IN THE MATTER OF

GUSTAVE GOLDSTEIN TRADING AS HUMANIA HAIR GOODS & SPECIALTY CO.

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

Docket 5249. Complaint, Nov. 21, 1944—Decision, June 16, 1950

Where an individual engaged in the interstate sale of certain cosmetic preparations for the skin, hair, and scalp; in advertising in catalogs distributed throughout the United States by the mails and by other means in commerce—

(*a*) Represented that his "B. Paul's Compound" for coloring the hair was composed of harmless ingredients and could be used without harmful effects; notwithstanding the fact that by virtue of its pyrogallic acid content, a caustic, use thereof would under certain conditions irritate the skin and mucous membranes;

(*b*) Falsely represented that "Herolin Skin Cream" provided a competent and effective treatment for superficial pimples and skin marks of external origin;

(*c*) Represented that "Henry's Super-Light Working Oil," "Working Oil," and "Henry's Sulphur Lanolin Treatment for Hair and Scalp" were competent and effective treatments for itchy scalp and dandruff, and that "Henry's Sulphur Lanolin Treatment" for hair and scalp was a competent and effective treatment for baldness, falling hair, itchy scalp, and dandruff;

The facts being that while said preparations might in most cases temporarily relieve itching of the scalp caused by minor scalp disorders and might make loose dandruff scales less noticeable by matting them to the hair and scalp, none of them was a competent, effective, or adequate treatment for many of the underlying causes of itching scalp or dandruff; use thereof would not relieve itching in some scalp conditions; and use of said last-named preparation would not prevent falling hair or baldness and was not a competent or effective treatment therefor; and

(*d*) Falsely represented that "Humania Dandruff Treatment" was a competent and effective treatment for dandruff and would cure it;

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

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

In said proceeding in which the complaint also charged, and in which the Commission had theretofore found, as set forth in its prior findings issued on April 27, 1945, 40 F. T. C. 466, that respondent's advertisements concerning certain of his preparations constituted false advertisements for failure to reveal certain potential dangers in the use thereof, in that—

1. Said "B. Paul's Compound," when applied to the skin was potentially dangerous by reason of its pyrogallic acid content—as to which it appeared,

after the reopening of the instant proceeding, that it consisted of 98 to 99 percent of henna (varying with the shade), together with small percentages of copper sulphate and pyrogallic acid, and that, when used in accordance with directions, it is unlikely to be seriously injurious to health;

2. Said "Apex Skin Bleach," when applied to the skin was similarly dangerous, by reason of its ammoniated mercury content—as to which it similarly appeared that a product of the composition of said bleach containing less than 5 percent of ammoniated mercury, when used in accordance with the directions therefor, it is unlikely to be seriously injurious;

3. Said "Magic Shaving Powder," a depilatory, when applied to the skin was potentially dangerous by reason of its irritating ingredients, which included barium sulfide, calcium hydroxide, calcium carbonate, and powdered corn starch (in different proportions for its "full strength" and "medium strength" products)—as to which it similarly appeared from the evidence that products of such composition when used in accordance with directions are unlikely to be seriously injurious; and

4. Certain hair dye preparations, namely, "Luxe Hair Coloring," "Eau Sublime," and "Godefroy's Larieuse" when applied to the skin were potentially dangerous by reason of their para-phenylenediamine content—as to which it similarly appeared from the record that the cautionary statement on the label and the accompanying directions were in all respects adequate to enable purchasers to make preliminary safety tests with respect to the individual skin sensitiveness, and that the Commission had determined on November 24, 1948 (acting under its statement of policy promulgated on December 11, 1946, as amended on March 2, 1948), that it would not thereafter consider any advertisement of the coal tar hair dye of the "para" type as false merely because of its failure to reveal that the preparation was potentially dangerous by reason of its aforesaid content when the label bore such a statement and the accompanying directions were adequate for preliminary testing:

The Commission was of the opinion and found that respondent's advertisements of his various aforesaid preparations, as set forth in paragraphs 1 to 3 above, did not constitute false advertisements because of their failure to reveal that such preparations are potentially dangerous by reason of the facts above set forth; and was accordingly of the opinion that said previous findings to the contrary should be set aside; and

The Commission was of the further opinion and found, as respects said last-named preparations, that respondent's advertisements under the Commission's present policy did not constitute false advertisements because of their failure to reveal that they are potentially dangerous by reason of their para-phenylenediamine content, and that by reason of said fact it would be in the public interest for its previous findings to such effect to be set aside.

Mr. B. G. Wilson for the Commission.

Reeves, Todd, Ely & Beaty, 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 Gustave Goldstein, an individual, trading as Humania Hair Goods & Specialty Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent Gustave Goldstein is an individual trading as Humania Hair Goods & Specialty Co., with his office and principal place of business at 303 Fourth Avenue, New York, N. Y.

PAR. 2. The respondent is now and for more than 2 years last past has been engaged in the business of selling and distributing cosmetic preparations under various names, among them being: Luxe Hair Coloring, Eau Sublime, B. Paul's Compound, Herolin Skin Cream, Godefroy's Larieuse, Apex Skin Bleach, Magic Shaving Powder, Henry's Super-Light Working Oil, Working Oil, Henry's Sulphur Lanolin Treatment for Hair and Scalp, and Humania Dandruff Treatment, in commerce between and among the various States of the United States and the District of Columbia.

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

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

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

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

Representations with respect to B. Paul's Compound:

Made of pulverized roots and other harmless ingredients.

Representations with respect to Herolin Skin Cream:

If your surface skin is too dark due to exposure to sun and wind, and is blemished by superficial pimples and marks of external origin, try Herolin Skin Cream.

Representations with respect to Henry's Super-Light Working Oil and Working Oil:

Wonderful for itchy scalp and dandruff.

Representations with respect to Henry's Sulphur Lanolin Treatment for Hair and Scalp:

Baldness, Itchy-Scalp, Falling out Hair; Dandruff, etc., are not inherited * * * Don't let dry, itchy scalp or dandruff drive you mad. * * * Start Using Henry's Treatment tonight.

Representations with respect to Humania Dandruff Treatment:

Dandruff, the greatest foe of beautiful hair and a healthy scalp is responsible for a large percent of all cases of baldness and falling hair. It is a serious affection and must be given persistent treatment. When the white flakes or scales that indicate this condition begin to disappear, do not stop—but continue the Humania dandruff treatment regularly.

PAR. 7. Through the use of the foregoing statements and representations and others of the same import not specifically set out herein, respondent represents that the preparation, B. Paul's Compound, is composed of harmless ingredients and can be used without harmful effects; that Herolin Skin Cream provides a competent and effective treatment for superficial pimples and skin marks of external origin; that Henry's Super-Light Working Oil and Working Oil are competent and effective treatments for itchy scalp and dandruff; that Henry's Sulphur Lanolin Treatment for Hair and Scalp is a competent and effective treatment for baldness, falling hair, itchy scalp and dandruff and that Humania Dandruff Treatment is a competent and effective treatment for dandruff and will cure dandruff.

PAR. 5. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, the preparation B. Paul's Compound is not harmless as it contains pyrogallic acid, which is a caustic and irritates the skin and mucous membranes. Herolin Skin Cream is not a competent and effective treatment for superficial pimples and will not remove many marks on the skin, although of external origin. While Henry's Super-Light Working Oil, Working Oil, and Henry's Sulphur Lanolin Treatment for the Hair and Scalp

may, in most cases, temporarily relieve itching of the scalp caused by minor scalp disorders and may make loose dandruff scales less noticeable by matting them to the hair and scalp, none of these preparations is a competent, effective, or adequate treatment for many of the underlying conditions which cause itching scalp, or for dandruff. Their use will not relieve itching in some scalp conditions. Henry's Sulphur Lanolin Treatment for Hair and Scalp will not prevent falling hair or baldness and is not a competent or effective treatment therefor. Humania Dandruff Treatment will not cure dandruff and is not a competent or effective treatment for dandruff.

PAR. 6. Respondent has disseminated and is now disseminating advertisements, in the manner aforesaid, with respect to his preparations designated Luxe Hair Coloring, Eau Sublime, Godefroy's Larieuse in which advertisements these preparations are offered as hair dyes. These advertisements, as well as the advertisements above quoted with respect to B. Paul's Compound, a hair dye; and Apex Skin Bleach, and Magic Shaving Powder, both offered as preparations to be applied to the skin, constitute false advertisements for the reason that they fail to reveal facts material in the light of the representations therein contained or material with respect to the consequences which may result from the use of the preparations to which the advertisements relate, under the conditions prescribed in said advertisements, or under such conditions as are customary and usual. The preparations Luxe Hair Coloring, Eau Sublime, and Godefroy's Larieuse are para-phenylenediamine hair dyes and are potentially dangerous in that their use may cause skin irritations. Said preparations should not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness. They should not be used in any event when there is any disease of or eruptions on the skin or the scalp, nor until after a proper patch test has demonstrated that the person is not sensitive to and can resist the effects of said preparation without harmful effects.

The preparation B. Paul's Compound contains pyrogallic acid, which is a caustic and may cause skin irritation. It should not be permitted to remain on the skin or scalp for prolonged periods of time, should never be used when the skin or scalp is broken or where an eruption is present, and should not be permitted to come into contact with the eyes.

The preparation Apex Skin Bleach contains ammoniated mercury and is potentially dangerous as it may cause skin irritations. It should not be applied to an area of the skin larger than the face and neck at any one time. Too frequent applications and use over ex-

cessive periods of time should be avoided and adequate rest periods between series of treatments should be observed.

This preparation should not be used where the skin is cut or broken and in all cases a proper patch test should be made to determine whether the user is sensitive to the preparation. The preparation Magic Shaving Powder contains ingredients which have an irritating effect upon the skin and should not be used by those having tender skins. It should not be allowed to come into contact with the eyes; to do so would cause extreme irritation.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations and advertisements are true, and that the preparations enumerated in paragraph 6 hereof are harmless and may be used without ill effects to the user, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said cosmetic preparations.

