses in competing with it or its distributors; and

(5) Effect of such price discriminations had been and might be substantially to lessen competition and tend to create a monopoly in the manufacture, sale and purchase of confectionery products or other packaged goods suitable for use in coin-operated vending machines, and in the manufacture, development, acquisition, ownership, operation, leasing, licensing or selling of such machines suitable for said products, and, as hereinbefore indicated, to injure, destroy or prevent competition (1) between manufacturers and processors of the aforesaid products who granted such lower prices and those who did not grant such discriminatory prices, (2) between respondent and vending machine operators who did not receive the benefit of the lower prices received by it, (3) between it and candy jobbers and wholesalers who did not receive the benefit of such discriminatory prices, (4) between it and other retailers of such products who did not receive the benefit of the lower prices granted it, and (5) between those manufacturers of automatic vending machines who supplied it and its distributors and those who did not:

Held, (*a*) That the acts and practices of said corporation, of entering into exclusive dealing contracts with its various distributors as above set out constituted a violation of section 3 of the Clayton Act; and

(*b*) That said acts and practices of said corporation is knowingly inducing and receiving discriminations in the prices of products suitable for sale in vending machines, purchased by it from manufacturers and processors, which had the effect above set out, constituted a violation of section 2 (f) of the Clayton Act as amended by the Robinson-Patman Act.

As respects the establishment of a factual basis for a cease and desist order, the medium through which the Commission enforces laws administered by it: competent proof of one or more violations, in ordinary circumstances, is sufficient to establish a factual basis for such an order, and neither harassment of litigants nor waste of Government funds in needless reiteration through cumulative evidence should be countenanced; and the Commission was of the opinion in the instant proceeding, in which fourteen sellers were named as typical of a group from which respondent had induced or received discriminations in price, that the records of not more than five

of such sellers would have supplied ample evidence of such discriminations or price differentials.

In said proceeding in which counsel, after the record had been closed for the taking of testimony, entered into a stipulation—which the Commission accepted and approved—by the terms of which it was agreed that if the Commission, when it reached a decision on the merits, should decide to issue an order to cease and desist and should issue an order which was no more broad in scope and no more stringent in its provisions than the proposed order made a part of said stipulation, then the Commission might proceed, without further intervening procedure, to make its findings as to the facts and its conclusion based thereon from the testimony and exhibits theretofore introduced and admitted, and enter its order requiring respondent to cease and desist from the acts, practices and methods complained of (after making its decision upon certain pending appeals from the ruling of the trial examiner and after the trial examiner had closed the record and filed his recommended decision):

The Commission, after due consideration, eliminated certain prohibitions contained in the order agreed to, and an additional prohibition recommended by the trial examiner either because the evidence failed to provide a basis for findings of fact in support thereof or because such prohibitions were not required by reason of the nature of the complaint or were without sound basis under the provisions of the statute under which the proceeding was initiated; and in adopting the order entered, with inhibitions which did no more than prohibit those acts, practices and methods of respondent which were found to violate section 3 of the Clayton Act and section 2 (f) of said act as amended by the Robinson-Patman Act, and were confined to those acts, practices and methods alleged in the complaint, adopted an order which was not as stringent in its terms or as broad in scope as the order to which respondent agreed, but served to more properly dispose of the issues raised by the pleadings and to more nearly meet the requirements of the statute.

Before *Mr. Charles B. Bayly*, trial examiner.

Mr. Austin H. Forkner for the Commission.

Sanders, Gravelle, Whitlock & Howrey, of Washington, D. C., and *Friedlund, Levin & Friedlund*, of Chicago, Ill., for respondent.

Mr. William A. Quinlan, of Washington, D. C., for National Candy Wholesalers Association Inc., amicus curiae.

Mr. David Carliner, of Washington, D. C., for Automatic Merchandise Co., Davidson Bros., Keystone Vending Co., National Distributors, George E. Leach, Inc., Pack Shops Co., Southern Venders, Sterling Vending Co., W. W. Tibbals, Vendex Inc., and Vendomat Corp. of America, amici curiae.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of section 3 and of subsection (f) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint against the said respondent, stating its charges as follows:

COUNT I

PARAGRAPH 1. Respondent, Automatic Canteen Co. of America, is a corporation organized and existing by virtue of the laws of the State of Delaware, with its principal office and place of business located at 222 West North Bank Street, Chicago, Ill.

PAR. 2. Respondent is now and for many years last past has been engaged in the business of leasing and licensing automatic vending machines used in the dispensing of candy bars, chewing gum and nuts, hereinafter referred to as confection and nut products. Respondent is likewise engaged in the sale and distribution to lessees or licensees of said automatic vending machine of the confection and nut products vended in said machines, which products respondent purchases from various manufacturers and sells to said lessees in a manner and under terms and conditions hereinafter described. In connection with the leasing and licensing of automatic vending machines, and in connection with the sale and distribution of confection and nut products to the lessees thereof, respondent has caused, and still causes, said vending machines when leased or licensed and the said confection and nut products when sold to be transported from its principal place of business located in the State of Illinois to the lessees, licensees, and vendees thereof located in various points in the several States of the United States other than the State of Illinois, and in the District of Columbia, and said respondent now is and has been for more than 5 years last past constantly engaged in commerce in said vending machines and said confection and nut products between and among the various States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. In the course and conduct of its said business in commerce, as aforesaid, said respondent is, and has been for many years last past, in competition with individuals, partnerships and corporations engaged in the manufacture, leasing, licensing, and vending of auto-

matic vending machines and with other individuals, partnerships, and corporations who have been and are engaged in the manufacture, sale and distribution of confection and nut products, most, if not all, of which latter competitors manufacture and/or sell and distribute confection and nut products suitable for use in respondent's vending machines. Respondent would have been, and would now be, in more active and substantial competition with both said competing vending machine manufacturers, lessors and vendors and with said competing manufacturers and/or sellers and distributors of confection and nut products suitable for use in vending machines but for the restrictive conditions of respondent's contracts of license, lease and sale as hereinafter more particularly set forth.

Respondent does not manufacture its own automatic vending machines but has said machines manufactured for it by other companies in accordance with specifications furnished by respondent. Respondent was organized in 1931, has enjoyed rapid growth and is now and has been for more than 5 years last past one of the largest concerns engaged in the business aforesaid. Respondent now has outstanding in numerous locations in 31 States of the United States, and under lease agreements hereinafter described, executed by and between respondent and some 140 lessees, numerous vending machines as follows: 88,856 selective candy machines, 27,735 standard gum machines, 37,487 selective nut machines, 50,976 selective gum machines, and an unknown but large number of standard candy machines and standard nut machines. That by reason of the rapid growth of respondent's business, as aforesaid, and by reason of the numerous machines outstanding under lease as aforesaid, respondent is a dominant factor in the business of leasing and licensing vending machines; however, such business of respondent is incidental to its business of selling and distributing confections and nut products to the lessees of said vending machines. The candy vending machines of respondent vend in excess of 200,000,000 candy bars annually. The nut vending machines of respondent vend in excess of 5,000,000 pounds of nuts annually. Respondent annually purchases from one supplier alone for resale to its gum machine lessees approximately 1,850,000 boxes (100 sticks to a box) of chewing gum. Respondent has leased and now leases its vending machines to its said lessees for specified nominal rentals; the rental charge on the selective candy machines varies from 25 to 37 cents per machine per period and the year is divided into 13 periods. The lease terms of some types of respondent's gum machines are as low as 4 cents per period. Respondent derives little or no profit from the leasing of its vending machines, its principal source of profit being derived from

the sale of confection and nut products to the lessees of its machines at terms provided for in said lease or at terms as later modified during the period of the lease by mutual agreement. The leases entered into by respondent and its various lessees covering said vending machines run for a fixed term of 18 years without any right to terminate given to the lessees thereunder and provide that the lessees may use such machines only in a certain designated territory allotted by respondent as an exclusive franchise for the period of the lease. The approximate life and usefulness of respondent's vending machines, due to wear, deterioration and obsolescence, is approximately 8 years or less than one-half of the term of the leases covering said vending machines of respondent. Pursuant to arrangements made by respondent or its said lessees, respondent's vending machines are located in industrial plants, service stations, garages and terminals, approximately 95 percent of such vending machines being in industrial plants. The lessees are required by respondent to pay to the owners of the locations a commission of 10 percent on all sales made through said machines and in addition the lessees are sometimes required to pay an additional monetary consideration to the owners of choice locations. Respondent maintains certain supervision over its lessees by provisions in the lease agreement that said lessees shall follow standard practices of respondent with respect to methods employed in obtaining machine locations, in maintaining, reconditioning and servicing the machines, and in accounting and bookkeeping procedure, but said lease agreements expressly provide that the lessees are independent contractors and are in no sense the agents or representatives of the respondent.

PAR. 4. The respondent, in the course and conduct of its business hereinbefore described in paragraphs 1, 2, and 3, has leased and licensed, and is now leasing and licensing, its automatic vending machines for use in the several States and Territories of the United States and in the District of Columbia on the condition, agreement or understanding that the lessees or licensees thereof will not use the said automatic vending machines to vend any confections, nut products or merchandise other than those purchased from respondent; and on the further condition, agreement or understanding that the lessees or licensees thereof, during the period of said leases, will not acquire, hold, use, operate, lease or otherwise deal with any automatic vending machines other than those of respondent; and on the further condition, agreement or understanding that if the lessees or licensees thereof fail to comply with the aforesaid conditions during a period of fifteen days after written notice from respondent, all rights of said lessees or licensees shall terminate, including the right to the

use and possession of such automatic vending machines which may be thereafter immediately repossessed by respondent and removed by respondent from their respective sales locations or from the premises of said lessees or licensees; and on the further condition, agreement or understanding that the lessees or licensees thereof, upon the termination of said leases by lapse of time or by respondent, upon the breach of any of the conditions aforesaid, shall not own, lease or deal in any automatic vending machines of any kind or character, or sell any merchandise of any kind or character by means of any automatic vending machines within the franchise territory of such lessees or licensees for a period of 5 years after said termination of said leases.

PAR. 5. The effect of said leases or licenses on the said conditions, agreements or understandings set forth in paragraph 4 hereof may be to substantially lessen competition or tend to create a monopoly in either or both of two lines of commerce, to wit: (1) the leasing, licensing or selling of automatic vending machines between and among the several States of the United States and in the District of Columbia, (2) the sale of confections and nut products suitable for use in automatic vending machines between and among the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts, practices and methods of respondent constitute a violation of the provisions of section 3 of the hereinabovementioned act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act).

COUNT II

PARAGRAPHS 1 to 3, inclusive. As paragraphs 1 to 3, inclusive, of count II of this complaint, the Commission hereby incorporates paragraphs 1 to 3, inclusive, of count I hereof to precisely the same extent as if each and all of them were set forth in full and repeated verbatim in this count.

PAR. 4. Respondent in the course and conduct of its business more particularly described in paragraphs 1, 2, and 3 hereof, as a result of the restrictive covenants contained in its automatic vending machine leases, more particularly described in count I hereof, is one of the largest distributors of confection and nut products to automatic vending machine operators in the United States, and in consequence is an important outlet to manufacturers of such confection and nut products who wish extensive distribution of said products throughout the United States.

Respondent in the course and conduct of its business, now and since June 1936 has been in substantial competition with other corporations, individuals, partnerships, and firms similarly engaged in the business of buying, selling, and distributing confection and nut products, except insofar as such competition has been affected by the practices which are the subject of this count. Respondent in its business of leasing automatic vending machines, of securing additional locations for the lessees of said machines, of increasing the number of its said machines outstanding under lease, and of supplying the lessees thereof with confection and nut products for use therein, is in active competition with jobbers of candy who supply the retail candy trade and also with the retail customers of such jobbers.

PAR. 5. Respondent and its competitiors buy confection and nut products from a large number of manufacturers, jobbers and distributors located in the various States of the United States (hereinafter called sellers), representative of whom are the following:

The Curtiss Candy Co., Chicago, Ill.
Walter H. Johnson Candy Co., Chicago, Ill.
Williamson Candy Co., Chicago, Ill.
Bunte Bros., Chicago, Ill.
D. L. Clark Co., Pittsburgh, Pa.
Luden's, Inc., Reading Pa.
Nelster Candy Co., Cambridge, Wis.
Switzer's Candy Co., St. Louis, Mo.
Sperry Candy Co., Milwaukee, Wis.
Queen Anne Candy Co., Hammond, Ind.
Trudeau Candies, Inc., St. Paul, Minn.
Wayne Candies, Inc., Fort Wayne, Ind.
Chase Candy Co., St. Joseph, Mo.
William Wrigley, Jr., Co., Chicago, Ill.

Each of said sellers sell and distribute confection or nut products in commerce between and among the various States of the United States and the District of Columbia causing said confection or nut products to be shipped and transported from their respective places of business in the various States of the United States to respondent at its principal place of business in Chicago, Ill., where respondent takes possession of all of its said purchases, to competitors of respondent, and to said competitors' customers located in the various States of the United States and in the District of Columbia. That the sellers located in Chicago, Ill., make deliveries to respondent with the knowledge that a substantial portion of respondent's purchases is intended for the use of the lessees of the respondent's automatic vending machines

located in the various States of the United States other than the State of Illinois.

Respondent and respondent's competitors resell and distribute said confection and nut products in commerce between and among the various States of the United States and the District of Columbia, causing said confection and nut products to be shipped and transported from their respective places of business in the various States of the United States to their respective customers located in the various States of the United States and the District of Columbia.

PAR. 6. In the course and conduct of their respective businesses as above described said sellers have been and are now being induced by respondent to discriminate in price between different purchasers buying said confection and nut products of like grade and quality in commerce for use, consumption, and resale within the United States by charging said competitors of respondent higher prices than those charged respondent. Said discriminations in prices which favor respondent are not uniform on each confection and nut product sold or from each seller. Respondent pays such sellers from approximately 10 to approximately 25 percent less for said confections and nut products of like grade and quality than respondent's competitors pay said sellers, depending upon the confection and nut product and the seller, or either of them.

PAR. 7. The effect of said discriminations in prices as set forth in paragraph 6 hereof may be substantially to lessen competition between respondent and competing jobbers likewise engaged in the sale of candy either to vending machine companies or to retailers engaged in the sale and distribution of confection and nut products; to tend to create a monopoly in respondent in the lines of commerce in which respondent and its competitors are engaged; and to injure, destroy, or prevent competition with respondent in the resale of such confection and nut products of like grade and quality purchased from said sellers; and to injure, destroy, or prevent competition with the sellers granting said discriminations in prices to respondent.

PAR. 8. Respondent receives information as to the regular prices paid by its competitors to said sellers for said confection and nut products, refuses to purchase said confection and nut products from said sellers unless it is granted prices lower than paid by its competitors, and accepts and receives such lower prices on said confection and nut products and thereby and while engaged in commerce and in the course of such commerce as alleged in paragraph 5 hereof, is now and has been since June 19, 1936, knowingly inducing and receiving the discriminations in price alleged in paragraph 6 hereof.

PAR. 9. The foregoing alleged acts of said respondent are in violation of section 2 (f) of said act of Congress approved June 19, 1936, entitled, "An act to amend section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies and for other purposes,'" approved October 15, 1914, as amended (U. S. C. title 15, sec. 13) and for other purposes.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by said act, the Federal Trade Commission on March 19, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Automatic Canteen Co. of America, a corporation, charging it with violation of section 3 and of subsection (f) of section 2 of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. On February 18, 1939, after the record was closed for the taking of testimony, a stipulation was entered into by and between counsel supporting the complaint and respondent and its counsel. By terms of this stipulation it was agreed, among other things, that if the Commission, when it reached a decision on the merits in this matter, should decide to issue an order to cease and desist and should issue such an order no more broad in scope and no more stringent in its provisions than the proposed order attached to, and made a part of, said stipulation, the Commission might proceed upon the record without further intervening procedure to make its findings as to the facts and its conclusion based thereon from the testimony and exhibits theretofore introduced and admitted, and enter its order requiring the respondent to cease and desist from the acts, practices, and methods complained of after it had made its decision upon pending appeals from rulings of the trial examiner and after the trial examiner had closed the record and filed his recommended decision. The Commission accepted and approved this stipulation on March 2, 1949. On May 5, 1949, it rendered its decision upon the aforesaid

appeals from rulings of the trial examiner. The trial examiner closed the record on July 15, 1949, and filed his recommended decision on August 16, 1949.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the answer thereto, testimony and other evidence, the accepted and approved stipulation, and the recommended decision of the trial examiner and exceptions thereto (no briefs having been filed and oral argument not having been requested, according to the terms of the stipulation); and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Automatic Canteen Co. of America, is a corporation oraganized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 222 West North Bank Street, Chicago, Ill.