PAR. 8. 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, MODIFIED FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 21, 1944, issued and thereafter served upon the respondent, Gustave Goldstein, an individual trading as Humania Hair Goods & Specialty 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. After the issuance of said complaint and the filing of the respondent's answer thereto, a stipulation was entered into by and between the respondent, Gustave Goldstein, and Richard P. Whiteley, Assistant Chief Counsel of the Commission, in which stipulation it was agreed that, subject to the approval of the Commission, the statement of facts contained therein might be taken as the facts in this proceeding in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order dis-

posing of the proceeding. In said stipulation the respondent expressly waived the filing of a trial examiner's report upon the evidence. Subsequently, this proceeding regularly came on for final consideration by the Commission upon the complaint of the Commission, the respondent's answer thereto, and the stipulation, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the matter, on April 27, 1945, made and issued its findings as to the facts, its conclusion drawn therefrom, and its order to cease and desist disposing of said proceeding. Thereafter, on April 25, 1949, pursuant to a motion filed by counsel in support of the complaint and consented to by the respondent (which motion was supplemented by additional material filed April 20, 1950) the proceeding was reopened for the purpose of receiving such supplemental evidence as might be offered to determine whether or not changed conditions of fact or the public interest, or both, require a modification of the aforesaid findings as to the facts and order to cease and desist, and, in accordance with this direction, certain supplemental evidence was subsequently received and filed; and the Commission, having duly considered said supplemental evidence and the entire record and being of the opinion that its findings as to the facts and its conclusion issued herein on April 27, 1945, should be modified in certain respects, now makes this its modified findings as to the facts and its conclusion drawn therefrom, the same to be in lieu of said findings as to the facts and conclusion issued on April 27, 1945.

MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Gustave Goldstein, is an individual trading as Humania Hair Goods & Specialty Co., with his office and principal place of business located at 303 Fourth Avenue, New York, N. Y.

PAR. 2 The respondent is now, and for a number of years last past he has been, engaged in the business of selling and distributing certain cosmetic preparations. Included among said preparations are those sold under the following names: "Luxe Hair Coloring," "Eau Sublime," "B. Paul's Compound," "Herolin Skin Cream," "Godefroy's Larieuse," "Apex Skin Bleach," "Magic Shaving Powder," "Henry's Super-Light Working Oil," "Working Oil," "Henry's Sulphur Lanolin Treatment for Hair and Scalp," and "Humania Dandruff Treatment." The respondent causes said preparations, when sold, to be transported from his place of business in the State of New York to purchasers thereof located in various other States of the United States

and in the District of Columbia. The respondent maintains, and at all times mentioned herein he has maintained, a course of trade in such preparations in commerce between and among the various States of the United States and in the District of Columbia.

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

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

Representations with respect to "B. Paul's Compound":

Made of pulverized roots and other harmless ingredients.

Representations with respect to "Herolin Skin Cream":

If your surface skin is too dark due to exposure to sun and wind, and is blemished by superficial pimples and marks of external origin, try Herolin Skin Cream.

Representations with respect to "Henry's Super-Light Working Oil" and "Working Oil":

Wonderful for itchy scalp and dandruff.

Representations with respect to "Henry's Sulphur Lanolin Treatment for Hair and Scalp":

Baldness, Itchy-Scalp, Falling Out Hair; Dandruff, etc., are not inherited * * *

Don't let dry, itchy scalp or dandruff drive you mad * * * Start using Henry's Treatment tonight.

Representations with respect to "Humania Dandruff Treatment":

Dandruff, the greatest foe of beautiful hair and a healthy scalp is responsible for a large percent of all cases of baldness and falling hair. It is a serious affection and must be given persistent treatment. When the white flakes or

scales that indicates this condition begin to disappear, do not stop—but continue the Humania dandruff treatment regularly.

PAR. 4. Through the use of the foregoing statements and representations, and others of the same import not specifically set out herein, the respondent has represented that the preparation, B. Paul's Compound, is composed of harmless ingredients and can be used without harmful effects; that Herolin Skin Cream provides a competent and effective treatment for superficial pimples and skin marks of external origin; that Henry's Super-Light Working Oil and Working Oil are competent and effective treatments tor itchy scalp and dandruff; that Henry's Sulphur Lanolin Treatment for Hair and Scalp is a competent and effective treatment for baldness, falling hair, itchy scalp and dandruff, and that Humania Dandruff Treatment is a competent and effective treatment for dandruff and will cure dandruff.

PAR. 5. In the respects and to the extent hereinafter mentioned the aforesaid statements and representations were false, misleading, and deceptive.

The preparation "B. Paul's Compound" contains pyrogallic acid, which ingredient is a caustic, and the use of a preparation containing this ingredient will, under certain conditions, irritate the skin and mucous membranes. Insofar as the respondent's advertising stated or implied that this preparation will not under any circumstances cause injury to the user it was misleading and untrue.

Contrary to the respondent's representations, "Herolin Skin Cream" is not a competent or effective treatment for superficial pimples, and it will not remove any marks on the skin, although of external origin.

While "Henry's Super-Light Working Oil," "Working Oil," and "Henry's Sulphur Lanolin Treatment for the Hair and Scalp" may, in most cases, temporarily relieve itching of the scalp caused by minor scalp disorders and may make loose dandruff scales less noticeable by matting them to the hair and scalp, none of these preparations is a competent, effective, or adequate treatment for many of the underlying conditions which cause itching scalp or dandruff. Their use will not relieve itching in some scalp conditions.

"Henry's Sulphur Lanolin Treatment for Hair and Scalp" will not prevent falling hair or baldness and is not a competent or effective treatment therefor.

"Humania Dandruff Treatment" will not cure dandruff and is not a competent or effective treatment for dandruff.

PAR. 6. (*a*) The complaint in this proceeding also charged, and the Commission, in its findings as to the facts issued on April 27, 1945, found, that the respondent's advertisements concerning his hair dye

preparation "B. Paul's Compound" constituted false advertisements for the further reason that they failed to reveal that this preparation, when applied to the skin, is potentially dangerous by reason of its pyrogallic acid content; that his advertisements concerning his skin bleach preparation "Apex Skin Bleach" constituted false advertisements because of their failure to reveal that this preparation, when applied to the skin, is potentially dangerous by reason of its ammoniated mercury content; that his advertisements concerning his depilatory preparation "Magic Shaving Powder" constituted false advertisements because of their failure to reveal that this preparation, when applied to the skin, is potentially dangerous by reason of its irritating ingredients; and that his advertisements concerning his hair dye preparations "Luxe Hair Coloring," "Eau Sublime" and "Godefroy's Larieuse" constituted false advertisements because of their failure to reveal that these preparations, when applied to the skin, are potentially dangerous by reason of their para-phenylenediamine content.

(*b*) Evidence introduced after this proceeding was reopened shows that the preparation "B. Paul's Compound" consists of 98 to 99 percent of henna (varying with the shade), together with small percentages of copper sulphate and pyrogallic acid. The directions for the use of said preparation are as follows:

FOR COLQRING GRAY HAIR

WILL NOT BLEACH

The hair must be shampooed thoroughly and left damp, not dry. For best results always empty the entire contents of box, in order to have all of the various ingredients, into a bowl, not metallic, and add sufficient boiling water gradually until the preparation becomes the thickness of a soft paste, at the same time stir continually with a wooden spoon so as to dissolve the powder. Place bowl in a very hot water bath and stir paste for about five minutes, as it is necessary to keep and apply paste as warm as one can stand it. For those who wish a red cast add a tablespoon of vinegar to the paste.

Then separate the hair into small strands, and apply the paste with the brush on the hair you want colored, always commencing at the roots and where the hair is most gray. The gray hair must be well saturated with the paste, just as if in a mud bath. Leave the paste on *fifty minutes* for all Brown shades, Blonde shades *thirty* minutes, Dark Brown, *one hour and a half*, and Black, *Two Hours*. The longer paste is on the hair the darker the color.

For Auburn shades on gray hair, apply the Auburn shade of B. Paul's Henna desired, leave on one hour, rinse off with warm water and then apply the light brown shade for *thirty minutes*, to tone down the brightness of the gray hair.

When the hair is only *slightly gray* leave the paste on *fifteen minutes less* than the time specified. If the whole length of the hair is to be colored and the hair near the scalp is done, the paste should be weakened and made thinner

by adding hot water and the remaining thin paste applied toward the ends, as the ends of the hair take the dye more rapidly than the roots.

After the application the hair should be thoroughly rinsed with warm water until all paste is out of the hair, the famous B. Paul Shampoo being strongly recommended for shampooing. Be sure to apply the Shampoo quite warm. Slight stains on the fingernails can be easily removed with peroxide adding a few drops of ammonia.

The shade of color will develop, while the hair dries and complete results will be seen on the third day after the application.

Should the first application fail to give the desired results, a second application should be made, but not before five days have elapsed, using the same shade, but leaving the paste on the hair *twenty minutes only.*

Imperfect results are always caused by an imperfect application or because the hair is not thoroughly cleansed.

As bleached hair or hair on which peroxide has been used is porous and lacks resistance, it is impossible to state how fast or dark color will take. If over bleached color is apt to turn Black in five minutes. It is best to try a sample. Paul's Compound should be used for coloring gray hair only. *It will not bleach or lighten the hair.*

Self applications of our hair coloring preparations can be made providing you carefully follow directions.

CAUTION—This product contains Metallic Salts and Pyrogallol. It is for external use only to color hair on a healthy scalp, not where skin is broken. **Must Not be used for dyeing eyelashes or eyebrows.**

The evidence further discloses that this preparation, when used in accordance with the foregoing directions for its use, is unlikely to be seriously injurious to the health of the user. The Commission is of the present opinion, therefore, and finds, that the respondent's advertisements concerning his hair dye preparation "B. Paul's Compound" did not constitute false advertisements because of their failure to reveal that this preparation is potentially dangerous by reason of its pyrogallic acid content and that its previous finding to the contrary should be set aside.

(*c*) According to information now in the record, the preparation "Apex Skin Bleach" is composed of the following ingredients in the quantities or proportions given:

	Ounces
Ammoniated mercury	0.75
Bismuth subnitrate	.50
White beeswax	1.75
White petrolatum	13.00
Oil red rose	(1)

The directions for use of said preparation are as follows:

The face and neck should be thoroughly cleansed with warm water and soap and then a good cleansing cream. We recommend APEX CLEANSING CREAM,

[1] Sufficient to perfume.

due to the fact that the cream properly massaged into the skin will remove dirt and grime which cannot be properly reached with just soap and water.

After using APEX CLEANSING CREAM, thoroughly remove the excess cream from the face with a soft cloth or tissues. With the finger tips, spread a thin film of APEX BLEACH over the face, neck, or arms, being careful not to get it into the eyes.

Don't massage or rub in into the skin, just spread it over the skin lightly. Let Bleach remain on overnight or a few hours during the day. Next morning or when ready to remove the BLEACH CREAM, apply APEX CLEANSING CREAM. Then remove it with a soft cloth or tissues. By rinsing the face in cold water you will close the pores.

Repeat these treatments daily unless the skin is sensitive. After a few applications you will note a difference in your complexion. Your skin will become lighter and softer.

The cream can also be used on the neck, shoulders, and arms to lighten them, as well as the face. The use of APEX CLEANSING CREAM for cleansing the face before and after using the APEX BLEACH CREAM is, indeed, very beneficial. This is a new cream.

Try APEX BLEACH CREAM for a few days and note the great difference in the appearance of your skin.

DO NOT USE BLEACH IF YOU HAVE SENSITIVE SKIN. CAUTION FOR THOSE WITH UNUSUALLY SENSITIVE SKIN. Many persons have sensitive skins. As you perhaps are aware, there are certain foods that some people cannot eat because they will give them a rash or a breaking out on the skin. For instance, some people are not able to eat strawberries because they will give them "strawberry rash." Therefore, due to the fact that the APEX BLEACH CREAM contains an ingredient known as Ammoniated Mercury, which is a product containing the bleaching properties necessary in all bleaching creams, people who have SUPER-SENSITIVE skins should not use it or any kind of a bleaching cream. If skin irritation appears after application, use of this product should be immediately discontinued.

We suggest that you make a test before using the cream by spreading a small quantity of it on your arm and letting it remain overnight. Should you notice that the skin appears somewhat irritated do not use it.

CHILDREN UNDER TWELVE YEARS OF AGE SHOULD NOT USE THIS BLEACH CREAM.

Persons who have skin diseases, or if the skin is cut or there is an abrasion, the bleach cream should not be used.

It is necessary for us to give this warning because of the fact that some people have skin diseases and desire to use the bleach cream. Because of the diseases the cream would perhaps by injurious to them. We recommend that all persons with skin diseases see their physician immediately.

The evidence introduced after this proceeding was reopened further discloses that a product of the composition of "Apex Skin Bleach" containing less than 5 percent of ammoniated mercury, when used in accordance with the foregoing directions, is unlikely to be seriously injurious to the health of the user. The Commission therefore finds that the respondent's advertisements concerning this preparation did

not constitute false advertisements because of their failure to reveal that this preparation is potentially dangerous by reason of is ammoniated mercury content and, in conformity therewith, is of the opinion that its previous finding to the contrary should be set aside.

(*d*) The record now shows that the preparation "Magic Shaving Powder (depilatory)" is composed of barium sulfide, calcium hydroxide, calcium carbonate, and powdered corn starch and that it is marketed in two different strengths under differently colored labels. The red label "Magic Shaving Powder (Depilatory)—Full Strength" is composed of the following ingredients in the quantities and proportions given:

	Pounds
Barium sulfide	23. 50
Calcium hydroxide	23. 75
Calcium carbonate	38. 00
Powdered corn starch	95. 00

The blue label "Magic Shaving Powder (Depilatory)—Medium Strength" is composed of the following ingredients in the quantities and proportions given:

	Pounds
Barium sulfide	20. 00
Calcium hydroxide	14. 25
Calcium carbonate	47. 25
Powdered corn starch	95. 00

The directions for use of both products are the same and are as follows:

Removes Hair Without A Razor

DIRECTIONS

Let hair grow out well before using. Mix quantity needed with cold water into a smooth paste. Apply paste with a spatula or flat stick in an even layer thick enough to cover the hair. Let paste remain on hair 5 minutes to remove coarse hair. DO NOT RUB. Scrape paste off with sharp edge of spatula or dull tool, and wash skin thoroughly with wet rag and clean, cold water. Then dry with soft towel and apply cold cream or talcum powder.

CAUTION:

Do Not Get Into Eyes.

Should not be used by those having a tender or irritated skin.

Depilatory for Women.

Magic Shaving Powder is used by women as a depilatory for removing superfluous hair from the neck, arms, underarms, legs, or any part of the body.

The evidence further shows that products of the composition of either of these preparations, when used in accordance with the foregoing directions, are unlikely to be seriously injurious to the health of

the user. The Commission therefore finds that the respondent's advertisements concerning his preparation "Magic Shaving Powder" did not constitute false advertisements because of their failure to reveal that this preparation is potentially dangerous by reason of its irritating ingredients, and accordingly is of the opinion that its previous finding to the contrary should be set aside.

(*e*) With respect to the preparations "Luxe Hair Coloring," "Eau Sublime," and "Godefroy's Larieuse," the record now shows that the label on the container in which each of said preparations is sold bears the following statement:

CAUTION: This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes and eyebrows; to do so may cause blindness.

and that the accompanying directions are in all respects adequate to enable purchasers of such preparations to make the preliminary test referred to in said statement.

The record further shows that the Commission, on November 24, 1948, acting under its statement of policy promulgated on December 11, 1946, as amended on March 2, 1947, determined that it would not thereafter consider any advertisement of a coal tar hair dye of the "para" type as false merely because of the failure of such advertisement to reveal that the preparation is potentially dangerous by reason of its para-phenylenediamine content when the label on such preparation bears such a statement and when the accompanying directions are adequate for the preliminary testing. The Commission is of the opinion, therefore, and finds, that the respondent's advertisements concerning his preparations "Luxe Hair Coloring," "Eau Sublime," and "Godefroy's Larieuse" would not under the Commission's present policy constitute false advertisements because of their failure to reveal that these preparations are potentially dangerous by reason of their para-phenylenediamine content, and that by reason of this fact it would be in the public interest for its previous findings that such advertisements were false to be set aside.

PAR. 7. The use by the respondent of the false, deceptive, and misleading statements and representations referred to in paragraphs 3, 4, and 5 has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of the respondent's cosmetic preparations.

PAR. 8. The respondent states that he is a distributor of the preparations herein described, that the statements made by him were supplied by the manufacturers of said products, and that he had no knowledge that his advertisements were false or deceptive.

CONCLUSION

The acts and practices of the respondent as herein found (excluding those referred to in par. 6) were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having heretofore been heard by the Federal Trade Commission upon the complaint of the Commission, the respondent's answer thereto, and a stipulation as to the facts entered into by and between the respondent, Gustave Goldstein, and Richard P. Whiteley, Assistant Chief Counsel of the Commission, which said stipulation provided, among other things, that without further evidence or other intervening procedure the Commission might issue and serve upon the respondent its findings as to the facts and its conclusion based thereon and an order disposing of said proceeding; and

The Commission, after having made its findings as to the facts and its conclusion that the respondent had violated the provisions of the Federal Trade Commission Act, on April 27, 1945, issued, and on April 30, 1945, served upon the respondent said findings as to the facts, conclusion, and its order to cease and desist; and

This proceeding, on April 25, 1949, having been reopened for the purpose of receiving such supplemental evidence as might be offered to determine whether or not changed conditions of fact or the public interest, or both, require modification of said findings as to the facts and order to cease and desist, certain supplemental evidence was received and duly filed; and the Commission, having considered said supplemental evidence and the entire record herein, and having made its modified findings as to the facts and its conclusion based thereon, and being of the opinion that its order to cease and desist issued on April 27, 1945, should also be modified in certain respects:

It is ordered, That the Commission's findings as to the facts, conclusion, and order to cease and desist issued in this proceeding on April 27, 1945, be, and they hereby are, set aside.

It is further ordered, That the respondent, Gustave Goldstein, an individual trading as Humania Hair Goods & Specialty Co., or trading under any other name or through any corporate or other device, and said respondent's agents, representatives, and employees, in connection with the offering for sale, sale, or distribution of his cosmetic preparation designated "B. Paul's Compound," "Herolin Skin Cream," "Henry's Super-Light Working Oil," "Working Oil," "Henry's Sulphur Lanolin Treatment for Hair and Scalp," and "Humania Dandruff Treatment," or any other preparation or preparations of substantially similar composition or possessing substantially similar properties, under whatever name or names sold, do forthwith cease and desist from, directly or indirectly:

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 the preparation, "B. Paul's Compound," is composed of harmless ingredients or can be used without harmful effects;

(*b*) That the preparation, "Herolin Skin Cream" constitutes a competent or effective treatment for superficial pimples or marks on the skin;

(*c*) That the preparations, "Henry's Super-Light Working Oil," "Working Oil," and "Henry's Sulphur Lanolin Treatment for Hair and Scalp" constitute competent or effective treatments for dandruff or itchy scalp or will relieve itchy scalp, except that caused by minor scalp irritations;

(*d*) That the preparation "Henry's Sulphur Lanolin Treatment for Hair and Scalp" will prevent falling hair or baldness or constitutes a competent or effective treatment therefor;

(*e*) That the preparation "Humania Dandruff Treatment" will cure dandruff or constitutes a competent or effective treatment for dandruff.

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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparations, any advertisement which contains any representation prohibited in paragraph 1 hereof.

IN THE MATTER OF

GAY TIME FROCK CO. OF SCRANTON 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 5350. Complaint, July 3, 1945—Decision, June 22, 1950

Garments made from rayon fibers which have been so manufactured as to simulate natural fibers in texture and appearance have the appearance and feel of natural-fiber garments, and many members of the purchasing public are unable to distinguish between such rayon garments and those made from natural fibers, so that the former are readily accepted by some as natural fiber products.

Products manufactured from silk, the product of the cocoon of the silk worm, for many years have been held and still are held in great public esteem because of their outstanding qualities, and there has been for many years and still is a public demand for such products.