PAR. 2. (a) The respondent is now, and since June 19, 1936, has been engaged in the business of purchasing candy, gum, nuts, and other confectionery products from the producers thereof and in the resale of these products directly through automatic vending machines and to various persons, firms, or corporations known as "canteen distributors." These canteen distributors in turn resell the same merchandise to the public by means of automatic vending machines leased from the respondent and located in offices, factories, and other commercial establishments. The respondent has also been engaged in the development, acquisition, ownership, operation, and leasing of automatic coin-operated vending machines which are designed to, and do, dispense candy, gum, nuts, and other confectionery products to purchasers for consumption at the point of purchase.

(*b*) The respondent, for nearly 20 years last past, has been engaged in purchasing nationally known candy and confectionery products of standard weight and quality from many manufacturers and producers located in various States and reselling them principally as a wholesaler, to lessees of its automatic vending machines. In carrying out this function, it is, and has been, principally engaged as a wholesaler of candy, gum, nuts, and other confectionery products. The automatic vending machines operated by its customers were leased by it to various persons, firms, and corporations called "canteen distributors," who operate and have operated these machines as in-

dependent contractors in territories specifically described and set out by the respondent, throughout the several States of the United States. The respondent owns a substantial number of such leased machines located in many States and used within each of the territorial limits specifically defined and circumscribed by it. The lessees of respondent's automatic vending machines, hereinafter referred to as "distributors," have been, and are, its sole customers for the products it purchases and sells as a wholesaler. The number of such distributors has varied from time to time, but as of January 11, 1946, there were 83 such distributors operating automatic vending machines in 112 separate territories located in 33 States and in the District of Columbia. Prior to April 12, 1942, respondent operated a retail division of its own, through which it sold merchandise through automatic vending machines in northern Illinois, including the metropolitan area of Chicago.

PAR. 3. (*a*) As a part of respondent's primary function in merchandising candy, gum, nuts, and other confectionery products, it has spent considerable time and effort in developing the possibility of automatically retailing these and other items through leased vending machines. Upon its incorporation in 1931, respondent acquired from Chicago Automatic Canteen Co. and the Canteen Co. a small number of standard candy canteens designed to deliver candy bars through a single mechanism. Different sizes and shapes of bars could be placed in this type of canteen, but the customer had no choice in purchasing merchandise placed therein and was compelled to accept the kind of candy bar delivered in response to the deposit of his coin. Respondent continued to purchase this type of automatic vending machine for about 3 years, at the end of which time it owned approximately 40,000.

(*b*) In 1935 respondent developed a selective candy canteen, which gradually replaced the standard canteens in the hands of its distributors. This selective candy canteen consisted of a machine having five columns installed in a cabinet, which permitted the customer to select five kinds of candy bars. By means of display windows in each column, the customer was enabled to observe samples of these bars. On January 11, 1946, there had been manufactured for respondent a total of 91,217 selective candy canteens, of which the respondent then owned approximately 87,750. Substantially all canteens or automatic vending machines for all types of products are in the possession of respondent's distributors through the operation of a lease agreement between respondent and these distributors.

(*c*) Beginning in the year 1932 respondent introduced the standard gum canteen operated on the same principle as the standard candy canteen. In 1938 respondent arranged for the manufacture of a selective gum canteen which it had previously designed. This canteen permitted the selection of five kinds or flavors of gum. On January 11, 1946, respondent had purchased a total of approximately 54,941 selective gum canteens, of which it then owned approximately 52,000.

(*d*) In 1935 respondent added a coin or automatic vending machine for the dispensing of peanuts and other types of nuts. This machine consisted primarily of a glass bowl mounted on a vending device. Respondent has purchased approximately 42,249 such machines, and on January 11, 1946, owned approximately 36,500. In 1938 it introduced a selective nut canteen, which gradually replaced the glass-bowl type and offered the customer a choice of two varieties of nuts. On January 11, 1946, it had purchased approximately 45,243 such machines of which it then owned approximately 43,000.

(*e*) Respondent does not own or control any manufacturing facilities and has never manufactured any of its vending machines. It purchases them under contract from manufacturers. The number of machines manufactured for respondent prior to January 11, 1946, the original replacement value fixed by it in its contracts with distributors, and the number estimated to be owned as of January 11, 1946, are summarized in the following table:

Number of machines (canteens) manufactured	Replacement value	Number owned by respondent
40,000 standard candy	$13.50	None
91,217 selective candy	45.00–50.00	87,750
30,013 standard gum	5.00	10,900
54,941 selective gum	10.00	52,000
42,249 standard nut (2 pound)	5.00	36,500
45,243 selective nut	10.00	43,000
303,663 total canteens	[1] 14.75	230,150

[1] Average.

PAR. 4. (a) Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce among and between the various States of the United States and in the District of Columbia.

1. In the course and conduct of its business in the purchase and resale of candy, gum, nuts, and other confectionery products since June 19, 1936, respondent has caused said products to be shipped from its principal place of business in the State of Illinois or from the various places of business of its suppliers to its warehouses or to

its distributors at their respective points of location in various other States of the United States and in the District of Columbia.

2. In carrying on its business in the leasing and licensing of automatic vending machines, respondent has caused said machines, when leased, to be shipped and transported from its principal place of business in the State of Illinois or from the places of manufacture of such machines located in several other States of the United States to the points of location of its respective distributors or to its places of business located in other States of the United States and in the District of Columbia.

PAR. 5. Respondent's largest distributor as of January 11, 1946, consisted of a partnership known as the "Canteen Co.," which was principally owned by Nathaniel Leverone, chairman of the board of directors of the respondent company, and his brother, L. E. Leverone, its president. This partnership operated as a canteen distributor in 17 territories, and its volume of business for the 5 fiscal years prior to January 11, 1946, accounted for 24.7 percent of the total retail sales reported by all canteen distributors during that period. This distributor operated automatic vending machines in 17 cities located in nine States and in the District of Columbia. Another large distributor operated under the name "Canteen Service Co." This was a corporation organized on September 29, 1945, and succeeded a partnership of the same name in which the Leverone brothers were the only partners. The majority of the stock of this corporation was owned by these brothers. It operated principally in Cook County, Ill., and embraced the greater metropolitan area of Chicago and some other parts of the county. For the fiscal year ending September 29, 1945, its retail sales amounted to 10.06 percent of all retail sales reported by respondent's canteen distributors. Both the Canteen Service Co. and the Canteen Co. occupied offices at the same location as the respondent and shared, on a proportionate basis, in the expenses of rental, accounting, clerical, and other services rendered.

PAR. 6. (*a*) Through the use of contracts between respondent and its distributors or lessees, respondent leased automatic vending machines to said distributors for varied specified periods of time and required them to purchase all merchandise sold in said machines solely from it. These lease agreements, among other things, provided that said distributors or lessees would not buy, use, or deal with the products supplied by any other seller or supplier, or any competitor of the respondent. Said agreements further provided that the distributors or lessees of the vending machines leased from respondent would not acquire, manufacture, own, hold, locate, use, operate, lease, or other-

wise deal with any automatic vending machine not sold, licensed, or leased by respondent or otherwise acquired from it.

(*b*) The provision of the aforesaid contract dealing with the purchase of merchandise by the distributor is as follows:

The distributor, further in consideration of the leasing of the aforesaid canteens, does hereby covenant and agree that it will order and purchase from the company all candy, confections, gum, peanuts and other merchandise (of the kind or type which may from time to time be carried by the company as hereinafter specified) which the distributor may require throughout the period of this agreement, for resale by means of the canteens leased hereunder, at the price and upon the terms hereinafter in this article specified.

(*c*) The provision of the contract with respect to the sale of merchandise required:

That the distributor shall not use or sell, or cause or permit to be used or sold, any merchandise purchased by the distributor from the company hereunder in any automatic vending machine other than the Canteens leased by the distributor hereunder; that the distributor shall not sell or offer to sell any merchandise purchased hereunder except by means of the canteens leased hereunder; and that the distributor shall not use or sell or attempt to use or offer to sell in or by means of any canteen leased hereunder any merchandise other than that purchased by the distributor from the company hereunder.

(*d*) The provision dealing with the leasing of automatic vending machines required:

That the distributor shall not during the period of this agreement acquire, manufacture, own, hold, locate, use, operate, lease or otherwise deal with any automatic vending machine other than the canteens leased to the distributor hereunder.

(*e*) By the terms of said license agreement, respondent's distributors or lessees, upon the termination thereof either by lapse of time or upon the breach of any of the conditions specified in paragraphs (*b*), (*c*), and (*d*) above and others, were prohibited from owning, licensing, leasing, or dealing in any automatic vending machine of any kind or character and from selling any merchandise of any kind or character by means of any automatic vending machine within the territory specified by such agreement with the distributor or lessee for a period of 5 years. The provisions of the lease agreement covering these conditions are as follows:

1. The distributor expressly covenants and agrees that the distributor shall not, at any time during the period of 5 years from and after the date of the termination of this agreement (whether by lapse of time or otherwise), directly or indirectly, or under any circumstances or conditions whatsoever, own, sell, lease, operate, or otherwise deal in any automatic vending machine of any kind or character, or sell or offer to sell any merchandise of any kind or character by

means of any type of automatic vending machine, within the territory hereinbefore described.

2. The distributor further agrees that from and after the date of the termination of this agreement (whether by lapse of time or otherwise) the distributor shall not, directly or indirectly, employ or use the word "canteen" or the phrase "automatic canteen" in or in connection with any business to be conducted by the distributor in any other manner.

(*f*) Each of the contracts contained a paragraph providing for its termination as follows:

It is expressly agreed that if the distributor shall (*a*) fail or refuse during a period of three consecutive months to keep, observe, and fulfill the terms, covenants, and guarantees contained in paragraphs 1, 2, or 3 of article IV hereof; or (*b*) the distributor shall make default in the performance of any of the other agreements, conditions, covenants or terms herein contained and such default shall continue for a period of 15 days after written notice thereof from the company to the distributor; or (*c*) if the distributor shall at any time be adjudicated insolvent or a bankrupt; or (*d*) if the distributor shall at any time make a general assignment for the benefit of creditors or take the benefit of any insolvency act; or (*e*) if a receiver or trustee of the interest of the distributor hereunder shall be appointed by a court of competent jurisdiction; or (*f*) if this agreement or the interest of the distributor hereunder shall be transferred or pass to or devolve upon any other person, firm, or corporation, except in the manner hereinbefore permitted; then and in each such event, the company shall have the right, without further notice, to terminate and end this lease and agreement, as well as all of the right, title, and interest of the distributor hereunder.

(*g*) By other provisions in said contracts or agreements the distributor guaranteed, throughout the period of operation thereunder, that he would at all times maintain on active sales locations a portion of all automatic vending machines leased, of each type specified in the agreement as theretofore delivered to him, a number equivalent to at least 90 percent of all automatic vending machines of the same type owned by respondent and leased by it to all of its distributors under the terms of similar agreements. This agreement further provided that the distributor would maintain a sales volume through respondent's automatic vending machines and a ratio of automatic vending machines on sales locations in proportion to the population of his territory related to the average sales volume and ratio of sales location of all canteen distributors. In the event of default in performance by a distributor of this or of any of the other covenants or undertakings of said distributor, the respondent was entitled to terminate the lease and all of the title and interest of the distributor under the agreement.

(*h*) This lease and sale agreement which respondent had with its distributors contains a number of miscellaneous provisions and requirements which were directly related to each of the provisions set

forth in paragraphs (*b*) to (*g*), inclusive. Some of these provided that the distributor follow certain standard practice as set out by the respondent and required reports on the conduct of the distributor's business. The distributor was required to purchase all his repair parts from the respondent, but the respondent reserved the right to sell, rent, locate, and make arrangements for the location, operation, and use of vending machines and merchandise to be sold therefrom in the distributor's territory where such machines or the sale of such merchandise involved chain organizations, interstate concessionaires, and public utility transportation systems. The distributor was prohibited from disposing of his business without the consent of the respondent.

(*i*) The basic agreements above referred to were modified from time to time primarily due to wartime conditions. Beginning in 1942 the respondent gave various distributors permission to make certain direct purchases from local jobbers or from certain manufacturers and processors upon payment to it of a fee, as rental for use of its automatic vending machines, based upon the amount of such purchases. In every instance respondent reserved the right to terminate such permission in whole or in part, with or without cause. Beginning on or about December 20, 1942, respondent granted permission to its distributors to purchase merchandise direct from national manufacturers or suppliers and jobbers and to resell the same by means of automatic vending machines, leased by the respondent to said distributors on condition that before reselling any type of candy bar or other vending machine packaged goods, a sample of such merchandise would be submitted to the respondent, together with a statement of the price to be paid and the quantity, if the purchase was from other than a jobber, and further, that on or before the tenth day of each month the distributor would furnish the respondent a statement in writing of all candy bars and other packaged goods purchased and received during the next preceding period, together with the name and address of each supplier and the price paid. The distributor, on or before the tenth of each month, was required to pay to the respondent 10 cents for each 100 candy bars or other similarly packaged goods purchased by such distributor during the next preceding period. On April 11, 1942, this payment was increased to 25 cents for each 100 bars. Permission was also given these distributors to purchase peanuts and other nuts, as well as chewing gum, but similar conditions were imposed with respect to such purchases.

PAR. 7. As an aid in carrying out the full force and effect of the provisions of its exclusive-dealing contracts described in paragraph

6, the respondent organized the Swan Candy Co. as its wholly owned subsidiary with identical officers and located at the same office as respondent. Some of the respondent's distributors were advised, instructed, or directed to purchase of and pay the Swan Candy Co. for all merchandise desired of certain suppliers, while certain suppliers of respondent were advised, instructed, or directed to sell to respondent's distributors only through the Swan Candy Co.

PAR. 8 (*a*) The effect of the respondent's exclusive-dealing contracts containing the conditions and agreements described herein has been, is, and may be to substantially lessen competition or tend to create a monopoly in both lines of commerce in which the respondent is engaged, namely, the sale and purchase of candy, gum, nuts, confectionery products, and other similar packaged merchandise suitable for use in automatic vending machines and the development, acquisition, ownership, operation, leasing, licensing, or selling of automatic vending machines.

(*b*) These exclusive-dealing contracts have resulted in a substantial lessening of competition between respondent's suppliers of candy, nuts, confectionery products, and other packaged merchandise and their competitors, who have been, and are, unable to sell similar products to respondent. This lessening of competition tends to create a monopoly in the manufacturers and processors who sell such merchandise to the respondent. Competition has also been substantially lessened between respondent and its competitiors and between respondent's distributors and their competitors. Such lessening of competition tends to create a monopoly in the respondent and its distributors in the resale of the aforesaid products. Several of respondent's own suppliers who received limited orders and many competitors of its suppliers who have been unable to sell respondent were, and have been ready, willing, and able to supply respondent's distributors such products as they have required, and now require, for sale through automatic vending machines, but have been prohibited from doing so because of the restrictions, conditions, and limitations set forth in paragraphs 6 and 7 above.

(*c*) Competition has also been substantially lessened between vending-machine manufacturers and others who are, and have been, able to sell such machines to respondent, and their competitors, who have been able to sell only to other vending-machine purchasers, which tends to create a monopoly in the vending-machine manufacturers and suppliers who sell such machines or parts to the respondent. From time to time one or more manufacturers of automatic vending machines have been, and are now, ready, willing, and able to supply

respondent or its distributors with such machines and would have supplied them had it not been for the restrictions, conditions, and limitations set out in paragraphs 6 and 7. These vending-machine manufacturers have generally refrained from attempting to sell their machines to respondent's distributors. Where such sales have been attempted, expensive litigation, trouble, and loss have resulted to each vending-machine manufacturer or the respondent's distributor to whom said manufacturer was attempting to make a sale. For this reason, respondent's distributors have generally refrained from using or dealing in automatic vending machines of any person, firm, or corporation other than respondent and have generally complied with the terms of the contracts existing between them and the respondent with respect to such purchases.