Where two corporations and two individuals who were officers and directors of both, engaged in the sale and distribution of women's wearing apparel and other articles through two types of retail stores—their "Gay Time" and their "York" stores, which they operated in Indiana, Illinois, Pennsylvania, and Virginia, and in purchasing for their said stores through their New York buying office merchandise from various sources in other States, which, when delivered to them in said city, they examined, sorted, priced, and, when necessary, labeled, and shipped to their said various retail stores; and engaged also for a time in carrying on a mail order business pursuant to which they shipped merchandise to purchasers in other States—

Offered and sold certain garments which simulated in texture and appearance garments composed of natural fibers but were made wholly or in part of rayon, without disclosing in words familiar to the purchasing public the fact that said garments were wholly or partly rayon;

Whereby many members of the purchasing public were led to believe that said garments were composed wholly or in part of silk, the product of the silk worm, or of other natural fibers:

Held, That such acts, practices, and methods, 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 within the intent and meaning of the Federal Trade Commission Act: and

Where two partners, engaged in the manufacture of women's wearing apparel and in the interstate sale of such apparel and other articles to the aforementioned corporation and individuals, among others, and in introducing into commerce and manufacturing for introduction into commerce wool products composed in whole or in part of wool, reprocessed wool or reused wool, and, as such, subject to the Wool Products Labeling Act and the rules and regulations promulgated thereunder—

Caused such articles of wearing apparel, including ladies' coats, dresses, and suits, to be misbranded in violation of the provisions of said act and rules, etc., through 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, including the name of the manufacturer or that of one or more persons subject to section 3 of said act, or the registered identification number of such person or persons as provided for in rule 4 of the regulations as amended:

Held, That such acts, practices, and methods constituted misbranding of wool products and were in violation of said Wool Products Labeling Act and the rules and regulations promulgated thereunder; and were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

As respects certain other charges in the complaint with regard to the alleged certification of values by some outside independent agency, etc., improper or unwarranted use of the words Shetland and Cameltone, and of the words taffeta, faille, jersey, satin, and crepe, and the charge that respondent Gay Time Frock Co., of Pennsylvania, removed or participated in the removal of the stamps, etc., required by the Wool Products Labeling Act, the Commission was of the opinion and found that such charges were not sustained by the evidence.

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

Mr. DeWitt T. Puckett for the Commission.

Fein & Altersohn, of Chicago, Ill., for Gay Time Frock Co., a Pennsylvania corporation, Gay Time Frock Co., an Illinois corporation, Leo Simon, Adolph Rosen, Benjamin F. Rosner, and Harold A. Fein.

Mr. Jack Hirsch, of New York City, for Herman Seldin and Nathan Lieberman.

COMPLAINT [1]

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 Gay Time Frock Co., a Pennsylvania cor-

[1] The Commission on October 4, 1945, issued an order amending complaint, as follows:

"This matter coming on to be heard by the Commission upon the request of Herman Seldin and Nathan Lieberman, individuals doing business as Gil Sportwear Co., a partnership, that they be made parties respondent in this proceeding in the place and stead of respondent Gil Sportwear Co., Inc., without the issuance and service upon them of an amended complaint or notice with respect thereto, and the Commission having fully considered the said request and the record herein, and being now fully advised in the premises;

"It is ordered, That the complaint herein be, and the same hereby is, amended by substituting as parties respondent Herman Seldin and Nathan Lieberman, individuals doing business as Gil Sportwear Co., for respondent Gil Sportwear Co., Inc."

poration, Gay Time Frock Co., an Illinois corporation, Leo Simon, Adolph Rosen, Benjamin F. Rosner, and Harold A. Fein, individually and as officers and directors of both aforesaid corporations, and Gil Sportwear Co., Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondents Leo Simon, Adolph Rosen, Benjamin F. Rosner, and Harold A. Fein, are officers and directors of respondent corporations Gay Time Frock Co., one of which was organized and is now existing and doing business under the laws of the State of Illinois and the other having been organized and is now existing and doing business under the laws of the State of Pennsylvania. Said respondents operate two types of retail stores, one type known as "Gaytime" stores and the other as "York" stores.

Said respondents are now and for more than 2 years last past have been engaged in the sale and distribution of women's wearing apparel and other articles. Their principal office is at 370 Seventh Avenue, New York, N. Y.

All of the aforesaid respondents act in concert in formulating and in carrying out the acts, practices, and policies hereinafter described.

PAR. 2. Respondent Gil Sportwear Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and has its principal office and place of business at 519 Eighth Avenue, New York, N. Y. Said respondent is now, and for more than 1 year last past, has been engaged in manufacturing and selling women's wearing apparel and other articles, some of which is sold to the other afore-mentioned respondents.

All of the aforesaid respondents have caused and are now causing some of their said products, when sold, or to be sold by them, to be transported from their said places of business in the State of New York or from the State in which manufactured to purchasers thereof located in various other States of the United States and in the District of Columbia. Said respondents maintain, and at all times mentioned herein have maintained, a substantial 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. 3. In the course and conduct of their business as aforesaid, respondents Gay Time Frock Co. of Pennsylvania, Gay Time Frock Co. of Illinois, and Leo Simon, Adolph Rosen, Benjamin F. Rosner,

and Harold A. Fein, for the purpose of inducing the sale of certain of their said merchandise have used, and are now using, various statements and representations which purport to be descriptive of their merchandise. These representations and statements are made in various newspaper advertisements and in various other ways. Sometimes mail order coupons are included in the advertisements and the orders are received by the local store and transmitted to the principal office at 370 Seventh Avenue, New York, N. Y., where they are filled and from there delivered to the purchaser.

Among and typical of such statements and representations found in said advertisements are the following:

Certified $_____ Value or Certified Value $_____.
89¢ _____ All Certified $1.29 Values.
50% Wool Shetland.
Camel-Tone.

PAR. 4. Through the use of the aforesaid statements and representations said respondents, except Gil Sportwear Co., Inc., have represented and now represent that their merchandise has been certified as to values by some outside independent agency; that the garments advertised as "50 percent Wool Shetland" were in fact made of wool produced in the Shetland Islands and that the garments advertised as "Camel-Tone" were composed of camel's hair.

PAR. 5. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, the values represented as "Certified" are in fact only certified by the respondents themselves and not by an outside agency. The garments were not made of wool produced in the Shetland Islands, and the coats described as "Camel-Tone" contained no camel's hair at all.

PAR. 6. The use by said respondents of the aforesaid false, misleading and deceptive representations and statements with respect to their said wearing apparel as alleged in paragraph 3 has had and now has the tendency and capacity to mislead and deceive, and has misled and deceived, purchasers and prospective purchasers 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 said wearing apparel.

PAR. 7. Among the products offered for sale and sold by the respondents Gay Time Frock Co. of Illinois, Gay Time Frock Co. of Pennsylvania, Leo Simon, Adolph Rosen, Benjamin F. Rosner, and Harold A. Fein, in commerce as aforesaid, are some which are composed wholly or in part of rayon.

PAR. 8. Rayon is a chemically manufactured fiber which may be manufactured so as to simulate natural fibers in texture and appearance, and fabrics manufactured from such rayon fibers simulate natural-fiber fabrics in texture and appearance. Garments manufactured from such rayon fabrics have the appearance and feel of natural-fiber garments, and many members of the purchasing public are unable to distinguish between such rayon garments and garments manufactured from natural fibers; consequently, such rayon garments are readily accepted by some members of the purchasing public as natural-fiber products.

PAR. 9. Products manufactured from silk, the product of the cocoon of the silkworm, for many years have been held, and still are held, in great public esteem because of their outstanding qualities, and there has been for many years, and still is, a public demand for such products.

PAR. 10. The respondents, except Gil Sportwear Co., Inc., sell, in commerce as aforesaid, garments composed wholly or in part of rayon, which garments simulate in texture and appearance garments composed wholly or in part of silk, the product of the cocoon of the silkworm, or other natural fibers. Respondents do not inform the purchasing public of the fact that the garments which resemble silk in texture and appearance or other natural fibers are made wholly or in part of rayon and not of silk or other natural fibers.

PAR. 11. The practice of the said respondents in offering for sale and selling said garments manufactured wholly or in part of rayon which resemble in texture and appearance garments manufactured from silk of other natural fibers, in commerce as aforesaid, without disclosing, in words familiar to the purchasing public, the fact that said garments are composed wholly or in part of rayon is misleading and deceptive and many members of the purchasing public are thereby led to believe that said garments are composed wholly or in part of silk, the product of the cocoon of the silkworm, or other natural fibers.

PAR. 12. Silk fibers have long been woven into a variety of fabrics, and distinctive terms well known to and understood by the purchasing public have been applied to such silk fabrics as designating the different types of weaving. Among the terms well known to and understood by the purchasing public as designating a type of fabric woven from silk are "taffeta," "faille," "jersey," "satin," and "crepe." The use of these terms to designate, describe or refer to fabrics having the texture and appearance of silk is understood by the purchasing public to indicate that the fabrics are composed of silk, unless such terms are accompanied by words familiar to the purchasing public indicating clearly

that such fabrics are not composed of silk but of fibers other than the product of the cocoon of the silkworm.

PAR. 13. The respondents, except Gil Sportwear Co., Inc., in connection with the offering for sale and sale of their said articles of wearing apparel composed wholly or in part of rayon, which wearing apparel resembles in texture and appearance wearing apparel manufactured from silk, the product of the cocoon of the silkworm, in commerce as aforesaid, in advertisements circulated among the purchasing public, designate, describe, and refer to certain of said wearing apparel as "taffeta," "faille," "jersey," "satin," and "crepe" and do not accompany such words with words familiar to the purchasing public which disclose the fact that said fabrics are not composed of silk, the product of the cocoon of the silkworm, but wholly or in part of other fibers.

PAR. 14. The use by the respondents of the acts and practices described in paragraph 13 has the capacity and tendency to, and does, mislead and deceive members of the purchasing public as to the fiber contents of their said products and as a result of this deception substantial quantities of respondents' products are purchased in the belief that they are composed of silk, the product of the cocoon of the silkworm.

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

PAR. 16. Among the wool products introduced and manufactured for introduction into commerce by Gil Sportwear Co., Inc., and offered for sale, sold, transported, and distributed in said commerce by all the respondents as aforesaid, were articles of wearing apparel such as

ladies' coats, dresses, and suits. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid articles of wearing apparel in violation of the provisions of said act and said rules and regulations by failing to affix to said wearing apparel a stamp, tag, label, or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (*a*) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 percentum or more, and (5) the aggregate of all other fibers; (*b*) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling or adulterating matter; (*c*) the percentages, in words and figures plainly legible, by weight, of the wool contents of such wool product where said wool product contains a fiber other than wool; (*d*) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller of the product as provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of said act with respect to such wool product.

PAR. 17. All of said wool products purchased and transported in said commerce as aforesaid and all of said wool products manufactured for introduction into said commerce were subject to the provisions of the Wool Act of 1939 and the rules and regulations promulgated thereunder, and all of said wool products had affixed thereto by the manufacturer thereof or by some person authorized under the provisions of said act and said rules and regulations, a stamp, tag, label, or other means of identification purporting to show (*a*) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 percentum or more, and (5) the aggregate of all other fibers; (*b*) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling or adulterating matter; (*c*) the percentages, in words and figures plainly legible, by weight of the wool contents of such wool product where said wool products contain a fiber other than wool; (*d*) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller of the product as provided for in the rules and regulations promulgated under such

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

PAR. 18. After said wool products were delivered to the respondent Gay Time Frock Co. (of Pennsylvania) at its said stores and places of business as aforesaid and before said wool products were offered for sale or sold by respondent to the general public, said respondent, with intent to violate the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, did remove and participate in and cause the removal of the stamps, tags, labels, or other means of identification which purported to contain the information required by the provisions of said act and said rules and regulations affixed to said wool products by the manufacturer thereof or by some person authorized or required by said act to affix such stamps, tags, labels, or other means of identification to said wool products.

PAR. 19. After said wool products were delivered to the respondent, Gay Time Frock Co. (of Pennsylvania) at its said store and place of business as aforesaid and before said wool products were offered for sale or sold by respondent to the general public, said respondent, with intent to violate the provisions of said Wool Products Labeling Act of 1939 and said rules and regulations promulgated thereunder, did mutilate and participate in and cause the mutilation of, the stamps, tags, labels, or other means of identification which purported to contain the information required by the provisions of said act and said rules and regulations affixed to said wool products by the manufacturer thereof or by some person authorized or required by said act to affix such stamps, tags, labels or other means of identification to said wool products.

PAR. 20. Said respondent did not replace said stamps, tags, labels, or other means of identification with substitute stamps, tags, labels, or other means of identification containing the information required under the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder. As a result of respondent's said acts and practices in removing and mutilating said stamps, tags, labels, or other means of identification affixed to said wool products, said wool products, when offered for sale and sold by respondent to the general public at its said store and place of business did not have affixed thereto stamps, tags, labels, or other means of identification containing the information required by said act and said rules and regulations.

PAR. 21. The acts and practices and methods of respondents as alleged in paragraphs 15, 16, 17, 18, 19, and 20 hereof constitute mis-

branding of wool products and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and all of the aforesaid acts, practices, and methods as alleged herein are to the prejudice and injury of the public and constitute unfair or deceptive acts or 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 July 3, 1945, issued and thereafter served its complaint in this proceeding on Gay Time Frock Co. of Scranton (named in the complaint as Gay Time Frock Co.), a Pennsylvania corporation, Gay Time Frock Co., an Illinois corporation, Leo Simon, Adolph Rosner (named in the complaint as Adolph Rosen), Benjamin F. Rosner, Harold A. Fein, and Gil Sportwear Co., Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939. On August 10, 1945, Herman Seldin and Nathan Lieberman, copartners trading as Gil Sportwear Co., requested that the complaint be amended by substituting them as parties respondent in the place and stead of respondent Gil Sportwear Co., Inc., and the Commission, on October 4, 1945, granted the request and the complaint was accordingly amended. Respondents, except Herman Seldin and Nathan Lieberman, filed their answer to the complaint admitting certain allegations and denying others. Respondents Herman Seldin and Nathan Lieberman filed an answer admitting all material allegations of fact set forth in the complaint insofar as it related to them and waiving all intervening procedure and further hearing as to said facts. 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 as amended, answers thereto, testimony and other evidence, recommended decision of the trial examiner with exceptions thereto, and briefs and oral argument of counsel; and the Commission, having duly considered the matter and having entered its order disposing of 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. Respondent Gay Time Frock Co. of Scranton is a Pennsylvania corporation, with its principal office at 423 Lackawanna Avenue, Scranton, Pa. Respondent Gay Time Frock Co. is an Illinois corporation, with its principal office at 77 West Washington Street, Chicago, Ill. Both of said respondent corporations maintain an accounting and buying office at 370 Seventh Avenue, New York, N. Y. Respondents Leo Simon and Benjamin F. Rosner are officers and directors of each of said respondent corporations and are responsible for formulating and carrying out the acts, practices, and policies hereinafter described.

It appears that the individual respondents Adolph Rosner and Harold A. Fein do not exercise a substantial degree of authority or control over the policy or conduct of the business of said respondent corporations and that they should not be retained as parties respondent. As hereinafter used, "respondents" does not include the individual respondents Adolph Rosner and Harold A. Fein.

Said respondents operate two types of retail stores, one type known as "Gay Time" stores and the other as "York" stores, and are now, and for more than 2 years last past have been, engaged in the sale and distribution of women's wearing apparel and other articles.

The aforesaid respondents, through their buying office in New York, N. Y., purchase merchandise from various sources, including sources located outside the State of New York, which merchandise is delivered to said respondents in New York City, where it is examined, sorted, priced, and, when necessary, labeled, and thereafter shipped to their various retail stores in the States of Indiana, Illinois, Pennsylvania, and Virginia, where said merchandise is sold to the consuming public.

In the course and conduct of their business the aforesaid respondents also carried on a mail-order business from December 7, 1942, until December 16, 1943, with at least one mail order having been filled after the latter date. Respondent Leo Simon notified the various retail stores of the discontinuance of the mail-order business on June 5, 1944, after having been contacted by an investigator of the Federal Trade Commission in May 1944. In the conduct of such mail-order business, merchandise was shipped by said respondents, pursuant to mail-order requests therefor, from said respondents' warehouse in New

York City to purchasers located in States other than the State of New York.

The Commission finds, therefore, that the aforesaid respondents maintain, and at all times herein mentioned have maintained, a substantial course of trade in women's wearing apparel and other articles in commerce among and between various States of the United States.

PAR. 2. Respondents Herman Seldin and Nathan Lieberman, copartners trading as Gil Sportwear Co. (formerly officers and owners of Gil Sportwear, Inc., a corporation no longer in existence), have their principal office and place of business at 519 Eighth Avenue, New York, N. Y. Said respondents are now, and for more than 1 year last past have been, engaged in manufacturing and selling women's wearing apparel and other articles, some of which were sold to the other aforementioned respondents.

The respondents Herman Seldin and Nathan Lieberman have caused, and are now causing, some of their said products when sold to be transported from their said place of business in the State of New York to purchasers thereof located in various States of the United States and in the District of Columbia. Said respondents maintain, and at all times herein mentioned have maintained, a substantial 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. 3. Among the products offered for sale and sold by the respondents, except Herman Seldin and Nathan Lieberman, in commerce as aforesaid, are some which are composed wholly or in part of rayon.

PAR. 4. Rayon is a chemically manufactured fiber which may be manufactured so as to simulate natural fibers in texture and appearance, and fabrics manufactured from such rayon fibers simulate natural-fiber fabrics in texture and appearance. Garments manufactured from such rayon fabrics have the appearance and feel of natural-fiber garments, and many members of the purchasing public are unable to distinguish between such rayon garments and garments manufactured from natural fibers; consequently, such rayon garments are readily accepted by some members of the purchasing public as natural-fiber products.

PAR. 5. Products manufactured from silk, the product of the cocoon of the silkworm, for many years have been held, and still are held, in great public esteem because of their outstanding qualities, and there has been for many years, and still is, a public demand for such products.

PAR. 6. The respondents, except Herman Seldin and Nathan Lieberman, sell, in commerce as aforesaid, garments composed wholly or in part of rayon, which garments simulate in texture and appearance garments composed of natural fibers. Respondents do not inform the purchasing public of the fact that the garments which resemble natural-fiber garments in texture and appearance are made wholly or in part of rayon and not of natural fibers.

PAR. 7. The Commission finds the practice of the respondents, except Herman Seldin and Nathan Lieberman, in offering for sale and selling said garments manufactured wholly or in part of rayon, which resemble in texture and appearance garments manufactured from natural fibers, in commerce as aforesaid, without disclosing, in words familiar to the purchasing public, the fact that said garments are composed wholly or in part of rayon is misleading and deceptive and many members of the purchasing public are thereby led to believe that said garments are composed wholly or in part of silk, the product of the cocoon of the silkworm, or other natural fibers.

PAR. 8. Respondents Herman Seldin and Nathan Lieberman, copartners trading as Gil Sportwear Co., are engaged in the introduction and manufacture for introduction into commerce, and in the offering for sale, sale, transportation, and distribution in commerce, of wool products as such products are defined in the Wool Products Labeling Act of 1939. Said products are composed in whole or in part of "wool," "reprocessed wool," or "reused wool," as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder.

Since July 15, 1941, respondents Herman Seldin and Nathan Lieberman have violated the provisions of said act and said rules and regulations in the introduction and manufacture for introduction into commerce, and have violated the provisions of said act and said rules and regulations in the offering for sale, sale, transportation, and distribution of wool products in interstate commerce, by causing said wool products to be misbranded within the intent and meaning of said act and the rules and regulations.

PAR. 9. Among the wool products introduced and manufactured for introduction into commerce by Herman Seldin and Nathan Lieberman, copartners trading as Gil Sportwear Co., and offered for sale, sold, transported, and distributed in said commerce, were articles of wearing apparel such as ladies' coats, dresses, and suits. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid

articles of wearing apparel in violation of the provisions of said act and said rules and regulations by failing to affix to said wearing apparel a stamp, tag, label, or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (*a*) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers; (*b*) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling, or adulterating matter; (*c*) the percentages, in words and figures plainly legible, by weight of the wool contents of such wool product where said wool product contains a fiber other than wool; (*d*) the name of the manufacturer of the wool product or the name of one or more persons subject to section 3 of said act with respect to such wool product, or the registered identification number of such person or persons as provided for in rule 4 of the regulations as amended.

PAR. 10. While the complaint contained certain charges in addition to those mentioned herein, the Commission is of the opinion, and finds, that such charges are not sustained by the evidence.

CONCLUSION

The acts, practices, and methods of respondents Herman Seldin and Nathan Lieberman, copartners trading as Gil Sportwear Co., as found in paragraphs 8 and 9 hereof constitute misbranding of wool products and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder; and the acts, practices, and methods of the aforesaid respondents, and the acts, practices, and methods of respondents Gay Time Frock Co. of Scranton, Gay Time Frock Co., Leo Simon, and Benjamin F. Rosner as found in paragraphs 6 and 7 hereof, 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 respondents Herman Seldin and Nathan Lieberman admitting the material allegations of fact in the complaint insofar as it related to them and waiving all intervening procedure and further hearing as to said facts, the answer of the other respondents admitting certain allega-

tions and denying others, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner, with exceptions thereto, and briefs and oral argument of counsel; and the Commission having made its findings as to the facts and conclusion that respondents Herman Seldin and Nathan Lieberman have violated the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder and that all of the respondents, except Adolph Rosner and Harold A. Fein, have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents Gay Time Frock Co. of Scranton, a Pennsylvania corporation, Gay Time Frock Co., an Illinois corporation, their officers, agents, representatives, and employees, and Leo Simon and Benjamin F. Rosner individually, and their respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of women's wearing apparel and other articles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from advertising, offering for sale, or selling products composed in whole or in part of rayon without clearly disclosing such rayon content.