PAR. 9. (*a*) In the course and conduct of its business since June 19, 1936, the respondent has knowingly induced, and knowingly received, lower prices from the suppliers from whom it purchased candy, gum, nuts, food, and other confectionery products than the prices paid by respondent's competitors from the same manufacturers and suppliers for products of like grade and quality. The prices paid by respondent to various sellers and suppliers of such products have consistently ranged from slightly less than 1.2 percent to slightly more than 33 percent lower than the prices paid by respondent's competitors for products of like grade and quality. These sellers generally pack candy bars and other confectionery products designed to retail at 5 cents per bar in boxes or cartons containing 100, 60, and 24 such bars. Their standard or usual prices for such boxes or cartons when sold to most of respondent's competitors between 1936 and 1942 were $2.50, $1.50, and 64 cents, respectively, while thereafter such prices increased generally to $2.65, $1.60, and 68 cents, respectively. Respondent, purchasing candy bars and other confectionery products of like grade and quality from the same sellers, principally in boxes or cartons of 100 bars, between 1936 and 1942, paid prices ranging from $1.95 to $2.25 per box and thereafter paid prices ranging from $2 to $2.62 per box. Respondent has been, and is now, receiving such price differentials from approximately 80 of its 115 suppliers.

(*b*) The aforesaid prices and price differentials vary from seller to seller and from product to product of the same seller. Typical and illustrative of these differentials and the different prices paid are the following: The Euclid Candy Co. of Illinois, Inc., during 1938 sold its "Jumbo," "Love Nest," and "Melt Away" candy bars to respondent in 100-count boxes at $2 per box, while selling them to respondent's

competitors at $2.50 per box. In 1939 this company sold its "Jumbo" bars to respondent at $2 per box, its "Cowboy" and "Big Game" bars at $1.95, while selling these identical products to other customers at $2.50. In 1940 it sold its "Rusty" and "Cowboy" bars in 100-count packages to respondent at $1.95, while selling them to other customers at $2.50. In 1941 it sold its "Cowboy," "Dolly Dimple," "Four Star," "Victory," and "Jumbo" bars to respondent in 100-count packages at $1.95, while selling them to respondent's competitors at $2.50. In 1942 this company sold its "Jumbo," "Dolly Dimple," "Cowboy," and "Four Star" bars in 100-count to respondent at $2 per box, while selling these same bars in the same count to respondent's competitors at $2.65. In 1943 this firm sold its "Dolly Dimple," "Jumbo," and "Four Star" bars in 100-count boxes to respondent at $2.15 and to respondent's competitors at $2.65. In 1945 and 1946 this firm sold its "Love Nest" bars to respondent at $2.62 in 100-count packages, while selling them to respondent's competitors at $2.65. All sales by this firm to respondent were made f. o. b. Chicago, while sales to other customers were made on a delivered basis. During 1938, 1939, and 1940, the George Ziegler Co. sold its "Big Swing" and "Giant" candy bars in 100 count to the respondent at $2.05, while selling them to respondent's competitors at $2.10. In 1942 this company sold its "Mounties" bars in 100-count packages to respondent at $2.10, while sales to its competitors were made at $2.45. In 1947 the F. W. Washburn Candy Corporation sold its peanut bars in 100-count boxes to respondent at $2.80 per box, while selling said bars to respondent's competitors at $2.85 in 100-count packages. This same company during 1939, 1940, and 1941 sold its coconut bars to respondent in 100-count boxes at $1.85, while it sold the identical product in the same count to respondent's competitors at $2.10. Luden's, Inc., in 1939 sold its "Fifth Avenue" bar in 100-count packages to respondent at $2.20 per box, while selling the same product to some of its competitors at $2.25 per box and to other such competitors at $2.50 per box.

(*c*) Respondent made no attempt to show that any of the price differentials received from these or other suppliers make only due allowance for differences in cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such products were to the respondent sold or delivered.

(*d*) The price differences herein described constitute discriminations in price between purchasers of commodities of like grade and quality who have been and are, either competitively engaged with each

other in the sale and distribution of such commodities or whose ultimate purchasers or customers have been, and are, so engaged.

(*e*) The respondent's gross profits on candy, nuts, gum, and other confectionery products were composed almost entirely of preferential discounts which it exacted from its suppliers. For example, the William Wrigley, Jr., Co., sold the respondent $8,823,728.83 worth of gum from 1937 to 1945, inclusive, at 38 cents per hundred sticks. Respondent sold this gum to its distributors at 56 cents per hundred, which resulted in a markup of approximately 46 percent above the purchase price and permitted the respondent a gross profit of approximately $4,091,386.58. Other customers competing with respondent or its distributors paid the Wrigley Co. 55 cents per hundred sticks, or approximately $12,771,240 for the same quality of gum of the same grade and quality, which amounts to $3,947,471.57, or approximately 44 percent, more than the respondent paid for the same gum. Of the $4,091,386.58 gross profit resulting from the sale of Wrigley's gum alone in the years 1937 to 1945, inclusive, $3,947,471.57, or approximately 96 percent, consisted of the difference between what others paid and the lower or preferential price which was granted to the respondent by the Wrigley Co. during those years.

PAR. 10. (*a*) The respondent or its distributors have been, and are, actively engaged in competition in commerce with vending-machine manufacturers or operators, jobbers, and retailers in performing the function of purchasing and reselling candy, gum, nuts, and other confectionery products; in developing, owning, designing, and improving coin-operated vending machines; in developing and finding suitable locations for such machines; and in the operation thereof. In the same trade areas in which there have been, and are, located automatic vending machines owned by respondent and operated by its distributors in factories, theaters, office buildings, oil stations, etc., there have been, and are, also located other automatic vending machines operated by other customers of respondent's suppliers, as well as factory canteens, candy and gum counters, confectionery wagons, restaurants, grocery stores, and other retail outlets distributing merchandise of like grade and quality in competition with the respondent or its distributors. Manufacturers of candy, gum, nuts, and other confectionery products compete in the sale of these products to these various retail outlets and in selling to wholesalers and jobbers who resell these products to other retail outlets. In the same trade area and in the same localities in which there have been, and are located automatic vending machines of respondent, there have been, and are, also located wholesalers and jobbers who have purchased, and now purchase, the

same merchandise for resale to vending-machine operators competing with the respondent or its distributors. Said wholesalers and jobbers have sold, and now sell, the same products to other retail outlets who compete with respondent or its distributors. These wholesalers and jobbers also compete between and among themselves in the resale of these products to retail outlets, including competing vending-machine operators.

(*b*) Manufacturers of coin-operated automatic vending machines have been, and are now, actively competing with each other and with the respondent in the development, design, perfection, repair, and placement of these machines in suitable locations and in otherwise assisting their vending-machine customers to procure supplies and operate vending machines in order to compete with respondent or its distributors.

PAR. 11. (*a*) The effect of the price discriminations hereinbefore set forth has been, and may be, substantially to lessen competition and tend to create a monopoly in the manufacture, sale, and purchase of candy, gum, nuts, confectionery products, or other packaged goods suitable for use in coin-operated vending machines, and in the manufacture, development, acquisition, ownership, operation, leasing, licensing, or selling of automatic vending machines suitable for vending said products; and to injure, destroy, or prevent competition between manufacturers and processors of the aforesaid products who grant respondent lower prices and those manufacturers and processors who do not grant such discriminatory prices, between respondent and vending-machine operators who do not receive the benefit of the lower prices received by respondent, between respondent and candy jobbers and wholesalers who do not receive the benefit of such discriminatory prices, between respondent and other retailers of candy, gum, nuts, and other confectionery products who do not receive the benefit of the lower prices granted respondent, and between those manufacturers of automatic vending machines who supply respondent and its distributors and those who do not supply them with such machines.

(*b*) Competition among the manufacturers and jobbers of candy, gun, nuts, and other confectionery products is, and has been, such that any differential or discrimination in the price of these products of like grade and quality may result in a substantial diversion of business to those manufacturers and jobbers who grant such differential or discrimination and substantially reduce the sales of those manufacturers and jobbers who do not grant them. Thus, the effect of any discrimination in price may be to injure, destroy, or prevent competition between those manufacturers and processors of candy, gum, nuts,

and other confectionery products who grant respondent lower prices and those manufacturers and processors who do not grant discriminatory prices, and between respondent and wholesalers or jobbers of such products who do not receive the benefit of discriminatory prices.

(*c*) Manufacturers and processors who have been, and are, unable to sell their products at the lower prices demanded by respondent have suffered a loss of business as a result of decreased sales and profits. Their sales of candy, gum, nuts, and other confectionery products have been reduced where such sales are made to vending-machines operators, jobbers, and retailers who compete with respondent or its distributors in the sale of such products in the same trade areas. Vending-machine operators who are, and have been, unable to obtain the low prices granted respondent have suffered reduced profits and the loss of vending-machine locations in many instances, resulting in decreased sales by them. The lower prices granted respondent have enabled it and its distributors to earn greater profits, provide more adequate facilities, give better services, and pay a higher rate of commission for preferred locations. From the increase in income resulting from the lower prices received on merchandise purchased, respondent has been able to create departments for accounting, new business, sales, operations, and engineering, and a traffic or product division, all primarily used for the benefit, aid, and assistance of its distributors. Competition between respondent's distributors and other vending-machine operators for locations in which to place automatic vending machines has been, and is, very intense and has been, and is now, generally determined by the highest rental bid or the type of service rendered. The principal basis of competition by vending-machine operators is obtaining locations in which to place their machines. By means of the additional income which has accrued to the respondent because of the lower prices granted it, through which respondent rendered special services to its distributors, said distributors were enabled to offer larger commissions to obtain locations for their machines, which other vending-machine operators were unable to meet or which they were forced to meet at a definite decrease in sales and profits. The average commission granted for locations of automatic vending machines has been 10 percent. However, higher commissions were granted in some cases by respondent's distributors for the purpose of obtaining competitive locations. In many of such instances competing vending-machine operators were forced to remove their machines from various locations as a result of the higher commissions paid by respondent's distributors. Candy jobbers and wholesalers

have been, and are, adversely affected by competitive sales of respondent's products in their local territories. Jobbers have been, and are now, unable to sell candy, gum, nuts, and other confectionery products to respondent's distributors who receive the ultimate benefit of respondent's lower prices through the medium of additional services and aids, which have enabled these distributors to replace other retail outlets. Because of the price advantage received by respondent, it and its distributors have been, and are now, able to procure more and better vending-machine locations, which substantially reduces the business of competing vending-machine operators who ordinarily purchase their merchandise from jobbers, again resulting in a loss of business to candy jobbers and wholesalers.

(*d*) Retailers other than vending-machine operators competing with respondent and its distributors have suffered a loss of sales or detraction of trade in the neighborhood where said distributors were able to place their vending machines. Because of the decreased sales on the part of vending-machine operators competing with the respondent and its distributors, manufacturers engaged in selling or leasing these machines to such operators have been either forced to reduce their sales of such machines or have been required to increase their services and expenses in competing with the respondent or its distributors.

PAR. 12. (*a*) Respondent, since its incorporation in 1931, and particularly since 1936, has enjoyed a rapid growth in business and attained a dominant position in the sale and distribution of candy, gum, nuts, and other confectionery products through and by means of automatic vending machines. Such expansion has been primarily due to the exclusive-dealing contracts heretofore described and the reception of lower prices as set out herein. The following illustrates respondent's growth in merchandise sales, canteen rentals, and net income for the years 1936 to 1945, inclusive:

Fiscal year ending on or about Sept. 30	Merchandise sales	Rentals and other operating income	Net income		Dividends paid on common stock
			Before Federal income taxes	For year	
1936	$1,937,117	$127,273	$235,635	$202,223	$9,884
1937	3,573,098	255,151	421,152	354,152	385,405
1938	3,697,104	306,126	382,048	318,048	269,584
1939	4,565,704	413,693	514,294	424,378	159,096
1940	6,139,442	469,187	874,185	717,185	273,959
1941	9,065,727	650,625	1,290,273	840,273	376,155
1942	14,706,508	887,936	2,167,396	829,896	313,252
1943	14,738,776	1,037,730	1,741,395	641,395	317,133
1944	14,253,547	1,073,940	1,686,520	602,020	320,338
1945	12,899,106	879,970	1,458,219	548,219	321,067

(*b*) Respondent's sales of candy bars and other packaged goods increased from 53,135,000 for the year ending September 30, 1936, to 335,438,000 for the year ending September 30, 1942. The number of 1-cent sticks of gum sold by respondent for these respective periods amounted to 33,409,000 and 355,332,000, while its sales of nuts for the same periods amounted to 808,000 pounds and 6,760,000 pounds, respectively.

PAR. 13. (*a*) In the course and conduct of its business since June 19, 1936, respondent has, through its officers and representatives, knowingly induced and knowingly received, and has knowingly sought to induce and receive, the differentials in price set forth in paragraph 9 above. Officials of respondent knew that many of the prices paid by its competitiors were higher than those which it sought to induce and did receive. This knowledge was based primarily on the common information that items purchased by respondent consisting of the 1- and 5-cent variety goods purchased were standard price items. Sales by most suppliers were based on that standard and considered to be common trade information. Variations from the standard price were brought about only by means of discounts, free deals, or other promotional aids made available by manufacturers and suppliers. That officials of respondent had knowledge that it was inducing and receiving lower prices than those granted to its other customers is shown by the following:

1. The C. S. Allen Corp., one of respondent's suppliers, on February 13, 1939, addressed a letter to respondent in which it stated:

> To show our good will, we are prepared to take a small loss and quote you $1.95 C delivered in Chicago, if that will be of any assistance to you.

2. The president of Town Talk, Inc., on March 10, 1943, addressed a letter to respondent which reads in part:

> At all times we have made sales to your company at substantially lower prices than we made to other companies and also at substantially lower prices than our ceiling price.

3. By letter of April 13, 1943; the George Ziegler Candy Co. sent the respondent a month-to-month summary of the prices at which it had sold its candy bars to its jobber and other customers for a period of 3 years. Said prices are all above those which respondent paid for the identical bars of candy purchased from this supplier.

4. On February 20, 1937, W. F. Schrafft & Sons Corp. addressed a letter to the respondent which reads in part:

> The superior quality of the materials used in the manufacture of our products, our rigid adherence to established standards, combined with the unusual precautions we take to insure uniform quality, will not permit of our meeting the

lower prices quoted by other bar manufacturers, as indicated by your letter, * * *

* * * * * * *

* * * we have always refrained from taking any business on which a legitimate profit cannot be secured. On that basis the price we have made is the very lowest which we are able to offer.

(*b*) Respondent used various methods to induce its suppliers to grant discriminatory prices. One of these was to inform prospective suppliers of the prices and terms of sale which would be acceptable to the respondent without consideration or inquiry as to whether such supplier could justify such a price on a cost basis or whether it was being offered to other customers of the supplier. At other times the respondent refused to buy unless the price to it was reduced below prices at which the particular supplier sold the same merchandise to others. In other instances respondent sought to explain to the prospective supplier that certain alleged savings would accrue to the supplier in selling to respondent or that certain elements of the supplier's cost could be eliminated, which would, in respondent's opinion, justify a lower price. In carrying out this form of inducement, respondent would advise a supplier or prospective supplier of the price which it considered "standard price." In letters written to the Curtiss Candy Co. on November 15, 1939, and to W. F. Schrafft & Sons Corp. on February 15, 1937, respondent summarized alleged savings to these companies as follows:

Alleged savings	Curtiss Co.	Schrafft Corp.
	Percent	*Percent*
(1) Freight savings of	6	5 to 7
(2) Sales cost savings of	7	7
(3) 24-count cartons savings of	5	5
(4) Return and allowances savings of	1	1 to 2
(5) Free deals and samples savings of	8	2 to X
(6) Shipping containers savings of		1 to 2
Total deductions	27	21 to 25

Respondent advised these companies that such alleged savings could be made because of the method by which respondent made purchases and because certain services could be eliminated in selling to it.

CONCLUSION

The acts and practices of the respondent as herein found of entering into contracts with its various distributors for the leasing of vending machines and the purchase of candy, gum, nuts, or other confectionery products to be sold through these same machines on the

condition and with the agreement and understanding that such distributors should not lease, operate, or in any way use vending machines obtained from any other source than the respondent and that such distributors should not purchase for resale through said vending machines leased from the respondent any candy, gum, nuts, or other confectionery products except such products as were sold to the distributor by the respondent, constitute a violation of section 3 of the act of Congress approved October 14, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act).

The acts and practices of the respondent in knowingly inducing and receiving discriminations in the prices of candy, gum, nuts, and other confectionery items of the 1- and 5-cent variety and other products suitable for sale in vending machines, purchased by it from various manufacturers and processors, which have the effect herein found, constitute a violation of the provisions of section 2 (f) of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (Robinson-Patman 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, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, a stipulation entered into between counsel in support of the complaint and the respondent and its counsel, and approved and accepted by the Commission, and recommended decision of the trial examiner and exceptions thereto (no briefs having been filed and oral argument not having been requested according to the terms of the stipulation); and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of section 3 of an act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), and subsection (f) of section 2 of said act, as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act):

1. *It is ordered*, That the respondent, Automatic Canteen Co. of America, a corporation, its officers, agents, representatives, and em-

ployees, directly or through any corporate or other device, in connection with the leasing, licensing, operation, or sale of any automatic vending machine or parts thereof, or in connection with the offering for sale, sale, or distribution of candy, gum, nuts, or any other confectionery product purchased for resale by or through the use of automatic vending machines, in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

A. Entering into, enforcing, continuing in operation or effect, or carrying out any contract, agreement, or understanding for the lease or sale of automatic vending machines or parts therefor, or for the sale of candy, gum, nuts, or other confectionery products for use or resale in such machines on the condition, agreement, or understanding that any lessee, licensee, operator, or purchaser thereof

1. Shall not acquire, manufacture, own, hold, locate, use, operate, lease, or otherwise deal with any automatic vending machine which is not licensed, leased, purchased, or otherwise acquired from respondent or from some source authorized by it.

2. Shall not offer to sell, sell, or cause or permit to be sold any candy, gum, nuts, or other confectionery products purchased from respondent other than by means of automatic vending machines leased or purchased from it.

3. Shall not buy for resale, deal with, use, or permit to be used, in automatic vending machines leased or purchased from respondent, the confectionery products of any seller or supplier other than respondent.

4. Shall order and purchase exclusively from respondent all confectionery products offered for resale by means of automatic vending machines leased or purchased from respondent.

Provided, however, That nothing contained in the preceding paragraphs numbered 1 through 4 shall be construed as prohibiting respondent from entering into any contract, agreement, or understanding with any lessee, licensee, purchaser, or distributor of its automatic vending machines which provides for payment to the respondent of such compensation as it may desire for the use of its automatic vending machines, for services rendered, for protection of quality and salability of products sold through its said vending machines, or provides for protection of respondent's franchise territories and distribution, of its good will and trade name, of its rental and additional income, of the development and retention of its business in its distributors' territory, and of the public, when none of such provisions are in conflict with the probibitions set forth herein.

II. *It is further ordered*, That respondent, Automatic Canteen Co. of America, a corporation, its officers, agents, representatives, and employees, in connection with the offering to purchase or purchase of any candy, gum, nuts, or other confectionery products of any nature in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

A. Knowingly inducing or knowingly receiving or accepting any discrimination in the price of such products, by directly or indirectly inducing, receiving, or accepting a net price from any seller known by respondent or its representatives to be below the net price at which said products of like grade and quality are being sold by such seller to other customers, where the seller is competing with any other seller for respondent's business, or where respondent is competing with other customers of the seller: *Provided, however*, That the foregoing shall not be construed to preclude the respondent from defending any alleged violation of this order by showing that a lower net price received or accepted from any seller makes only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are by such seller sold or delivered to respondent.

For the purpose of determining "net price" under the terms of this order, there shall be taken into account discounts, rebates, allowances, deductions, or other terms and conditions of sale by which net prices are affected.

III. *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.

Opinion by Commissioner Mason, Concurred in by Commissioners Ayres, Carson, and Mead

This matter regularly came on before the Commission for final consideration on its merits. The complaint herein was issued on March 19, 1943. It charged respondent, Automatic Canteen Co. of America, a corporation, with violation of section 3 of the Clayton Act through the use of certain exclusive-dealing contracts employed in leasing automatic vending machines in commerce, which machines were designed for the retail sales of candy, gum, nuts, and other confectionery products, and through the use of such contracts in connection with the sale and distribution of such products in commerce. It also charged respondent with violation of subsection (f) of section 2

of said act as amended by the Robinson-Patman Act through knowingly inducing and receiving price discriminations in connection with the purchase of candy, gum, nuts, and other confectionery products in commerce. Respondent, in its answer, filed May 11, 1943, denied the material allegations of the complaint. Through a series of delays, caused primarily by wartime conditions, a trial examiner was not appointed until May 26, 1946, at which time the first hearing was ordered to begin on June 26, 1946. Thereafter, a number of hearings were held at various points throughout the United States, and the last witness was examined on July 3, 1947. During these hearings, more than 7,000 pages of testimony and 6,000 exhibits were introduced into the record as evidence.

The complaint listed 14 candy manufacturers as representative of those sellers from whom respondent was alleged to have knowingly induced and received discrimination in price. Records or summaries of records of the prices at which more than 75 such manufacturers sold their candy, gum, nuts, and other confectionery products covering a period of 10 years were obtained by subpoena and introduced into evidence. The Commission is concerned with enforcement of the laws administered by it through the medium of orders to cease and desist. Competent proof of one or more violations would, in ordinary circumstances, be sufficient to establish a factual basis for such an order. The record in this case does not disclose the reason for such a plethora of cumulative evidence as was adduced by Government counsel in the instant matter. Neither harassment of litigants nor the waste of Government funds in needless reiteration through cumulative evidence should be countenanced, nor does it seem that it was necessary to name 14 sellers as typical of a group from which respondents had induced or received discriminations in price, and certainly the records of not more than 5 of such sellers would have supplied ample evidence of such discriminations or price differentials.

On August 4, 1947, after counsel in support of the complaint had rested his case, respondent filed a motion to dismiss, which the Commission denied on January 6, 1948. On March 18, 1948, respondent filed a motion before the trial examiner for reconsideration and reversal of 272 previous rulings on the admissibility of evidence, upon which the trial examiner made his rulings on July 5, 1948. Thereafter, on August 9, 1948, respondent appealed from these rulings. Counsel in support of the complaint filed answer to each of the aforesaid motions and appeals, and on July 8, 1948, filed his own motion for reconsideration and reversal of certain rulings of the trial examiner, which rulings were appealed to the Commission after the trial ex-

aminer had rendered his decision with respect thereto. While these appeals were under consideration by the Commission, pending decision and after the record had been closed for the taking of testimony, counsel supporting the complaint and respondent and its counsel on February 18, 1949, entered into a stipulation, by the terms of which it was agreed that if the Commission, when it reached a decision on the merits in this proceeding, should decide to issue an order to cease and desist and should issue such an order no more broad in scope and no more stringent in its provisions than the proposed order attached to, and made a part of, said stipulation, the Commission might proceed upon the record, without further intervening procedure, to make its findings as to the facts and its conclusion based thereon from the testimony and exhibits theretofore introduced and admitted, and enter its order requiring respondent to cease and desist from the acts, practices, and methods complained of after making its decision upon the pending appeals from the rulings of the trial examiner and after the trial examiner had closed the record and filed his recommended decision. The Commission accepted and approved this stipulation on March 2, 1949, and on May 5, 1949, rendered its decision upon the aforesaid appeals from rulings of the trial examiner. The trial examiner closed the record on July 15, 1949, and filed his recommended decision on August 10, 1949.

For a number of years respondent has been engaged in the business of purchasing candy, gum. nuts, and other confectionery products from approximately 115 producers thereof and selling them as a wholesaler or jobber to various persons, firms, and corporations which lease its automatic vending machines and which are known as "canteen distributors." These distributors resold these products to the public by means of such machines. Respondent has also been engaged in the development, acquisition, ownership, operation, and leasing of automatic vending machines. It has occupied a dominant position with respect to these two activities. On January 11, 1946, it owned 230,150 candy, nut, and gum vending machines, most of which were leased to its 83 distributors located in 112 separate territories in 33 States and in the District of Columbia. Sales through such machines increased from $1,937,117 for the year ending September 30, 1936, to $14,253,547 for the year ending September 30, 1944.

The contracts under which respondent's automatic vending machines were leased to its distributors provided that said distributors or lessees, during the life of such agreement, would order and purchase all merchandise sold in said machines solely from respondent; would not use or sell, or cause or permit to be sold, any merchandise pur-

chased from respondent in any automatic vending machine not leased to the distributor by the respondent; would not use or sell, or attempt to use or offer to sell, in or by means of any automatic vending machine leased from respondent, any merchandise not purchased from respondent; and would not acquire, manufacture, own, hold, lease, locate, use, operate, or otherwise deal with any automatic vending machine other than such machines as were leased by respondent. These contracts further provided that for a period of 5 years from the termination thereof, whether by lapse of time or upon breach of certain conditions, distributors or lessees of respondent's vending machines should not, directly or indirectly, or under any circumstances or conditions whatsoever, own, sell, lease, operate, or otherwise deal in any automatic vending machine of any kind or character, or sell or offer to sell any merchandise of any kind or character by means of any type of automatic vending machine, within the territory described in such contract.

These exclusive-dealing contracts have affected a substantial volume of business in both the leasing, sale, and distribution of vending machines and the sale and distribution of candy, gum, nuts, and other confectionery products. It is apparent that they entirely foreclosed the sale and leasing of vending machines to respondent's distributors by anyone but respondent and that other sellers and suppliers of candy, gum, nuts, and other confectionery products have been completely and effectively foreclosed from selling these products to respondent's distributors. Further, respondent's distributors or the lessees of its vending machines have been wholly foreclosed from doing business with any competitor of respondent while these contracts have been in effect and for 5 years thereafter. In *International Salt Co.* v. *U. S.* (332 U. S. 392), the court stated that "it is unreasonable, per se, to foreclose competitors from any substantial market" and held a similar contract to be in violation of section 3 of the Clayton Act, even in the absence of evidence that the effect of such a contract may be to substantially lessen competition or tend to create a monopoly in any line of commerce. The record in this proceeding contains an abundance of evidence which proves, beyond any reasonable doubt, that the effect of respondent's exclusive-dealing contracts has been, and may be, to substantially lessen competition or tend to create a monopoly in both lines of commerce in which respondent is engaged, and the Commission has so found. Such proof more than meets the standard laid down in the case of *Standard Oil Co.* v. *U. S.* (337 U. S. 293), in which the court concluded "that the qualifying

clause of section 3 is satisfied by proof that competition has been foreclosed in a substantial share of the line of commerce affected."

Respondent has induced and received discriminations in price from approximately 80 of its suppliers of candy, gum, nuts, and other confectionery products. It has consistently paid these suppliers and sellers from slightly less than 1.2 percent to slightly more than 33 percent less than its competitors paid the same sellers for products of like grade and quality. These price differentials or discriminations varied from seller to seller and from product to product of the same seller. Officers, agents, and representatives of respondent were thoroughly aware that such price discriminations were being induced and received. They knew the prices at which their suppliers were selling candy, gum, nuts, and other confectionery products of like grade and quality to other customers, and employed various means to induce lower prices on purchases by respondent. The evidence of record clearly establishes that respondent at times informed prospective suppliers of the prices and terms of sale which would be acceptable to it without consideration or inquiry as to whether such suppliers could justify such a price on a cost basis or whether it was being offered to other customers of the supplier. At other times the respondent refused to buy unless the price to it was reduced below the prices at which its supplier sold the same merchandise to others. In other instances, respondent sought to, and did, persuade its suppliers and sellers that they could effect certain savings in freight, sales, cartons, return and allowances, free deals and samples, and shipping container costs in selling to respondent, and thus could afford to sell to respondent at a net price of 21 to 27 percent below the price at which products of like grade and quality were being sold to respondent's competitors.

The evidence of record reveals that any discrimination in the price of candy, gum, nuts, and other confectionery products will divert business from any manufacturer or jobber of such products who does not grant such price discriminations to a manufacturer or jobber who does grant them. Such a condition is demonstrated beyond any doubt by respondent's refusal to buy in most instances except where it could induce and receive a discrimination in price.

The Commission has found from the evidence of record that the effect of price discriminations induced and received by respondent has been, and may be, substantially to lessen competition and tend to create a monopoly in the manufacture, sale, and purchase of candy, gum, nuts, confectionery products, or other packaged goods suitable for use in coin-operated vending machines, and in the manufacture,

development, acquisition, ownership, operation, leasing, licensing, or selling of automatic vending machines suitable for vending such products; and to injure, destroy, or prevent competition between manufacturers and processors of the aforesaid products who granted respondent lower prices and those manufacturers and producers who did not grant such discriminatory prices, between respondent and vending machine operators who did not receive the benefit of the lower prices received by respondent, between respondent and candy jobbers and wholesalers who did not receive the benefit of such discriminatory prices, between respondent and other retailers of candy, gum, nuts, and other confectionery products who did not receive the benefit of the lower prices granted respondent, and between those manufacturers of automatic vending machines who supplied respondent and its distributors and those who did not supply them with such machines.

Respondent made no attempt to show that the price differentials and discriminations induced and received by it made only due allowance for differences in the cost of manufacture, sale, or delivery resulting in the differing methods or quantities in which candy, gum, nuts, or other confectionery products were sold or delivered to it. The statute places squarely on respondent the burden of showing that price differentials are thus justified. In *F. T. C.* v. *Morton Salt Co.* (334 U. S. 37) [44 F. T. C. 1499], the court said:

> First, the general rule of statutory construction that the burden of proving justification or exemption under a special exception to the prohibitions of a statute generally rests on one who claims its benefits, requires that respondent undertake this proof under the proviso of section 2 (a). Secondly, section 2 (b) of the act specifically imposes the burden of showing justification upon one who is shown to have discriminated in prices.

Certainly, the same burden rests upon one who is shown to have knowingly induced or received a discrimination in price in violation of subsection (f).

Respondent made no attempt to rebut the prima facie case herein established by showing that the discriminatory prices which it induced and received were granted in good faith to meet equally low prices at which merchandise of like grade and quality was being sold to its competitors. Here, again, section 2 (b) of the Clayton Act as amended places the burden of making such a showing upon the person charged with a violation. In *F. T. C.* v. *Staley Manufacturing Co. et al.* (324 U. S. 746) [40 F. T. C. 906], the court stated:

> Section 2 (b) does not require the seller to justify price discriminations by showing that in fact they met a competitive price. But it does place on the seller the burden of showing that the price was made in good faith to meet a competitor's. The good faith of the discrimination must be shown in the face of

the fact that the seller is aware that his discrimination is unlawful, unless good faith is shown, and in circumstances which are peculiarly favorable to price discrimination abuses. We agree with the Commission that the statute at least requires the seller, who has knowingly discriminated in price, to show the existence of facts which would lead a reasonable and prudent person to believe that the granting of a lower price would in fact meet the equally low price of a competitor.

In this proceeding the burden of such a showing rests upon respondent, and it is unlikely that such proof could be successfully adduced since the evidence clearly shows that officers, representatives, and employees of respondent knew that the discriminatory prices induced and received by respondent were below those prices at which merchandise of like grade and quality was being sold to its competitors by the same seller.

The inhibitions contained in the order to cease and desist issued herewith do no more than prohibit those acts, practices, and methods of respondent which are found to violate section 3 of the Clayton Act and section 2 (f) of said act as amended by the Robinson-Patman Act, and are confined to those acts, practices, and methods alleged in the complaint. Other prohibitions contained in the order to which respondent agreed and urged by counsel in support of the complaint and an additional prohibition recommended by the trial examiner have been eliminated after due consideration by the Commission, either because the evidence of record fails to provide a basis for findings of fact in support thereof or because such prohibitions are not required by reason of the nature of the complaint or are without sound basis under the provisions of the statute under which this proceeding was initiated. Thus, the order adopted by the Commission is not as stringent in its terms or as broad in scope as the order to which respondent agreed but serves to more properly dispose of the issues raised by the pleadings and to more nearly meet the requirements of the statute.