It is further ordered, That the respondents Herman Seldin and Nathan Lieberman, copartners trading as Gil Sportwear Co., or trading under any other name, and their respective 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 offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid acts, of wearing apparel 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 apparel or other products by failing to affix securely to or place on such products a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

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

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

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

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts 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 complaint herein as to Adolph Rosner and Harold A. Fein be, and the same hereby is, dismissed.

It is further ordered, That the respondents against whom this order is directed 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

PHILIP BARR & CO., INC. ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (C) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914 AS AMENDED BY AN ACT APPROVED JUNE 19, 1936, AND OF SEC. 5 OF AN ACT APPROVED SEPT. 26, 1914

Docket 5651. Complaint, Apr. 25, 1949—Decision, June 22, 1950

Where a corporation engaged in New York City, in buying, selling and distributing canned foods and vegetables, canned and barrelled olives and other food products; and two individuals, its officers and stockholders, who also, in order to further the practice below set out, carried on at the same location two businesses likewise thus engaged under assumed trade names and with fictitious addresses, and who made use of a fictitious name on correspondence and elsewhere;

In buying food products for their own account (as distinguished from their buying as brokers), in the course of which (1) they transmitted their own purchase orders directly to various sellers, by whom said products were invoiced and shipped to them for the account of said corporation or of said assumed trade names employed by them as above set forth; and (2) thereafter warehoused and insured said products against loss at their own expense and in their own name and for their own account, and (3) sold them at their own prices and terms and invoiced them to their customers in one of said names and otherwise assuming full credit risks and reaping a profit or sustaining a loss on each—

Received and accepted, directly or indirectly, on purchases of substantial quantities of food products made by them for their own account from sellers, who shipped the products from their respective States to them or to their customers, commissions, brokerage fees, or other compensation or allowances or discounts in lieu thereof:

Held, That such receipt and acceptance of commissions, brokerage fees, etc., under the circumstances set forth, constituted violations of subsection (c) of section 2 of the Clayton Act as amended: and

Where said individuals, engaged in making numerous and large purchases of food products from sellers in other States, pursuant to which said products were shipped and transported to them or to their customers; in advertising their business in various trade publications and journals and otherwise—

Represented that "Associated Food Factors" was a group of long-established individual organizations, and included over 250 top wholesalers and chain grocers, super markets and hotel, restaurant and bakery supply houses which operated through one buying and distributing source for its several hundred members, had offices at 401 Broadway, New York City, and offered many advantages to simplify distribution for the packer and processor of foods;

The facts being that their activities conducted under the aforesaid trade name were not for the advantage of packers and processors but were conducted for the sole benefit and advantage of said individuals; said Associated Food

Factors and its executive officers were not located as above set out, but at 105 Hudson Street, the same location as the aforesaid corporate brokerage business of said individuals, who used the Broadway address to prevent canners and packers from knowing that they were the sole owners of the business carried on under the aforesaid trade name—which they established in 1942—and were operating it in connection with their brokerage business;

With effect of misleading and deceiving a substantial number of canners and packers as well as the purchasing public into the mistaken belief that such representations were true, and of thereby inducing a substantial number of them to sell to and purchase from said individuals the food products dealt in by them; and with capacity and tendency so to do:

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

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

Mr. Edward S. Ragsdale, *Mr. Cecil G. Miles*, and *Mr. Eldon P. Schrup* for the Commission.

COMPLAINT

Pursuant to the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C. title 15, secs. 13 and 21), as amended by the Robinson-Patman Act, approved June 19, 1936; and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Philip Barr & Co., Inc., a corporation; Philip Francis Barr and Sylvia Barr, individually and as officers of said corporation; and Philip Francis Barr and Sylvia Barr, individually and doing business as or under the trade name of Associated Food Factors, and as S. Richter Co., all named and designated as parties respondents herein, have violated the provisions of said act as hereinafter particularized; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

COUNT I

PARAGRAPH 1. Respondent Philip Barr & Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business presently located at 105 Hudson Street, New York, N. Y. The respondent corporation is now engaged and for a substantial period of time since June 19, 1936, has been engaged in the business of buying, selling, and distributing canned foods, canned vegetables, canned and barrelled olives, etc., all of which are hereinafter referred to as food products.

On said purchases, respondents receive and accept, directly or indirectly, from said sellers, from whom they purchase said food products for their own account, brokerage fees, commissions, or other compensation or allowances, or discounts in lieu thereof.

The respondents, in connection with such purchases, are direct buyers and, as such, are traders for profit, purchasing and reselling said food products for their own account and at their own prices and on their own terms, taking title thereto and assuming all the risks incident to ownership. The respondents, upon receipt of such food products from the various sellers, warehouse and insure said food products at their own expense and in their own name and for their own account against contingent loss or damage.

When the respondents sell such food products, they invoice said food products to their customers in the name of Philip Barr & Co., Inc., Associated Food Factors, S. Richter Co., or otherwise, for their own account, and at prices and on terms they determine, assuming full and complete credit risk on such transactions, and either receive a profit or accept a loss thereon, as the case may be.

PAR. 5. Respondents named in the caption hereof, and each of them, for a substantial period of time since June 19, 1936, have made, and are now making, numerous and large purchases of food products from sellers located in States other than the State of New York where respondents are located, pursuant to which purchases, said food products were and are shipped and transported in commerce by the sellers thereof from the respective States in which they are located, across State lines, either to respondents or, pursuant to respondents' instructions and directions, to the respective purchasers to whom such products were and are sold by respondents.

PAR. 6. The respondents named in the caption hereof, and each of them, in connection with the purchase and sale of food products in commerce since June 19, 1936, as hereinabove alleged and described, have received and accepted, and are now receiving and accepting, either directly or indirectly, commissions, brokerage fees, or other compensation or allowances or discounts in lieu thereof, from the various sellers from whom they purchase said food products in commerce for their own account for resale, in the manner and under the circumstances set out in the last three subparagraphs of Paragraph 4 above.

PAR. 7. The foregoing acts and practices of the respondents named in the caption hereof, and each of them, in receiving and accepting commissions, brokerage, or other compensation or allowances, or discounts in lieu thereof, from each of the various sellers in connection

with said purchases of food products in commerce, are in violation of subsection (c) of the Clayton Act, as amended.

Pursuant to the provisions of the Federal Trade Commission Act (U. S. C. title 15, sec. 45); and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Philip Francis Barr and Sylvia Barr, individually and doing business as or under the trade name of Associated Food Factors, all named and designated as parties respondents herein, have violated the provisions of said act as hereinafter particularized; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

COUNT II

PARAGRAPH 1. Paragraph 2 of count I is hereby referred to, and by that reference, incorporated herein as fully and as completely as it would be if set forth herein verbatim.

PAR. 2. Respondents Philip Francis Barr and Sylvia Barr, individually and doing business as or under the trade name of Associated Food Factors in the course and conduct of their business in the purchase, sale, and distribution of their food products under said trade name, and for the purpose of inducing the purchase and sale of said food products, have made and have caused to be made various statements and representations concerning the nature and effectiveness of said business, by means of advertisements, letters, and by various other means.

Among and typical of the statements and representations so made are those disseminated in:

(*a*) The January 1, 1945, issue of The Canning Trade published in Baltimore, Md., as follows:

A F F Trade-Mark Establish a valuable post-war connection and get quicker, more efficient distribution of your products through this growing association of over 250 top wholesalers and chain grocers.

SELL DIRECT to us in carload lots or less—one sale, one bill, one shipment. We can use all sizes and types of canned and dried FRUITS, VEGETABLES, FISH. Immediate cash or ration points. Give us details. Write, wire or telephone your best offer, collect.

Reference, Marine Midland or any N. Y. Bank.

ASSOCIATED FOOD FACTORS

Executive offices, 401 Broadway, New York 13, N. Y.

(*b*) The June 1944 issue of the Pennsylvania Packer published at York, Pa., as follows:

Associated Food Factors

Membership grows rapidly

The Associated Food Factors, located in New York City, offers many advantages to simplify distribution for the packer and processor of foods. This is a group of wholesale grocers, chains, super markets, hotel, restaurant and bakery supply houses, operating through one buying and distributing source for its several hundred members. These long-established individual organizations have the added advantage of combined warehousing and trucking facilities. They make it easier for the packer or processor to make one cash sale in volume, with a consequent saving of time and manpower.

Associated Food Factors can make one purchase, preferably in carload lots, for all its members—pay cash for it against warehouse receipts or bill of lading—and distribute it to its members with maximum efficiency and minimum cost. This concern offers an important and convenient avenue of distribution for the East to the large and small packer alike, not only for staple items of food, but for the introduction of any new or unusual food item. Being alert, progressive and independently minded—they help to simplify the introduction of new items. That manufacturers recognize the value of this distribution is proven by the recent rapid growth of the Association.

PAR. 3. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented as follows:

(*a*) That the Associated Food Factors located in New York City offers many advantages to simplify distribution for the packer and processor of foods;

(*b*) That Associated Food Factors is located or maintains Executive offices at 401 Broadway, New York, N. Y.;

(*c*) That Associated Food Factors is a group of over 250 top wholesalers and chain growers, supermarkets, hotel, restaurant, and bakery supply houses operating through one buying and distributing source for its several hundred members;

(*d*) That its membership is composed of long established individual organizations.

PAR. 4. The statements and representations used and disseminated by respondents in the manner above described are false, misleading, and deceptive. In truth and in fact:

(*a*) Respondents' activities in the purchase, sale and distribution of food products were not for the advantage of packers and processors of food, but such activities were conducted for the sole benefit and advantage of respondents;

(*b*) That neither Associated Food Factors nor its executive offices are located at 401 Broadway but same are located and maintained at

105 Hudson Street, New York, N. Y., the same location as their brokerage business, namely, Philip Barr & Co., Inc. The said Broadway address was used for the purpose of deceiving canners and packers by preventing them from knowing or suspecting that respondents Philip Francis Barr and Sylvia Barr were the sole owners of Associated Food Factors and were directing its purchasing, sales, and distribution policies, and operating said business in connection with their brokerage business.