IN THE MATTER OF

MILTON W. FOLDS, JESSIE D. FOLDS, AND JESSIE MAY FOLDS DOING BUSINESS AS KLEEREX CO.

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

Docket 5332. Complaint, June 11, 1945—Decision, June 6, 1950

Where three partners engaged in the interstate sale and distribution of a medicinal preparation for pimples designated "Kleerex," the ingredients of which were recognized variously as being mildly astringent, antiseptic, antipruritic, and analgesic in nature, and which, as directed, was to be applied nightly, before retiring, with a brush, after washing the face with soap and water, to be followed by a second coating after the face was dry, and to remain on the skin overnight; in advertising in newspapers and by circulars, leaflets, pamphlets and other advertising literature—

Represented that their said Kleerex constituted an effective treatment for pimples and would cause them to dry up and disappear overnight; the facts being that whatever the value thereof might be in masking the unattractive appearance of pimples, in relieving accompanying discomfort, in aiding to reduce the number of organisms on the surface of the skin, or in tending to dry skin surfaces, the preparation would not penetrate through the layers of the skin to the core of the pimple, and thus affect the seat of the infective process and cause pimples to disappear overnight, or at all; and said product was not a competent or effective treatment for said condition;

With effect of misleading and deceiving a substantial portion of the purchasing public into the belief that said representations were true and thereby into the purchase of substantial quantities of their said preparation, and with capacity and tendency so to do:

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 stipulated testimony of certain users of said preparation to the effect that it had relieved accompanying itching and pain and that the pimples had subsequently disappeared, such stipulation cannot be accepted as evidence that Kleerex is an effective treatment for pimples, since it is common knowledge, fully supported by the record, that these vary considerably in size, virulence and duration, and that by following simple standards of cleanliness they will, except in unusual situations, disappear within a reasonable time, and there is nothing whatever in said stipulated testimony of the lay witnesses that the disappearance of their pimples was due directly or indirectly to the use of said preparation.

In said proceeding the Commission was further of the opinion—based on the record, including the testimony of the only medical witness in the original proceeding and in a supplemental proceeding (stricken in part by the trial examiner, but restored by the Commission), certain corroborative stipulated

testimony, and the stipulated testimony above referred to as to what certain users would testify—that while said preparation might be a useful adjunct in the treatment of pimples to the extent of relieving some of the accompanying discomfort, concealing to some degree their unattractive appearance, and decreasing the likelihood of further local infection of the area of the skin to which applied, it did not reach the seat of the infection nor cause pimples to disappear, and accordingly did not constitute a competent or effective treatment therefor; and to that extent disagreed with the trial examiner's recommended decision that the charge that the product was not an effective treatment for pimples had not been sustained by the greater weight of the evidence and should be dismissed, and entered the cease and desist order in question to prohibit such a representation.

Before *Mr. Webster Ballinger*, trial examiner.
Mr. R. A. McOuat and *Mr. B. G. Wilson* for the Commission.
Frank E. & Arthur Gettleman, of Chicago, Ill., 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 Milton W. Folds, Jessie D. Folds, and Jessie May Folds, copartners trading as Kleerex Co., hereinafter called 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, Milton W. Folds, Jessie D. Folds, and Jessie May Folds are individuals, operating and doing business as copartners under the trade name of Kleerex Co., with offices and principal place of business at 2005 South Michigan Avenue, Chicago 16, Ill.

PAR. 2. Respondents are now, and have been for more than 2 years last past, engaged in the business of offering for sale, selling and distributing, a medicinal preparation designated "Kleerex." Respondents cause said preparation when sold to be transported from their aforesaid place of business in the State of Illinois to purchasers located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said medicinal preparation in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business, respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said preparation, by United States mails and by various other means in commerce as commerce is defined in the Fed-

eral Trade Commission Act; and respondents have also disseminated and are now disseminating and have caused and are now causing dissemination of, false 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 said preparation in commerce as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said advertisements, disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements in newspapers, and by circulars, leaflets, pamphlets, and other advertising literature are the following:

PIMPLES DISAPPEARED OVERNIGHT

Yes, its true, there is a safe harmless medicated liquid called Kleerex that dries up pimples overnight. Those who followed simple directions and applied Kleerex upon retiring were amazingly surprised when they found their pimples had disappeared. These users enthusiastically praise Kleerex and claim they are no longer embarrassed and are now happy with their clear complexions.

Many (users) report that they had a red sore pimply face one night and surprised their friends next day with a clear complexion.

PAR. 4. Through the use of the foregoing statements and representations and others of the same import not specifically set out herein, all of which purport to be descriptive of the therapeautic properties of respondents said preparation, respondents have represented and now represent that their preparation "Kleerex" is an effective treatment for pimples and will cause pimples to dry up and disappear overnight.

PAR. 5. The foregoing statements are grossly exaggerated, false and misleading. In truth and in fact, respondents' said preparation is not a competent or effective treatment for pimples. Its use will not dry up or otherwise cause pimples to disappear overnight or at all.

PAR. 6. The use by the respondents of the foregoing false, misleading and deceptive statements and representations with respect to respondents' said preparation, has had, and now has, the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and into the purchase of substantial quantities of respondents' said preparation because of said erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices, as herein alleged, are all to the prejudice and injury of the public, and constitutes 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 11, 1945, issued and subsequently served its complaint in this proceeding upon the respondents, Milton W. Folds, Jessie D. Folds, and Jessie May Folds, doing business as copartners under the name of Kleerex Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by the respondents of their answer to the complaint, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter there came on to be heard a motion filed on May 8, 1947, by counsel supporting the complaint and the answer thereto of respondents, and the Commission on October 30, 1947, ordered that this proceeding be reopened for the taking of further testimony in support of and in opposition to one of the charges of the complaint. Subsequently, additional testimony was introduced before the trial examiner and duly recorded and filed in the office of the Commission. This proceeding thereafter came on for final hearing before the Commission on the complaint, answer, testimony and other evidence, recommended decision and supplemental recommended decision of the trial examiner, and the exceptions filed thereto, and briefs filed in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

Findings as to the Facts

Paragraph 1. Respondents, Milton W. Folds, Jessie D. Folds, and Jessie May Folds, are individuals doing business as copartners under the trade name of Kleerex Co., with offices and principal place of business at 2005 South Michigan Avenue, Chicago 16, Ill.

Par. 2. Respondents are now, and have been for more than 2 years last past, engaged in the business of offering for sale, selling, and distributing a medicinal preparation designated "Kleerex." Respond-

ents cause said preparation when sold to be transported from their aforesaid place of business in the State of Illinois to purchasers located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said medicinal preparation in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of 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 said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in said advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements in newspapers, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

PIMPLES DISAPPEARED OVERNIGHT

Yes, it's true, there is a safe harmless medicated liquid called Kleerex that **dries up pimples over night. Those who followed simple directions and applied** Kleerex upon retiring were amazingly surprised when they found their pimples had disappeared. These users enthusiastically praise Kleerex and claim they are no longer embarrassed and are now happy with their clear complexions.

Many (users) report that they had a red sore pimply face one night and surprised their friends next day with a clear complexion.

PAR. 4. Through the use of the foregoing statements and representations, respondents have represented and now represent that their preparation "Kleerex" is an effective treatment for pimples and will cause pimples to dry up and disappear overnight.

PAR. 5. Pimples are low inflammatory lesions of the skin, the local cause of which is a specific germ, usually a staphylococcus or a streptococcus. The staphylococcus and streptococcus belong to a group of organisms called the cocci, a term used to designate small round organisms. The streptococcus usually occurs either in what appear to be chains, or sometimes in clusters, of organisms, and staphylococci,

which are pus-producing organisms, form in clumps or clusters. Ranging in size from scarcely visible bumps to the proportions of boils, pimples are surrounded by an area of redness depending on the size of the core or central seat of the infective process present underneath the layers of the skin. Pimples frequently occur at the time of puberty or adolescence and when present in great numbers give rise to a condition called acne. The course or duration of pimples varies greatly in individual cases.

The primary treatment for pimples is the washing of the affected area with soap and water. In addition to the use of preparations designed for local application, regimens designed to build up the patient's general health may be adopted, ultraviolet light may be used, and occasionally vaccines prepared from cultures of the specific organism causing the infection are utilized in the treatment of pimples.

The directions for use of the respondent's product call for one coating to be applied nightly before retiring with a brush after washing the face with soap and water. After the first coat is allowed to dry, it is directed that a second coating be applied and allowed to remain on the skin overnight. The active ingredients of the respondent's product are prepared calamine, spirits of camphor, resorcin, and distilled extract of witch hazel. Such ingredients are recognized variously as being mildly astringent, antiseptic, antipruritic, and analgesic in nature. When used in combination in the proportions present in Kleerex, such ingredients have a tendency to dry up surface lesions, to decrease the number or organisms on the surface of the skin, and to relieve pain or itching. The preparation, however, will not penetrate through the layers of the skin to the core of the pimple. In addition, Kleerex may be applied in such manner as to leave a pink colored residue sufficient to mask small pimples from view, but it is not effective in concealing larger or severe inflammations.

PAR. 6. After Dr. Scott, a physician, the single scientific witness called by counsel supporting the complaint, had testified on September 25, 1946, to the foregoing among other things, it was stipulated between counsel that two other physicians available as witnesses on behalf of respondents would testify to substantially the same effect as had Dr. Scott, if called as witnesses by respondents in this proceeding. Also called as witnesses on behalf of respondents were one of the respondents, who is a registered pharmacist, and another graduate pharmacist associated with respondents in an executive capacity. Their testimony was similar in material respects to that adduced by the scientific witness called by counsel supporting the complaint. It was further stipulated that five members of the purchasing public,

if called as witnesses in this proceeding, would testify that after having used Kleerex, as directed, on pimples, they received relief from accompanying itching and pain and that the pimples subsequently disappeared. Subsequently, at a hearing held in this proceeding on May 25, 1948, Dr. Scott again appeared as a witness and adduced additional testimony relating to the therapeutic properties of Kleerex.

The trial examiner has concluded that the allegation of the complaint that Kleerex is not a competent or effective treatment for pimples is not sustained by the greater weight of the evidence. The trial examiner assigns as the reason therefor an affirmation by Dr. Scott in response to a question propounded at the subsequent hearing by the trial examiner, expressing agreement with a statement that, among other effects, the four principal ingredients of Kleerex, when used in combination in the proportions in which they appear in such product, have the tendency to dry up pimples. The trial examiner infers therefrom that Kleerex, if used as directed, for a sufficient period of time, will cause pimples to dry up and that said product therefore constitutes an effective treatment for this condition.

In the opinion of the Commission, the aforesaid conclusions of the trial examiner are erroneous. Dr. Scott previously had described the drying action variously as being limited to "obtaining to dry up somewhat the actual secretion of the skin," or as having an effect of drying or tending to dry the skin, and in reference to pimples said that he considered Kleerex to have a tendency to dry them up. During the course of the second hearing, the witness stated it to be his opinion also that Kleerex, when used as directed, is not an effective treatment for pimples, and assigned as one of the reasons for such opinion the fact that respondents' preparation will not cause pimples to disappear. His testimony as rendered during the original hearing to the effect that Kleerex will not penetrate the core or inner area of the pimple beneath the layers of the skin is not controverted in the record, and is in effect corroborated by the testimony of the two medical witnesses which was introduced into the record by respondent pursuant to stipulation between counsel. Moreover, the statement by Dr. Scott that Kleerex will not cause pimples to disappear is not expressly controverted by any competent evidence.

Whatever its value may be in masking the unattractive appearance of pimples, in relieving accompanying discomfort, in aiding to reduce the number of organisms on the surface of the skin, or in tending to dry skin surfaces, it plainly appears that the use of Kleerex as directed will not affect the seat of the infective process and that it will not cause pimples to disappear overnight or at all, and the Commission

accordingly is of the view that respondents' product is not a competent or effective treatment for pimples.

It is therefore concluded that the statements in respondents' advertising which represent that Kleerex is an effective treatment for pimples and that it will cause pimples to disappear are false and misleading, and that the advertisements wherein such statements have been made constitute false advertisements.

PAR. 7. The use by the respondents of the foregoing false, misleading, and deceptive statements and representations with respect to respondents' said preparation has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and into the purchase of substantial quantities of respondents' said preparation because of said erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices, 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, the answer of the respondents, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision and supplemental recommended decision of the trial examiner, and the exceptions filed thereto, and briefs filed in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That Milton W. Folds, Jessie D. Folds, and Jessie May Folds, individually and doing business under the name of Kleerex Co., or under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the product Kleerex, or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the

same name or under any other name, do forthwith cease and desist from:

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—

That said product will cause pimples to disappear or constitutes an effective treatment for pimples.

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

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

Opinion of the Commission

Ayres, *Commissioner.*

The respondents are charged with false and misleading advertising by representing that their preparation "Kleerex" is an effective treatment for pimples and will cause pimples to dry up and disappear overnight. The trial examiner recommended an order which would require respondents to cease and desist from representing that their product will remove pimples overnight, and recommended dismissal of the charge that the product is not an effective treatment for pimples.

Only one medical witness testified and his testimony supports the allegations of the complaint. His testimony was based upon his knowledge of the therapeutic properties of the several ingredients of Kleerex and not upon actual use or clinical tests of the product itself. The original testimony of the medical witness was corroborated by the stipulated testimony of two doctors offered by respondents. It was also stipulated that if certain persons specifically named and others who had used respondents' product in treating themselves were called as witnesses, they would testify in substance as follows:

That each was afflicted with pimples, that the cause thereof was unknown to the witness, that each used Kleerex in accordance with the printed directions accompanying the package of Kleerex, that after using Kleerex as directed, upon application each received relief from

itching and accompanying pain, that the colored covering of Kleerex concealed the blemishes and the pimples disappeared, but not overnight.

After the original testimony was taken the trial examiner filed a recommended decision. Thereafter the Commission ordered the proceedings reopened for the taking of testimony concerning the charge that Kleerex is not a competent or effective treatment for pimples. During this supplemental proceeding the only witness called was the medical witness who had originally testified, and he was questioned specifically as to whether or not in his opinion Kleerex is an effective treatment for pimples. In this additional testimony he did not contradict or qualify any of his previous testimony, but added his specific opinion that Kleerex is not an effective treatment for pimples. The trial examiner struck this question and answer. That ruling was reversed by the Commission on March 28, 1949, for reasons set out in an opinion which accompanied the order.[1] This testimony of the medical witness, therefore, stands as a part of the record and no rebuttal evidence has been offered.

[1] The opinion of the Commission, by Commissioner Ayres, on the appeal in question under rule XX of the Commission's Rules of Practice, from the trial examiner's ruling, after setting forth the material facts, noted that the trial examiner's basis for his ruling was twofold, namely, "that the representations shown to have been made by the respondents with reference to their product Kleerex afforded no basis for the question; and, second, if it had, the witness could not have been permitted to answer over objection, as it called for an expression of opinion upon an ultimate issue of fact."

As to the first ground, noting that the examiner in effect held that the charge in the complaint that respondents had, among other things, represented their preparation as "an effective treatment for pimples" was unsupported, the opinion states that the complaint alleged and the answer admitted that respondents advertised their preparation in the language set forth in the findings, on p. 902, supra, captioned "Pimples disappeared overnight" and expressed the view that "it is difficult to see how respondents could have more plainly represented their preparation to be 'an effective treatment for pimples' than in the advertisement" in question, and was therefore of the further view that the trial examiner's ruling on said point was without foundation.

As to the second ground stated by the trial examiner, namely, that the question called for an expression of opinion upon an ultimate issue of fact, as involved in *United States* v. *Spaulding* (293 U. S. 498), and certain other following decisions of the Federal courts, and in the Commission's decision on the appeal from certain rulings of the trial examiner in D. 5358, *L. Heller & Son, Inc. et al.*, decided on August 25, 1950, the opinion states in part:

In the present proceeding the medical expert had, prior to the stricken question and answer, expressed his opinions upon the therapeutic properties, both singly and in combination, of the various ingredients of "Kleerex" with reference to pimples, and subsequent to the stricken question and answer had given the reasons for his opinion that it is not an effective treatment for pimples. It is apparent that in answering the stricken question the medical expert had answered from a medical standpoint upon the usual and ordinary meaning of the words in which inquiry was made. The answer required no legal interpretations or construction. The stricken question dealt with one of several ultimate issues of fact in the proceeding, but it was also subsidiary in the decision of the whole case.

The decision of the appeal by the Commission in docket 5358 presents a situation quite different from that in the present proceeding. That proceeding involved failure to mark with the name of the country of origin certain products alleged to be in substantial part

The stipulation that users of Kleerex would testify that it has relieved itching and accompanying pain and that the pimples had subsequently disappeared, cannot be accepted as evidence that Kleerex is an effective treatment for pimples. It is common knowledge, fully supported by the record, that pimples vary considerably in size, virulence, and duration, and that by following simple standards of cleanliness they will, except in unusual situations, disappear within a reasonable time. There is nothing whatever in the stipulated testimony of the lay witnesses that the disappearance of their pimples was due directly or indirectly to the use of "Kleerex."

We must then rely upon the expert testimony to determine whether or not Kleerex is an effective treatment for pimples. The only medical witness who testified on the point said that Kleerex is not an effective treament for pimples and gave in appropriate detail the reasons for the opinion. His testimony on this specific point is not disputed by any evidence in the record, and most of his statements concerning the therapeutic effects of this product are fully corroborated by evidence offered by respondents.

Pimples are low, inflammatory lesions of the skin and they vary in size from almost invisible bumps up to boils. There are various theories indicating that pimples might be caused by the sebaceous glands, by some disfunction of the hormone balance, by exposure to dust, dirt or grime, or by other causes, and that the period of puberty or adolescence is usually accompanied by the appearance of pimples. Fun-

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of foreign origin. The questions ruled upon had to do with whether the products of partly foreign and partly domestic origin were in fact foreign or domestic articles, whether articles of foreign origin should be marked to show such origin, and whether the failure to mark such goods is fair to the public. The answers to these questions were not based upon specialized fields of knowledge, nor could the answers by the witnesses assist in resolving the issues in the case.

In the present proceeding the issue of whether respondents' preparation is an effective treatment for pimples is purely a medical question which can be determined by the Commission only upon the basis of the testimony of medical experts. If the stricken question had been carefully avoided and only the facts subsidiary to it developed, these also would necessarily have been simply medical opinions. The answer stricken merely drew together these subsidiary opinions into a medical opinion upon the therapeutic effectiveness of respondents' preparation in treating pimples. Opposing counsel were free to explore fully and reveal whatever weaknesses there were, if any, in the basis and reasons for the opinion expressed. Since the question had to be decided upon the basis of medical opinion, the mere fact that it was couched in the precise language of the complaint when the equivalent opinion might be otherwise elicited should not be, and in the view of the Commission is not, controlling.

The conclusion here should not be interpreted as indicating that the Commission considers the type of question discussed to be particularly suitable or desirable, for it is of the utmost importance that the bases of and reasons for opinions expressed by medical experts should be fully developed. However, there is no reason to believe that the stricken question and answer unfairly prejudiced respondents, and this question and answer may properly assist in determining the merits of the proceeding. These are important considerations here.

The trial examiner's ruling therefore has been reversed.

damentally, however, it appears that pimples are due directly to a local germ infection. No treatment is recognized as an effective cure. In their general treatment the primary step is cleanliness achieved by thorough washing with soap and water. Various kinds of preparations may also be used for local application and sometimes treatment includes the use of ultraviolet light and occasionally vaccines made from cultures of the specific organisms which cause the pimples.

The ingredients of Kleerex are mildly astringent and antiseptic and tend to relieve pain and to alleviate itching. When used over a period of time the product tends to dry up some of the actual secretion on the skin and probably decreases the number of infecting organisms occurring on the surfaces of the skin. The product leaves a pinkish powder deposited on the skin which might be sufficient to cover and thereby conceal small blemishes, but which would not be sufficient to conceal larger or very bad inflammations. The product does not penetrate deeply enough into the layers of the skin to have any effect on the core of pimples, or the seat of the infection.

Based on the foregoing characteristics of pimples and the effects of the ingredients of Kleerex, which were fully disclosed by the testimony of the medical witness and corroborated by the stipulated evidence of respondents, the medical witness expressed the opinion that Kleerex is not an effective treatment for pimples because the ingredients of the preparation do not actually cause pimples to disappear. He stated that if used over a period of time the product might be of some benefit in the treatment of pimples along with other measures such as hygienic and general measures to build up the health of the individual, but that it will not in itself constitute an effective treatment for pimples. The medical witness agreed that when used as directed Kleerex gives relief from itching and accompanying pain and that pimples disappear in time and the blemishes are concealed by the covering provided by the product, but he said that pimples would not disappear as a result of using Kleerex.

Based on this record the Commission is of the opinion that Kleerex may be a useful adjunct in the treatment of pimples to the extent of relieving some of the accompanying discomfort, concealing to some degree their unattractive appearance, and decreasing the likelihood of further local infection of the area of the skin to which applied. It is further of the opinion, however, that Kleerex does not reach the seat of the infection, and does not cause pimples to disappear and, accordingly, that it does not constitute a competent or effective treatment for them. To this extent the Commission has disagreed with the trial examiner's recommended decision, and has caused the accompanying order to cease and desist to be entered.

IN THE MATTER OF

MARTIN J. GOLDSTEIN AND ISABEL GOLDSTEIN TRADING AS REALFLEX PRODUCTS CO.

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

Docket 5413. Complaint, Jan. 7, 1946—Decision, June 14, 1950

Where the words "Champion," "Goodyear," and "Eveready" had been used for many years in the corporate names and as trade names for the spark plugs and other automotive products made by well known companies, and the products of such companies had become well and favorably known to the purchasing public, members of which had developed a preference for them; and thereafter two partners, engaged in the interstate sale and distribution of ignition cable sets or, as sometimes referred to, spark plug cable sets, for use on automobiles—

(*a*) Adopted and used the trade names and marks of well and favorably known concerns for their own said products, including the trade names "Champion," "Goodyear," and "Eveready," which they printed and made use of, along with the familiar picture of the winged foot in conjunction with the name Goodyear, on cards and in price lists and other advertising literature, and represented thereby that their said products were made by well known concerns;

When in fact said concerns did not make or have any connection with the spark cable sets sold by them, and aforesaid partners' use of said trade names was without the consent or approval of such concerns; and

(*b*) Represented that their sets were made with new cables of the same quality as those used on Government planes in combat through stating in circulars distributed among prospective customers, "Spark Plug Cable Sets Made with the Identical 7 M. M. Stainless Steel Conductor—High Tension Cable Being Used To-day by the U. S. Government Exclusively on all War Planes in Actual Combat";

The facts being that when, due to wartime restrictions, said individuals were unable to purchase new cable directly from manufacturers, they purchased and used large quantities of cable which had been rejected for use on combat planes because of being obsolete or otherwise not meeting Government specifications, and also cable known as scrap material, some containing marks or scars indicating that it had been previously used;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby induce it to purchase substantial quantities of their said products; and with the result of placing in the hands of purchasers of their products for resale a means or instrumentality whereby they could mislead and deceive the purchasing public as to the true facts in regard to 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 additional charges in the complaint that respondents falsely represented that they owned, operated or directly and absolutely controlled a plant or plants wherein were made the products offered by it, and falsely represented through use of the trade name "Zenith" that their products were manufactured by Zenith Radio Corp., such charges were not sustained by the evidence.

Before *Mr. Henry P. Alden*, trial examiner.
Mr. D. C. Daniel and *Mr. Charles S. Cox* for the Commission.
Booth, Lipton & Lipton, 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 Martin J. Goldstein and Isabelle Goldstein, individually and as copartners trading under the name of Realflex Products 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 Martin J. Goldstein and Isabelle Goldstein are copartners, trading under the name of Realflex Products Co., with their principal office and place of business located at 335 Thirty-eighth Street, Brooklyn, N. Y. Respondents also maintain a place of business at 5216 Third Avenue, Brooklyn, N. Y. Respondents are now, and for more than 5 years last past have been, engaged in the sale and distribution of automotive specialties, including spark plug cable sets, to retail dealers and others located in the various States of the United States and in the District of Columbia, who, in turn, sell said products to the purchasing public.

Respondents cause, and have caused, said products, when sold, to be transported from their aforesaid places of business in the State of New York to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said 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 aforesaid business and for the purpose of inducing the purchase of their said merchandise, respondents cause, and have caused, many false, misleading, and deceptive statements and representations respecting their said products

to be inserted in their price lists, invoices, catalogs, and other printed or written matter, and on the cartons or boxes containing said products. Among and typical of such false and misleading statements and representations are the following:

FOR THE DURATION—BUY
Spark Plug Cable Sets
Made with the Identical 7 M. M.
Stainless Steel Conductor—High Tension Cable
Being Used To-day by the U. S. Government Exclusively
On all War Planes in Actual Combat

* * * * * *

Manufactured & Guaranteed by
REALFLEX PRODUCTS CO.
Brooklyn, N. Y.

By the use of the foregoing statements respondents represent, and have represented:

(1) That their products are made or manufactured of new cables which are of the same quality as those cables used on combat airplanes of the United States;

(2) That respondents own, operate, or directly and absolutely control a plant or plants wherein are made or manufactured the products offered for sale by them.

In truth and in fact respondents' said spark plug cable sets are not made of new materials of the same quality as the cables used in said combat airplanes, but, on the contrary, are made of second-hand, scrap cables which were rejected by United States Government inspectors as unfit for such use because of imperfections in said cables. Moreover, respondents neither own, operate, nor directly, nor absolutely control the plants in which their said products are made or manufactured. All the products sold and offered for sale by them are manufactured in plants owned, operated, and controlled by others.

PAR. 3. The Champion Spark Plug Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in Toledo, Ohio. It is now, and for more than 25 years last past has been, engaged in the manufacture, sale, and distribution of automotive and metallic specialties, including spark plugs and porcelain therefor. It causes, and has caused, its said products, when sold, to be transported from its said place of business to the purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. For over 25 years last past the Champion Spark Plug Co., in addition to using the word

"Champion" in its corporate name, has used such word as a trade name or designation applying to its automotive and metallic specialties, including spark plug sets.

PAR. 4. The Goodyear Tire & Rubber Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located in Akron, Ohio. It has subsidiaries located in various other States of the United States. It is now, and for more than 25 years last past has been, engaged in the manufacture, sale, and distribution, among other things, of automobile tires and tubes. It causes, and has caused, said products, when sold, to be transported from its said places of business to the purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. For over 25 years last past the Goodyear Tire & Rubber Co. has, in addition to using the word "Goodyear" as a part of its corporate name, used such word as a trade name and designation for its automobile tires and tubes and other articles of merchandise.

PAR. 5. Zenith Radio Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at Chicago, Ill. It is now, and for more than 15 years last past has been, engaged in the manufacture, sale, and distribution, among other things, of radios, radio parts, and other articles of merchandise. It causes, and has caused, said products, when sold, to be transported from its aforesaid principal place of business to the purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. For more than 15 years last past the Zenith Radio Corp. has used the word "Zenith" as a part of its corporate name and as a trade name or designation for its products.

PAR. 6. The Champion Spark Plug Co., the Goodyear Tire & Rubber Co., and the Zenith Radio Corp., as a result of the long and widespread usage of their corporate and trade names, as hereinabove set forth, have caused their products to become well and favorably known by the purchasing public. As a result thereof, members of the purchasing public have developed a preference for the products manufactured, sold, and distributed by such companies.

PAR. 7. In the course and conduct of their business, as aforesaid, and for the purpose of creating a demand on the part of the purchasing public for their said products, respondents adopted and began to use as trade names the words "Champion," "Goodyear," and "Zenith," respectively. In advertising, including catalogs, and on price lists,

letterheads, and in legends on cartons and boxes respondents have made, and do now make, use of such terms to designate their said products. Such use of said terms on the part of respondents began long after the said Champion Spark Plug Co., the Goodyear Tire & Rubber Co., and the Zenith Radio Corp. had adopted and begun to use, in connection with the sale of their respective products, the trade names and terms "Champion," "Goodyear," and "Zenith," and was, and at all times has been, without the consent of said companies, who were not the manufacturers of respondents' products.

In addition to the foregoing trade names, respondents have used and are using the trade names of various other well and favorably known concerns as names or designations for respondents' products in the same manner as names or designations for respondents' products in the same manner and with the same effect as hereinabove related to the trade names of the Champion Spark Plug Co., the Goodyear Tire & Rubber Co., and the Zenith Radio Corp.

By the aforesaid use of such trade names and designations respondents represent, and have represented, that the products sold by them are products manufactured by the said well and favorably known concerns.

In truth and in fact respondents' products are not, and have not been, manufactured by said concerns.

PAR. 8. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations has had, and now has, a tendency and capacity to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations and statements are true, and has caused, and now causes, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' merchandise. 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 said respondents' merchandise.

PAR. 9. The aforesaid acts and practices of the respondents, as hereinable 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 January 7, 1946, issued and sub-

sequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act, in violation of the provisions of that act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final consideration by the Commission on the complaint, answer, testimony, and other evidence, recommended decision of the trial examiner and exceptions thereto filed by counsel for respondents, and briefs and oral argument of counsel; and the Commission, having duly considered the matter and having entered its order disposing of the exceptions to the recommended decision of the trial examiner, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Martin J. Goldstein and Isabel Goldstein (incorrectly named in the complaint as Isabelle Goldstein), were copartners doing business under the trade name of Realflex Products Co. from about the middle of 1942 until January 1, 1946, with their principal place of business located at 335 Thirty-eighth Street, Brooklyn, N. Y., and a branch place of business during a part of that time located at 5216 Third Avenue, Brooklyn, N. Y. Respondents were engaged in, among other things, the sale and distribution of ignition cable sets, sometimes referred to as spark plug cable sets, for use on automobiles. Respondents caused their said products when sold to be transported from their aforesaid places of business to the purchasers thereof located in various other States and in the District of Columbia.

Respondent Martin J. Goldstein has been engaged in the same type of business since 1926, at which time he and one Irving Beck organized a corporation, Real Products Corp., of which Martin J. Goldstein was the treasurer and said Beck was the president. Said corporation was dissolved in 1933. From 1933 until 1935, respondent Martin J. Goldstein did business as an individual under the trade name of Realflex Products Co. In 1935, Martin J. Goldstein became president of the Realflex Products Corp., which position he held until that corpora-

tion was dissolved in 1941. On December 31, 1935, the Commission issued an order to cease and desist against the said corporations, Real Products Corp. and Realflex Products Corp., prohibiting them from using the trade name "Champion" as a designation or trade name for their automobile spark plug cable sets. On or after February 25, 1941, respondent Martin J. Goldstein began doing business as an individual under the name of Realflex Products Co. About the middle of 1942, respondent Martin J. Goldstein and his wife, respondent Isabel Goldstein, became partners in the business and continued to operate under the name Realflex Products Co., until January 1, 1946. The Realflex Products Co., Inc., was incorporated by respondents on January 1, 1946, and the business formerly conducted by the respondents has been conducted by said corporation since that date.

PAR. 2. In the course and conduct of their aforesaid business, respondents published and distributed among their customers and prospective customers a circular which contained the following statement:

FOR THE DURATION—BUY
Spark Plug Cable Sets
Made with the Identical 7 M. M.
Stainless Steel Conductor—High Tension Cable
Being Used To-day by the U. S. Government Exclusively
On all War Planes in Actual Combat

Through the use of said statement respondents represented that their spark plug cable sets were made with new cables of the same quality as those cables used on United States Government planes in actual combat.

PAR. 3. Due to wartime restrictions, respondents were unable to purchase new cable of the kind ordinarily used in spark plug cable sets directly from the manufacturers thereof. As a result, respondents purchased and used in their spark plug cable sets large quantities of cable which had been rejected for use on combat planes because of being obsolete, or otherwise not meeting Government specifications, and also cable known as scrap material. Some of the cable so purchased and used by respondents contained marks or scars indicating that the cable had been previously used. The representation by respondents that their spark plug cable sets were made with new cables of the same quality as those cables used on United States Government planes in actual combat was false, misleading, and deceptive.