(*c*) That said Associated Food Factors is not a group of over 250 top wholesalers and chain grocers, supermarkets, hotel, restaurant, and bakery supply houses operating through one buying and distributing source for its several hundred members. In fact it has no bona fide members at all, but said business was established in 1942 with respondents Philip Francis Barr and Sylvia Barr as sole owners, and was operated for their own advantage, in connection with their brokerage firm, Philip Barr & Co., Inc.;

(*d*) Associated Food Factors' membership is not composed of a single bona fide long established individual organization, but was established in 1942 with Philip Francis Barr and Sylvia Barr as sole owners, and operated for their own advantage and benefit in connection with their brokerage business.

PAR. 5. Respondents Philip Francis Barr and Sylvia Barr, individually and doing business as or under the trade name of Associated Food Factors, or otherwise, and each of them for a substantial period of time since June 1942, have and are now advertising in various trade publications and journals, such as Canners and Packers Magazines, letters, and by various other means, which advertisements were and are published and distributed in numerous States other than the State of New York where respondents and their business organizations are located. These respondents, and each of them, also have made and are now making numerous and large purchases of food products from sellers located in various States other than the State of New York where respondents are located, pursuant to which purchases, said food products were and are shipped and transported in commerce by the sellers thereof from the respective States in which they are located, across State lines, either to respondents or, pursuant to respondents' instructions and directions, to respondents' customers.

PAR. 6. The use by respondents Philip Francis Barr and Sylvia Barr of the foregoing false, misleading, and deceptive statements and representations, disseminated as aforesaid, has had and now has, the capacity and tendency to mislead and deceive, and does mislead and deceive, a substantial number of canners and packers, as well as the

purchasing public, into the mistaken and erroneous belief that all of such statements and representations are true, and have induced and now induce a substantial number of canners and packers, as well as members of the purchasing public, because of such mistaken and erroneous belief, to sell to, and purchase from respondents, such food products as they distribute in commerce, in connection with their business operations.

PAR. 7. The acts and practices of the respondents, Philip Francis Barr and Sylvia Barr, individually, and trading as Associated Food Factors, 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 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 the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13), and pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 25, 1949, issued and thereafter served upon the respondents named in the caption hereof its complaint in this proceeding, charging said respondents with having violated subsection (c) of section 2 of said Clayton Act, as amended, and with the use of unfair and deceptive acts and practices in commerce in violation of section 5 of the Federal Trade Commission Act. The respondents' answer to said complaint having been filed on June 16, 1949, certain testimony and other evidence in support of the allegations of the complaint were introduced before a trial examiner of the Commission theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. At a hearing before the trial examiner, held on December 6, 1949, the respondents requested and were granted permission to withdraw their original answer to the complaint and to file in lieu thereof a substitute answer in which they 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 substitute answer was accordingly received and filed. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint of the Commission, the respondents' substitute answer thereto, the testimony and other evidence, and the trial examiner's recommended decision and certain exceptions thereto

(which exceptions have been separately considered and disposed of); 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 Philip Barr & Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 105 Hudson Street, New York, N. Y. Said respondent is now, and for a substantial period of time since June 19, 1936, it has been, engaged in the business of buying, selling, and distributing canned foods, canned vegetables, canned and barrelled olives, and other foods, all of which are hereinafter referred to collectively as food products.

Respondent Philip Barr & Co., Inc., is a successor to and continuation of Philip Barr & Co., which was established some time prior to June 19, 1936, and was incorporated in January 1942; with S. Richter as president and Philip Francis Barr as secretary and treasurer. S. Richter is in fact respondent Sylvia Barr, Richter being her maiden name.

Respondents Philip Francis Barr and Sylvia Barr are individuals who own all or substantially all of the capital stock of respondent Philip Barr & Co., Inc., and from the time said Philip Barr & Co., Inc., was incorporated in January 1942 these individuals have held various official positions in said corporation, such as president, secretary, and treasurer. In such official positions respondents Philip Francis Barr and Sylvia Barr have exercised, and still exercise, complete or substantial authority and control over the business conducted by the corporation Philip Barr & Co., Inc., including the direction of its purchasing, sales and distribution policies.

PAR. 2. Respondents Philip Francis Barr and Sylvia Barr are also engaged in business under the trade name of Associated Food Factors, which trade name was registered in June 1942. This business since June 1942 has been, and is now, conducted at 105 Hudson Street, New York, N. Y., the same location as that of respondent Philip Barr & Co., Inc., although the respondents have indicated on letterheads, invoices, etc., that said Associated Food Factors was and is located at 401 Broadway, New York, N. Y.

In the conduct of the aforesaid business, respondents Philip Francis Barr and Sylvia Barr, for a substantial period of time since June 19, 1936, have been, and they are now, engaged in the purchase and in the sale and distribution of canned foods, canned vegetables, canned and barrelled olives, etc., all of which are hereinafter referred to collectively as food products. The business was organized and established so as to enable respondents Philip Francis Barr and Sylvia Barr, acting through respondent Philip Barr & Co., Inc., to purchase food products for their own account for resale and to receive on such purchases brokerage payments, while leading some food packers, canners, and others to believe that the purchases were being made for or in behalf of some account other than their own. One of the practices employed to carry out this purpose has been the use, in numerous instances, of the fictitious name "S. Andrews" instead of the respondents' real names of Philip Francis Barr and Sylvia Barr on correspondence and elsewhere in connection with the operation of the business.

PAR. 3. Respondents Philip Francis Barr and Sylvia Barr are also in business under the trade name of S. Richter Co., and are engaged under such name in the purchase and in the sale and distribution of food products. This business was organized and established in September 1944 at 105 Hudson Street, New York, N. Y., the same location as that of respondent Philip Barr & Co., Inc., where it is still located. Like the business conducted under the name of Associated Food Factors, this business was also established to enable respondents Philip Francis Barr and Sylvia Barr, acting through respondent Philip Barr & Co., Inc., to purchase food products for their own account for resale and to receive on such purchases brokerage payments, while leading some food packers, food canners, and others to believe that the purchases were being made for or in behalf of some account other than their own.

In connection with the operation of this business, respondents Philip Francis Barr and Sylvia Barr have represented to canners, packers, and others, by appropriate indications on invoices, orders, etc., that the S. Richter Co. was located at 98 North Moore Street, New York, N. Y., instead of at its true location of 105 Hudson Street.

PAR. 4. The respondents hereinabove named, and each of them, for a substantial period of time since June 19, 1936, have been, and are now, engaged in the business of buying, selling, and distributing food products by two separate and distinct methods, namely: (1) as brokers, which phase of the respondents' business activities was not challenged by the complaint in this proceeding, and (2) as buyers of food prod-

ucts for their own account who, in connection with their purchases, receive or accept direct or indirect brokerage payments, which phase of the respondents' business activities was challenged by the complaint herein.

The respondents' business involving the purchase of food products for their own account may be described in general as follows. The respondents transmit directly to the various sellers with whom they deal their own purchase orders for food products. Such sellers invoice and ship the food products so ordered to the respondents for the account of Philip Barr & Co., Inc., Associated Food Factors or S. Richter Co., and the respondents, in connection with such purchases, are direct buyers, taking title to the food products so purchased and assuming all of the risks incident to ownership thereof. The respondents, upon receipt of such food products from the various sellers, warehouse and insure said food products against contingent loss or damage at their own expense and in their own names and for their own account, and when they sell the products they do so at prices and on terms of sale which they alone determine, and thereafter invoice the products to their customers in the name of Philip Barr & Co., Inc., Associated Food Factors, S. Richter Co., and otherwise. In all such transactions the respondents assume full and complete credit risks in connection therewith, and they reap a profit or sustain a loss on each transaction, as the case may be. On said purchases, however, the repondents receive and accept from the sellers of the food products so purchased brokerage fees, commissions, or other compensation, or allowances or discounts in lieu thereof.

PAR. 5. In the manner and under the circumstances aforesaid, the respondents, and each of them, for a substantial period of time since June 19, 1936, have made, and are now making, numerous and large purchases of food products from sellers located in States other than the State of New York, where the respondents are located. Pursuant to such purchases, the food products so purchased have been and are shipped and transported in commerce by the sellers thereof from the respective States in which they are located, across State lines, either to the respondents or, pursuant to the respondents' instructions and directions, to the respective purchasers to whom such products were and are sold by the respondents.

The Commission therefore finds that the respondents, and each of them, since June 19, 1936, have purchased, and are now purchasing, from various sellers, for their own account, in interstate transactions, substantial quantities of food products. In connection with such purchases the respondents have received and accepted, and they are now

receiving and accepting, either directly or indirectly, from the various sellers, commissions, brokerage fees, or other compensation, or allowances or discounts in lieu thereof.

PAR. 6. In the course and conduct of their business carried on under the name of Associated Food Factors, respondents Philip Francis Barr and Sylvia Barr have made, and are now making, numerous and large purchases of food products from sellers located in various States other than the State of New York, pursuant to which purchases such food products were and are shipped and transported in commerce by the sellers thereof from the respective States in which they are located, across State lines, either to the respondents or, pursuant to respondents' instructions and directions, to the respondents' customers. These respondents, for a substantial period of time since June 1942, also have been and are now advertising their business in various trade publications and journals by the use of letters and by various other means, which advertisements have been and are published and distributed in numerous States other than the State of New York where the respondents and their business organizations are located.

PAR. 7. In certain of the advertisements referred to in paragraph 6, and for the purpose of inducing the purchase and sale of their food products, respondents Philip Francis Barr and Sylvia Barr have made, and have caused to be made, various statements and representations concerning the nature and effectiveness of their business. Among and typical of the statements and representations so made are those disseminated in the January 1, 1945, issue of the Canning Trade published in Baltimore, Md., as follows:

A Establish a valuable postwar connection and get quicker, more efficient
F distribution of your products through this growing association of over 250
F top wholesalers and chain grocers.

Trade-Mark SELL DIRECT to us in carload lots or less—one sale, one bill, one shipment. We can use all sizes and types of canned and dried FRUITS, VEGETABLES, FISH. Immediate cash or ration points. Give us details. Write, wire or telephone your best offer, collect.