PAR. 4. In the course and conduct of their aforesaid business, respondents have adopted and used the trade names and marks of well and favorably known concerns as names or designations for their

spark plug cable sets. Included in the trade names so adopted and used were the trade names "Champion," "Goodyear," and "Eveready." Such names were printed on cartons in which the sets were sold and also in price lists and other advertising literature. Respondents also used in conjunction with the word "Goodyear" a picture of the winged foot.

PAR. 5. The word "Champion" has been used by the Champion Spark Plug Co. of Toledo, Ohio, for more than 30 years as a part of its corporate name and as a trade name for the spark plugs it manufactures. The word "Goodyear" has been used by the Goodyear Tire & Rubber Co., of Akron, Ohio, for more than 40 years as a part of its corporate name and, in conjunction with a picture of a winged foot, as a trade name or mark for its products, which include automobile tires, tubes, and accessories. The word "Eveready" has been used by the National Carbon Co., Inc., New York, N. Y., for more than 20 years as a trade name for various automotive products which it manufactures and sells.

As a result of long and widespread usage and extensive advertising by Champion Spark Plug Co., Goodyear Tire & Rubber Co., and National Carbon Co., Inc., of their respective trade names, their products have become well and favorably known to the purchasing public and members of the purchasing public have developed a preference for the products manufactured, sold, and distributed by those corporations.

PAR. 6. By the use of the trade names and designations as set forth in paragraph 4 hereof, respondents have represented that their spark plug cable sets were made by well and favorably known concerns, including Champion Spark Plug Co., Goodyear Tire & Rubber Co., and National Carbon Co., Inc. Said corporations did not make, or have any connection with, the spark plug cable sets sold by respondents, and respondents' use of said trade names was without the consent or approval of those corporations. The Commission finds that the use by the respondents of the trade names and marks of well and favorably known concerns as names or designations for their spark plug cable sets was misleading and deceptive. The record establishes that respondents' wrongful use of such names had the tendency and capacity to mislead and deceive.

PAR. 7. In addition to the matters set forth above, the complaint herein charged also that the respondents have falsely represented that they own, operate, or directly and absolutely control a plant or plants wherein are made or manufactured the products offered for sale by them, and falsely represented, by use of the trade name "Zenith," that

their products are manufactured by Zenith Radio Corp. These charges in the complaint have not been sustained by the evidence.

PAR. 8. The use by the respondents of the false, misleading, and deceptive statements and representations set forth hereinabove had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and to cause a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' merchandise. By said acts and practices respondents also placed in the hands of purchasers of their products for resale a means or instrumentality whereby they could mislead and deceive the purchasing public as to the true facts in regard to respondents' products.

CONCLUSION

The acts and practices of the respondents as hereinabove 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, the answer of the respondents, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner and exceptions thereto, and briefs and oral argument of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Martin J. Goldstein and Isabel Goldstein, individually and trading as Realflex Products Co., or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of spark plug cable sets or other automotive specialties, do forthwith cease and desist from:

1. Representing, directly or indirectly, that their said spark plug cable sets are made with cable of the same quality as the cable used on United States Government planes in combat or that their said

spark plug cable sets are made from new and unused cable, when such is not a fact.

2. Using the words "Champion," "Goodyear," or "Eveready," or any of them, either alone or in connection with any other word or words, to designate, describe, or refer to their said products.

3. Representing, in any manner, that their said products are the products of, or are made by, Champion Spark Plug Co., Goodyear Tire & Rubber Co., or National Carbon Co., Inc., or that any of said corporations has any connection with the manufacture or sale of said products.

4. Representing, through the use of the trade name or mark of any other concern or concerns engaged in the manufacture, sale, or distribution of automotive specialties, or in any other manner, that respondents' said products are the products of, or are made by, such other concerns.

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

IN THE MATTER OF

NICHOLAS SAGE TRADING AS GEO-MINERAL CO.

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

Docket 5666. Complaint, June 20, 1949—Decision, June 14, 1950

The generic term "anemia" embraces a considerable number of disease conditions, and it is only in that very small percentage of the cases of anemia encountered in medical practice, which is caused by an inadequate intake of iron in the diet, that a preparation such as that involved in the instant case would have any therapeutic value or be effective in enriching the blood or intending to produce rich red blood; and such a preparation would not be of value in the treatment of iron deficiency anemia resulting from an inadequate absorption of iron by the intestine or an increased loss of iron as in chronic bleeding; or in the treatment of pernicious anemia and other macrocytic anemias or those caused by derangements of the blood-forming organs of the body or conditions resulting in increased destruction of red blood cells; or in that of anemia secondary to severe or chronic diseases such as cancer, kidney disease, infections, etc.

Such symptoms or conditions as headaches, nervousness and dizzy spells, lack of vitality, energy, ambition, sparkle in the eyes and brilliance of the mind, poor appetite, underweight, weakened sexual powers and similar conditions may be due to anemia resulting from an inadequate intake of iron in the diet or to any of the numerous other types of anemia, and may also be due to a wide variety of disease conditions which are in no wise related to anemia. In only an extremely small percentage of persons having the aforesaid symptoms, however, are they the result of anemia due to a simple deficiency of iron in the diet, and it is only in said extremely small percentage of cases that such a preparation as that involved in the instant case would have any therapeutic value in their correction or relief.

Where an individual engaged in the interstate sale and distribution of a preparation designated as "Geo-Mineral" from his place of business and from his suppliers to dealers and individuals; in advertising in various newspapers and by other means—

(*a*) Falsely represented that his said Geo-Mineral, taken as directed, was a competent and effective treatment for and would cure stomach and kidney ailments, bloating, constipation, bowel adhesions, rheumatism, arthritis and neuritis, and would relieve the pains of rheumatism and arthritis;

(*b*) Represented that it was a competent and effective treatment for and would cure headaches and nervousness or dizzy spells and would restore vitality, energy or weakened sexual power, improve appetite, and increase weight and energy, build the blood, and correct dullness, tiredness, laziness, poor appetite or a lack of ambition to work or play, or of sparkle in the eyes or of mental brilliance, or similar symptoms or conditions;

The facts being it was of no value for the treatment of such conditions except in those very limited instances in which they are due solely to an iron deficiency diet rather than to numerous other possible causes;

(*c*) Falsely represented that said preparation contained no drug and restored health without use of drugs, and contained the same minerals in therapeutic amounts as were found in the best mineral spring water and would produce the benefits ordinarily ascribed to the use of such mineral water;

(*d*) Represented falsely that said preparation kept the colon free from waste matter, and that black stools and evidences of impurities in the urine demonstrated such results;

The facts being that any black color of the stools following the taking of the preparation was due to the chemical reaction of the iron compounds therein with sulphur compounds in the fecal matter and had no therapeutic significance; and use thereof would not cause impurities to appear in the urine; and

(*e*) Represented that 65 percent of all persons over 35 suffer from nutritional mineral-iron anemia and that when a person is nervous, dull, tired, or lazy, has headaches and dizzy spells, lacks ambition to work or play and has a poor appetite, and when eyes lack sparkle and the mind lacks brilliance, or other similar condition exists, such symptoms indicate a lack of minerals in the blood, and that use of said preparation as directed would correct them and restore health to all persons who might suffer ill health;

The facts being there are no reliable medical statistics showing that 65 percent or any other percent of persons over 35 suffer from such anemia; and as respects symptoms above set out, said preparation, as heretofore noted, would be of value in only a relatively small number of cases;

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

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

In concluding, in the instant proceeding, that certain of the advertising statements made by respondent as above set out were false and deceptive, the Commission, as in other cases heretofore presented to it for determination, took into consideration the innuendoes and suggestions contained therein. Thus, in offering said product for correction or cure of designated symptoms or conditions, for which it would be of benefit only in an extremely small percentage of instances, and would not be of benefit in the numerous other instances due to causes other than a deficiency of iron in the diet, respondent suggested not only that such symptoms or conditions might be due to the cause for which the product was beneficial but also that there was a likelihood that they were in fact due to such cause, a representation which, if made by suggestion and unaccompanied by an appropriate disclosure of the likelihood of other causes of the symptoms or conditions, is as false and deceptive as one made categorically, and is therefore subject to the exercise of the Commission's corrective action in the same manner and to the same extent as though made by affirmative statement.

Mr. Morton Nesmith for the Commission.

Barksdale, Abbott & Thies, of St. Louis, Mo., and *Mr. Max Siskind*, of Washington, D. 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 Nicholas Sage, trading as Geo-Mineral Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Nicholas Sage is an individual trading and doing business as Geo-Mineral Co. with his office and principal place of business located at 276 Arcade Building, St. Louis, Mo.

PAR. 2. Said respondent is now and has been for several years last past engaged in the business of selling and distributing a preparation containing drugs as "drug" is defined in the Federal Trade Commission Act. The designation used by the respondent for his preparation and the formula and directions for its use, are as follows:

Designation: Geo-Mineral.

Formula: An aqueous solution containing:

Ferric sulfate	4.22 g. per 100 cc.
Ferrous sulfate	0.04 g. per 100 cc.
Aluminum sulfate	0.93 g. per 100 cc.
Calcium sulfate	0.19 g. per 100 cc.
Magnesium sulfate	0.33 g. per 100 cc.
Phosphoric acid	0.020 g. per 100 cc.
Manganese	0. 0065 g. per 100 cc
Copper	less than 0.001 g. per 100 cc.

Directions for use:

IMPORTANT: NEVER TAKE GEO-MINERAL UNDILUTED. Take one teaspoonful twice daily, in a full glass of water, or fruit juice if preferred. Take Geo-Mineral after meals.

The respondent causes said drug preparation when sold to be shipped from his place of business in the State of Missouri and from his suppliers from their places of business in the States of Georgia and Missouri to dealers and individuals located in various other States of the United States and in the District of Columbia. Said dealers in turn sell such drug preparation to the general public. Respondent maintains and at all times mentioned herein has maintained a course of trade in said preparation in commerce between and among the various States of the United States and in the District of Columbia. His volume of business in said drug preparation in such commerce is substantial.

PAR. 3. In the course and conduct of his business respondent since March 21, 1938, has disseminated and caused the dissemination of certain advertisements concerning said preparation by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in Aurora Beacon News, Aurora, Ill., various issues between June 1, 1948, and February 1949; Elgin Courier-News, Elgin, Ill., various issues between June 1, 1948, and February 1949; Herald-News, Joliet, Ill., various issues between June 1, 1948, to February 1949; Daily News Tribune, La Salle, Ill., issues of February 2, 9, and 23, 1949; News Gazette, Champaign, Ill., issues of January 5 and 26, February 2, 9, 16, and 23, 1949; the Nashville Banner, Nashville, Tenn., issue of April 28, 1948; Montgomery Advertiser, Montgomery, Ala., issues of April 8 and 30, 1948; Miami Herald, Miami, Fla., issue of August 12, 1948, and Richmond Times-Dispatch, Richmond, Va., issue of December 11, 1947, and on various other dates in the years of 1947, 1948, and 1949; and respondent has disseminated, and caused the dissemination of advertisements concerning his said preparation, by various means, including but not limited to the advertisements referred to above, for the purposes of inducing and which were likely to induce, directly or indirectly, the purchase of the said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

[Statements and representations set out here at length in the complaint are published in the findings at p. 928, and are omitted here in the interest of brevity.]

PAR. 5. Through the use of the statements in the advertisements hereinabove set forth [1] and others of the same import, not specifically set out herein, respondent represented that his preparation Geo-Mineral, taken as directed, is a competent and effective treatment for and will cure stomach ailments, kidney ailments, bloating, constipation, bowel adhesions, rheumatism, arthritis, neutritis, headaches, nervousness, and dizzy spells; will restore vitality, energy, and weakened sexual powers; will improve the appetite and increase the weight of the user; that its use will relieve the pains of rheumatism and arthritis; that said preparation does not contain drugs and restores health without the use of drugs; that it contains the same minerals in therapeutic amounts as are found in the mineral waters of the best

[1] Set out in full in the findings, as above set forth, and omitted here in the interest of brevity.

mineral springs and that the use of the preparation will produce the benefits ordinarily ascribed to the use of such mineral waters; that its use will enrich the blood and build rich, red blood; that said preparation keeps the colon free from waste matter, and that the black stools and evidences of impurities in the urine demonstrate these results; that 65 percent of all persons over 35 years of age suffer from nutritional mineral-iron anemia; that when a person is nervous, dull, tired, lazy, has headaches and dizzy spells, lacks ambition to work or plan, has a poor appetite, when eyes lack sparkle and the mind brilliance or when other similar conditions exist, such conditions indicate lack of minerals in the blood and that the use of the said preparation, as directed, will correct them and that its use will restore health to all persons who may suffer ill health.

PAR. 6. The aforesaid advertisements [2] 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, respondent's preparation Geo-Mineral has no value in the treatment of stomach ailments, kidney ailments, bloating, constipation, bowel adhesions, neuritis, rheumatism, and arthritis and the pains thereof; and, except to the extent hereinafter set forth, has no value in the treatment of headaches, nervousness and dizzy spells, lack of vitality, energy, ambition, sparkle in the eyes and brilliance of the mind, poor appetite, underweight, weakened sexual powers and similar conditions, in building rich, red blood and in restoring or benefitting the health of the user. Practically all of the ingredients contained in said preparation are drugs and any results obtained through its use are by reason of a drug contained therein. It does not contain the same minerals as exist in water from the best mineral springs and the benefits obtained through its use are not comparable to those following the use of such waters. Said preparation will not keep the colon free from waste matter. Black stools and evidences of impurities in the urine are not indicative of any such result. Any black color of the stools following the taking of the preparation is due to the chemical reaction of the iron compound in the preparation with sulfur compounds in the fecal matter and has no therapeutic significance. The use of the preparation will not cause impurities to appear in the urine. There are no reliable medical statistics showing that 65 percent or any other percent of persons over 35 suffer from nutritional mineral-iron anemia.

PAR. 7. There are a considerable number of disease conditions embraced under the generic term "anemia"; some of these anemias result

[2] See footnote on p. 923.

from a deficiency of iron in the body, while the remainder result from a variety of other causes. Only that type of anemia involving a deficiency of iron in the body which has resulted from an inadequate intake of iron in the diet may be benefited by Geo-Mineral taken as directed; the preparation is not of value in the treatment of iron deficiency anemia resulting from an inadequate absorption of iron by the intestine or an increased loss of iron as in chronic bleeding; the preparation would also be without value in the treatment of pernicious anemia and other marocytic anemias, or the anemias caused by derangements of the blood-forming organs of the body or conditions resulting in increased destruction of red blood cells; it is also without value in the treatment of anemia secondary to severe or chronic diseases such as cancer, kidney disease, infections, etc. Of the cases of anemia encountered in medical practice, only a very small percentage is caused by an inadequate intake of iron in the diet, and it is only in this very small percentage of cases that Geo-Mineral may have any therapeutic value; also, it is only in this very small percentage of cases of anemia that the preparation would be effective in enriching the blood or in tending to produce rich, red blood.

Such symptoms or conditions as headaches, nervousness and dizzy spells, lack of vitality, energy, ambition, sparkle in the eyes and brilliance of the mind, poor appetite, underweight, weakened sexual powers and similar conditions may be due to anemia resulting from an inadequate intake of iron in the diet; these symptoms may also be due to any of the numerous other types of anemia and they may also be due to a wide variety of disease conditions which are in no wise related to anemia. In only an extremely small percentage of persons having the aforementioned symptoms are the symptoms the result of anemia due to a simple deficiency of iron in the diet, and it is only in this extremely small percentage of cases that Geo-Mineral will have any therapeutic value in the correction or relief of the aforementioned symptoms.

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

PAR. 9. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and consti-

tute 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 20, 1949, issued and subsequently served its complaint in this proceeding upon the respondent, Nicholas Sage, trading as Geo-Mineral Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Thereafter, counsel supporting the complaint moved that the complaint herein be amended in certain respects, counsel for respondent interposed answer in opposition to the granting of such motion, and counsel supported the complaint and counsel for respondent subsequently joined in a request to the Commission that the motion to amend be withdrawn, which request has been granted by the Commission. Respondent, on December 2, 1949, filed answer to the complaint in which answer respondent admits all the material allegations of fact set forth in the complaint and waives all intervening procedure and further hearings as to the facts. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and the answer thereto; 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 Nicholas Sage is an individual formerly trading and doing business as Geo-Mineral Co. with his office and principal place of business located at 276 Arcade Building, St. Louis, Mo.

PAR. 2. Said respondent is now and has been for several years last past engaged in the business of selling and distributing a preparation, designated as "Geo-Mineral," containing drugs as "drug" is defined in the Federal Trade Commission Act. The formula for respondent's preparation and directions for its use, are as follows:

Formula: An aqueous solution containing:

Ferric sulfate	4.22 g. per 100 cc.
Ferrous sulfate	0.04 g. per 100 cc.
Aluminum sulfate	0.93 g. per 100 cc.
Calcium sulfate	0.19 g. per 100 cc.
Magnesium sulfate	0.33 g. per 100 cc.

Phosphoric acid		0.020 g. per 100 cc.
Manganese		0.0065 g. per 100 cc.
Copper	less than	0.001 g. per 100 cc.

Directions for use:

IMPORTANT: NEVER TAKE GEO-MINERAL UNDILUTED. Take one teaspoonful twice daily, in a full glass of water, or fruit juice if preferred. Take Geo-Mineral after meals.

The respondent causes said drug preparation when sold to be shipped from his place of business in the State of Missouri and from his suppliers from their places of business in the States of Georgia and Missouri to dealers and individuals located in various other States of the United States and in the District of Columbia. Said dealers in turn sell such drug preparation to the general public. Respondent maintains and at all times mentioned herein has maintained a course of trade in said preparation in commerce between and among the various States of the United States and in the District of Columbia. His volume of business in said drug preparation in such commerce is substantial.

PAR. 3. In the course and conduct of his business respondent, since March 21, 1938, has disseminated and caused the dissemination of certain advertisements concerning said preparation by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in various issues of the Aurora Beacon News, Aurora, Ill., appearing between June 1, 1948, and February 1949; Elgin Courier-News, Elgin, Ill., various issues between June 1, 1948, and February 1949; Herald-News, Joliet, Ill., various issues between June 1, 1948, to February 1949; Daily News Tribune, La Salle, Ill., issues of February 2, 9, and 23, 1949; News Gazette, Champaign, Ill., issues of January 5 and 26, February 2, 9, 16, and 23, 1949; the Nashville Banner, Nashville, Tenn., issue of April 28, 1948; Montgomery Advertiser, Montgomery, Ala., issues of April 8 and 30, 1948; Miami Herald, Miami, Fla., issue of August 12, 1948, and Richmond Times-Dispatch, Richmond, Va., issue of December 11, 1947, and on various other dates in the years of 1947, 1948, and 1949; and respondent has disseminated, and caused the dissemination of advertisements concerning his said preparation, by various means, including but not limited to the advertisements referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of the said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

YOU CAN ENJOY
GOOD HEALTH

STOMACH AILMENTS, WEAK KIDNEYS, RHEUMATIC PAINS, ARTHRITIS, NEURITIS, and such complaints as Headaches, Nervousness, Acids, Toxins, Bloating, Lack of Vitality, Energy, Poor Appetite, Underweight, Dizzy Spells.

Drugless Health!

NO MATTER how long you have been suffering from stomach, kidney, and rheumatic distress, and what drugs you have tried before, you can, now, hope for relief if you take GEO-MINERAL. With your eyes SEE the results 7 days after you start taking it.

DRUGGISTS, Chemists cannot make GEO-MINERAL. It comes from the earth—Nature's laboratory. Contains NO dope, NO alcohol, NO oil. ONLY Nature's minerals—the oldest, most reliable remedy for rheumatism, arthritis, kidney, and stomach ailments.

Wonder Minerals

FOR THOUSANDS of years sufferers, on advice of doctors, go to mineral springs to get cure, or relief. The late President Roosevelt used to go to Mineral Springs in Georgia. He was helped or would not have gone there twice a year.

WE HAVE all heard of the miraculous springs of Lourdes, France, and famous Thronion in ancient Grece, where, according to legend, Hercules, the god of eternal strength and youth, drank its waters and bathed to be forever young.

IF YOU ARE a sufferer, and cannot go to the mineral springs, try GEO-MINERAL which contains a blend of the same minerals that can be found at the world's best springs. The minerals in it may work miracles.

Amazing Results

WATCH your elimination from your bowels two or three days after you start using GEO-MINERAL. The waste, black as coal, will break away and you will SEE it! Also examine your urine. You may see impurities—poisonous waste—coming out of your kidneys, and feel the relief. Be sure to watch for all this to realize its priceless value.

MEDICAL records show 65% of men and women over 35 suffer from nutritional mineral-iron anemia. When you feel nervous, dull, tired, lazy, have dizzy spells, no ambition to work or play, a poor appetite; when your eyes lack that bright spark and your mind brilliance; when headaches get the best of you, and you feel old before your time, and life seems not worth living, with worry wearing you down—it may be simply lack of minerals in your blood. GEO-MINERAL is then what you need.

100% Guaranteed!

WE URGE everyone to try GEO-MINERAL. Do not hesitate one moment. Go to your drug store now. Get one bottle. Use it one week. If you are not 100 percent satisfied, we will refund your money.

REGARDLESS of how long you have been suffering, and how many medicines you have tried before, GEO-MINERAL may be the remedy you need!

TRY it today; It may do wonders for you—and be the best investment for your health. Make you feel, eat, sleep, work, and enjoy life better. GEO-MINERAL: 1 bottle $1.10, p for $6.00.

* * * when the sexual powers weaken and life seems not worth living * * * GEO-MINERALS is then what you need.

GOOD NEWS
FOR SICK PEOPLE

STOMACH AILMENTS, WEAK KIDNEYS, RHEUMATIC PAINS, ARTHRITIS, NEURITIS, and such complaints as Headaches, Nervousness, Acids, Toxins, Bloating, Lack of Vitality, Energy, Poor Appetite, Underweight, Dizzy Spells.

Drugless Health

IF YOU ARE a sufferer of these ailments, try GEO-MINERAL. You may be astonished at the results. You need not guess—you will see facts. GEO-MINERAL comes from the earth—Nature's Laboratory. Contains NO dope, NO alcohol, NO oil. ONLY Nature's minerals, the oldest, most reliable remedy for rheumatism, arthritis, kidney, and stomach ailments.

GEO-MINERALS will enrich your blood, help to make you strong, full of pep, life and energy. Lack of minerals in the blood causes anemia, headaches, nervousness. Minerals generate mental brilliancy, give sparkling eyes, red cheeks, fight disease, build up health.

RHEUMATISM, arthritis are dreadful diseases. Acid condition in the blood is often their cause. What could be the remedy? For thousands of years, minerals have been used to relieve the pain and suffering of these ills. People, on the advice of doctors, go to mineral springs to find cure or relief. The late President Roosevelt used to go to Warm Springs in Georgia. He was helped or he would not have gone there regularly twice a year.

Amazing Results

YEAR after year, people rush to mineral springs and spas, to drink and bathe in their miraculous water. We have all heard of the wondrous springs of Lourdes, France, and famous Thronion in ancient Greece where, according to legend, Hercules, the god of eternal strength and youth, drank its waters and bathed to be forever young.

GEO-MINERAL contains minerals you get at the world's best springs. Watch your elimination from your bowels a day or two after using it. The waste, black as the color of your shoes, will start to break away, and you will SEE it. Also examine your urine. You may see impurities—poisonous waste—coming out of your kidneys, relieving you. And then realize the priceless value of GEO-MINERAL.

WE URGE everyone to try GEO-MINERAL. Do not hesitate one moment. Get one bottle. Use it one week. If you are not 100 percent satisfied we will refund your money in full. Try it today! It may do wonders for you—and be the best investment for your health. Make you feel, eat, sleep, work, and enjoy life better.

SICK!
STOMACH AILMENTS, WEAK KIDNEYS,
RHEUMATIC PAINS, ARTHRITIS,
NEURITIS, and such complaints as
Headaches, Nervousness, Acids,
Toxins, Bloating, Lack of Vitality,
Energy, Poor Appetite, Underweight,
Dizzy Spells.

Drugless Health
* * * * *
Rich Red Blood
* * * * *
Wonder Minerals
* * * * *
Amazing Results
* * * * *
100% Guaranteed!

NEWS
STOMACH AILMENTS, WEAK KIDNEYS,
RHEUMATIC PAINS, ARTHRITIS, NEURITIS
Drugless Health!
* * * * *
Amazing Results
* * * * *
Wonder Minerals
* * * * *
Read What They Say!
* * * * *
100% Guaranteed
HEALTH NEWS

Constipation is the cause of this atonic abnormal colon. Keep colon free from poisonous waste matter.

Spastic constipation—This condition is often caused by over use of harsh cathartics, physics.

Bowel Adhesions—Proper diet, keeping colon clean, always helps to avoid the condition of this colon.

PAR. 5. Through the use of the statements in the advertisements hereinabove set forth and others of the same import, not specifically set out herein, respondent represented that his preparation Geo-Mineral, taken as directed, is a competent and effective treatment for and will cure stomach ailments, kidney ailments, bloating, constipation, bowel adhesions, rheumatism, arthritis, neuritis, headaches, nervousness, and dizzy spells; will restore vitality, energy, and weakened sexual powers; will improve the appetite and increase the weight of the user; that its use will relieve the pains of rheumatism and arthritis; that said preparation does not contain drugs and restores health without the use of drugs; that it contains the same minerals in therapeutic amounts as

are found in the mineral waters of the best mineral springs and that the use of the preparation will produce the benefits ordinarily ascribed to the use of such mineral waters; that its use will enrich the blood and build rich, red blood; that said preparation keeps the colon free from waste matter, and that the black stools and evidences of impurities in the urine demonstrate these results; that 65 percent of all persons over 35 years of age suffer from nutritional mineral-iron anemia; that when a person is nervous, dull, tired, lazy, has headaches and dizzy spells, lacks ambition to work or play, has a poor appetite, when eyes lack sparkle and the mind brillance or when other similar conditions exist, such conditions indicate a lack of minerals in the blood and that the use of the said preparation, as directed, will correct them and that its use will restore health to all persons who may suffer ill health.

PAR. 6. The aforesaid 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, respondent's preparation Geo-Mineral has no value in the treatment of stomach ailments, kidney ailments, bloating, constipation, bowel adhesions, neuritis, rheumatism and arthritis, and the pains thereof; and, except to the extent hereinafter set forth, has no value in the treatment of headaches, nervousness and dizzy spells, lack of vitality, energy, ambition, sparkle in the eyes and brilliance of the mind, poor appetite, underweight, weakened sexual powers and similar conditions, in building rich, red blood and in restoring or benefiting the health of the user. Practically all of the ingredients contained in said preparation are drugs and any results obtained through its use are by reason of a drug contained therein. It does not contain the same minerals as exist in water from the best mineral springs and the benefits obtained through its use are not comparable to those following the use of such waters. Said preparation will not keep the colon free from waste matter. Black stools and evidence of impurities in the urine are not indicative of any such result. Any black color of the stools following the taking of the preparation is due to the chemical reaction of the iron compounds in the preparation with sulfur compounds in the fecal matter and has no therapeutic significance. The use of the preparation will not cause impurities to appear in the urine. There are no reliable medical statistics showing that 65 percent or any other percent of persons over 35 suffer from nutritional mineral-iron anemia.

PAR. 7. There are a considerable number of disease conditions embraced under the generic term "anemia"; some of these anemias

result from a deficiency of iron in the body, while the remainder result from a variety of other causes. Only that type of anemia involving a deficiency of iron in the body which has resulted from an inadequate intake of iron in the diet may be benefited by Geo-Mineral taken as directed; the preparation is not of value in the treatment of iron deficiency anemia resulting from an inadequate absorption of iron by the intestine or an increased loss of iron as in chronic bleeding; the preparation would also be without value in the treatment of pernicious anemia and other macrocytic anemias, or the anemias caused by derangements of the blood-forming organs of the body or conditions resulting in increased destruction of red blood cells; it is also without value in the treatment of anemia secondary to severe or chronic diseases such as cancer, kidney disease, infections, etc. Of the cases of anemia encountered in medical practice, only a very small percentage is caused by an inadequate intake of iron in the diet, and it is only in this very small percentage of cases that Geo-Mineral may have any therapeutic value; also, it is only in this very small percentage of cases of anemia that the preparation would be effective in enriching the blood or in tending to produce rich, red blood.

Such symptoms or conditions as headaches, nervousness and dizzy spells, lack of vitality, energy, ambition, sparkle in the eyes and brilliance of the mind, poor appetite, underweight, weakened sexual powers and similar conditions may be due to anemia resulting from an inadequate intake of iron in the diet; these symptoms may also be due to any of the numerous other types of anemia and they may also be due to a wide variety of disease conditions which are in no wise related to anemia. In only an extremely small percentage of persons having the aforementioned symptoms are the symptoms the result of anemia due to a simple deficiency of iron in the diet, and it is only in this extremely small percentage of cases that Geo-Mineral will have any therapeutic value in the correction or relief of the aforementioned symptoms.

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

CONCLUSION

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

In concluding that certain of the advertising statements disseminated by respondent are false and deceptive, the Commission here, as in other cases heretofore presented to it for determination, has taken into consideration the innuendoes and suggestions contained in the advertising.

In such advertisements, the product is offered for the correction or cure of designated symptoms or conditions. It will be of benefit, however, only in that extremely small percentage of instances where the symptoms stem from anemia due to a deficiency of iron in the diet. Obviously, the causes of such symptoms or conditions are so numerous that their mere existence creates no reasonable likelihood that they will be benefited by respondent's preparation. In representing the product as an effective treatment for the symptoms enumerated, respondent suggests not only that they may be due to the cause for which the product is beneficial, but also that there is a likelihood that they are in fact due to such cause. If such a representation be made in a categorical statement and if in the majority of cases the symptoms or conditions are due to causes in the treatment of which the product advertised will have no benefit whatsoever, the representation is false and clearly deceptive. A representation to the same effect made under the same circumstances except by suggestion instead of categorically and unaccompanied, as in the present case, by an appropriate disclosure of the likelihood of other causes of the symptoms or the conditions, is equally false and by reason of such falsity is subject to the exercises of the Commission's corrective action in the same manner and to the same extent as though the representation were made by affirmative statement.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and answer by respondent admitting all the material allegations of fact set forth in the complaint and waiving further intervening procedure and hearings as to the said facts, and the Commission having made its findings

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

It is ordered, That Nicholas Sage, individually and trading under the name of Geo-Mineral Co., or any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the preparation designated "Geo-Mineral," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from:

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

(*a*) That said preparation, when used as directed, is a competent or effective treatment for, or will cure, stomach or kidney ailments, bloating, constipation, bowel adhesions, rheumatism, arthritis, neuritis, or will relieve the plains of rheumatism or arthritis, or that it has any value in the treatment of such conditions.

(*b*) That said preparation is a competent or effective treatment for, or will cure, headaches, nervousness or dizzy spells, or will restore vitality, energy, or weakened sexual powers, will improve appetite or increase weight, or will enrich or build the blood, or will correct dullness, tiredness, laziness, poor appetite, or a lack of ambition to work or play, of sparkle in the eye, or of mental brilliance, or similar symptoms and conditions, unless such representations be expressly limited to those instances in which the symptoms and conditions to be treated are due solely to iron deficiency resulting from an inadequate intake of iron in the diet, and unless such advertisement discloses that such of the aforesaid symptoms and conditions to which the statements thereof may relate are caused less frequently by anemia due to a simple deficiency of iron in the diet than by other causes and that when such symptoms and conditions are due to other causes this preparation will not be effective in relieving or correcting them.

(*c*) That said preparation does not contain drugs or influences health without the use of drugs.

(*d*) That said preparation contains the same minerals in therapeutic amounts as are found in mineral waters of well known mineral springs, or that its use will produce the benefits ordinarily ascribed to the use of such mineral waters.

(*e*) That said preparation keeps the colon free from waste matter, or that black stools and apparent impurities in the urine demonstrate the value of respondent's product in eliminating waste.

(*f*) That any percentage or number of persons are suffering from nutritional mineral-iron anemia unless such statement is based on authoritative and reliable medical statistics.

(*g*) That said preparation will restore health to all persons who may suffer from ill health.

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

It is further ordered, That the respondent, Nicholas Sage, 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.

Commissioner Mason concurring except as to the qualifications contained in paragraph 1 (*b*) hereof.