Reference, Marine Midland or any N. Y. Bank.
ASSOCIATED FOOD FACTORS
Executive offices, 401 Broadway, New York 13, N. Y.

and in the June 1944 issue of the Pennsylvania Packer published at York, Pa., as follows:

Associated Food Factors
Membership Grows Rapidly

The Associated Food Factors, located in New York City, offers many advantages to simplify distribution for the packer and processor of foods. This is

a group of wholesale grocers, chains, supermarkets, hotel, restaurant and bakery supply houses, operating through one buying and distributing source for its several hundred members. These long established individual organizations have the added advantage of combined warehousing and trucking facilities. They make it easier for the packer or processor to make one cash sale in volume, with a consequent saving of time and manpower.

Associated Food Factors can make one purchase, preferably in carload lots, for all its members—pay cash for it against warehouse receipts or bill of lading—and distribute it to its members with maximum efficiency and minimum cost. This concern offers an important and convenient avenue of distribution for the East to the large and small packer alike, not only for staple items of food, but for the introduction of any new or unusual food item. Being alert, progressive and independently minded—they help to simplify the introduction of new items. That manufacturers recognize the value of this distribution is proven by the recent rapid growth of the Association.

PAR. 8. Through the use of the foregoing statements and representations, and others similar thereto, respondents Philip Francis Barr and Sylvia Barr have represented, among other things, the following:

(*a*) That Associated Food Factors, located in New York City, offers many advantages to simplify distribution for the packer and processor of foods;

(*b*) That Associated Food Factors is located or maintains executive offices at 401 Broadway, New York, N. Y.;

(*c*) That Associated Food Factors is a group of over 250 top wholesalers and chain grocers, supermarkets, hotel, restaurant, and bakery supply houses operating through one buying and distributing source for its several hundred members;

(*d*) That the membership of Associated Food Factors consists of a group of long-established individual organizations.

PAR. 9. In truth and in fact, respondents' activities conducted under the trade name of Associated Food Factors are not for the advantage of packers and processors of food, but such activities are conducted for the sole benefit and advantage of the respondents. Neither Associated Food Factors nor its executive offices are located at 401 Broadway, but they are located and maintained at 105 Hudson Street, New York, N. Y., the same location as the respondents' brokerage business, namely, Philip Barr & Co., Inc. The Broadway address was and is used for the purpose of deceiving canners and packers, by preventing them from knowing or suspecting that respondents Philip Francis Barr and Sylvia Barr are the sole owners of the business carried on under the trade name of Associated Food Factors and are directing its purchasing, sales, and distribution policies and operating said business in connection with their brokerage business. The busi-

ness carried on under the trade name of Associated Food Factors is not a group of over 250 top wholesalers and chain grocers, supermarkets, hotel, restaurant, and bakery supply houses operating through one buying and distributing source for its several hundred members. In fact it has no bona fide members at all, but said business was established in 1942 with respondents Philip Francis Barr and Sylvia Barr as the sole owners, and it was and is operated for their own advantage in connection with their brokerage firm, Philip Barr & Co., Inc. Contrary to the representations of respondents Philip Francis Barr and Sylvia Barr, Associated Food Factors' membership is not composed of a single bona fide long-established individual organization.

The Commission therefore finds that the aforesaid representations of respondents Philip Francis Barr and Sylvia Barr concerning the nature and effectiveness of their business conducted under the trade name of Associated Food Factors have been and are false, misleading and deceptive.

PAR. 10. The use by respondents Philip Francis Barr and Sylvia Barr of the foregoing false, misleading, and deceptive statements and representations, disseminated as aforesaid, has had, and now has, the capacity and tendency to mislead and deceive, and does mislead and deceive, a substantial number of canners and packers, as well as the purchasing public, into the mistaken and erroneous belief that such statements and representations are true, and have induced, and now induce, a substantial number of canners and packers, as well as the purchasing public, because of such mistaken and erroneous belief, to sell to and purchase from the respondents such food products as they distribute in commerce in the conduct of their business operations.

CONCLUSION

The receipt and acceptance, by the respondents herein, of commissions, brokerage fees, or other compensation, or allowances or discounts in lieu thereof, under the circumstances and in the manner set forth in paragraphs 4 and 5 hereof, constitute violations by each and all of said respondents of subsection (c) of section 2 of the Clayton Act, as amended; and the acts and practices of the respondents Philip Francis Barr and Sylvia Barr, as found in paragraphs 2, 6, 7, 8, and 9, inclusive, in addition, are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' substitute answer thereto, in which answer the respondents, for the purposes of the proceeding, 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 certain testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, and the trial examiner's recommended decision and exceptions thereto; and the Commission, having disposed of the exceptions to the trial examiner's recommended decision and having made its findings as to the facts and its conclusion that the respondents, Philip Barr & Co., Inc., a corporation, and Philip Francis Barr and Sylvia Barr, individually and as officers of said corporation, have violated the provisions of subsection (c) of section 2 of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13), and its conclusion that the respondents Philip Francis Barr and Sylvia Barr have, in addition, violated the provisions of section 5 of the Federal Trade Commission Act:

It is ordered, That the respondents, Philip Barr & Co., Inc., a corporation, and its officers, and Philip Francis Barr and Sylvia Barr, individually and as officers of said corporation and trading as Associated Food Factors and as S. Richter Co., or trading under any other name or trade designation, and said respondents' respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of food products or other merchandise in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting from any seller, directly or indirectly, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase made for any of said respondents' own accounts.

It is further ordered, That the respondents, Philip Francis Barr and Sylvia Barr, individually and trading as Associated Food Factors, or trading under any other name or trade designation, and said respondent agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering to purchase, purchase, offering for sale, sale or distribution in commerce, as

"commerce" is defined in the Federal Trade Commission Act, of food products or other merchandise, do forthwith cease and desist from:

(1) Representing, directly or by implication, that said respondents' individual firm is an organization composed of a group of wholesalers and chain grocers, super markets, hotel, restaurant, and bakery supply houses, or any other concerns; or that such firm operates through one buying or distributing source for any group of business establishments.

(2) Representing, directly or by implication, that said respondents' individual firm offers to packers or processors of food products, or of any other commodities, any distributional advantages which may result from sales to buying groups.

(3) Using in advertising, on stationery, or elsewhere, any false address or feigned signature, or otherwise misrepresenting the address, status or identity of said respondents' business, for the purpose or with the effect of deceiving packers or processors of food products or others with whom such respondents deal.

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

LEO LICHTENSTEIN ET AL. TRADING AS HARLICH MANUFACTURING CO. AND LOOMIS MANUFACTURING CO.

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

Docket 4879. Complaint, Nov. 18, 1943 [1]*—Decision, June 30, 1950*

Where three individuals engaged in the interstate sale and distribution of a variety of push cards and punch boards, which ranged in size from 10 to 100 disks, and from 50 to 10,000 holes, respectively, were arranged with and without depictions of specific articles of merchandise and instructions, blank spaces therefor, or cut-outs, or made to order, and were designed for use by retail dealers in the sale and distribution of merchanidise to the public through schemes whereby the purchasers who selected by chance certain numbers or legends concealed in the card or board, became entitled to designated articles of merchandise at no additional cost, and others received nothing further for their money other than the privilege of making a play, or, in some cases, merchandise of much less value than that above referred to—

(*a*) Sold and distributed such push cards and punch boards to manufacturers, jobbers, and wholesale dealers in candy, cigarettes, cigarette lighters, cigarette chests, knives, novelties, and other articles of merchandise, who made up assortments thereof, and sold them to retailers, by whom they were exposed and sold to the purchasing public in accordance with the aforesaid sales plan; and

Where said individuals, engaged also in selling and distributing to dealers cigarette chests or boxes, including assortments packed for use of a similar lottery scheme in sales to the purchasing public, typical assortment consisting of a chest and cigarettes, and a punch board for use in sale and distribution thereof under a plan whereby the purchaser who secured by chance a certain number received the chest packed with cigarettes, and other specified numbers entitled the purchasers to a package of cigarettes, the value of which exceeded the five cents paid, others receiving nothing for their money—

(*b*) Sold such assortments thus packed and assembled to dealers and retailers, by whom they were directly or indirectly exposed and sold to the purchasing public through the use of said punch boards and in accordance with the aforesaid sales plan; and

Thereby supplied to and placed in the hands of others, through such assortments as above described and through those assembled by the purchasers of their punch boards and push cards, the means of conducting lotteries, gift enterprises, or games of chance in the sale and distribution of their merchandise, contrary to an established public policy of the United States Government;

[1] Amended.

With the result that members of the purchasing public, by reason of the element of chance involved in such merchandising, were induced to deal with retailers who used such lottery devices; many retailers were thereby induced to deal or trade with suppliers who sold their product together with such devices; competitors of such retailers were faced with the alternatives of using such sale of their merchandise or suffering the loss of substantial trade; competitors of suppliers who did not use such devices often had sales diverted to those who did; and gambling was taught and encouraged thereby:

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

Before *Mr. John W. Addison* and *Mr. James A. Purcell*, trial examiners.

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

Mr. George M. Glassgold and *Mr. James A. Murray, Jr.*, of Washington, D. C., for respondents.

AMENDED 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 Leo Lichtenstein, Libbie Lichtenstein, and Byron J. Lichtenstein, individually and trading as Harlich Manufacturing Co. and Loomis Manufacturing 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 interest of the public, hereby issues its amended complaint stating its charges in that respect as follows:

COUNT I

PARAGRAPH 1. Respondents Leo Lichtenstein, Libbie Lichtenstein, and Byron J. Lichtenstein, are individuals doing business as copartners under the name of Harlich Manufacturing Co., with their principal office and place of business located at 1401–1417 West Jackson Boulevard, Chicago, Ill. Respondents are now and for some time last past have been engaged in the manufacture of devices commonly known as push cards and punch boards, and in the sale and distribution of said merchandise to manufacturers of, and in the sale and distribution of said merchandise to manufacturers of, and dealers in, various other articles of merchandise in commerce between and among the various States of the United States, and in the District of Columbia.

Respondents cause and have caused said devices, when sold, to be transported from their aforesaid place of business to purchasers thereof in various States of the United States other than the State of Illinois and in the District of Columbia, at their respective points of location. There is now and has been for some time last past a course of trade in such push-card and punch board devices by said respondents in commerce between and among the various States of the United States, and in the District of Columbia.

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

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

Others of said push card and punch board devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punch boards the purchasers thereof place instructions or legends which have the same import and meaning as

the instructions or legends placed by the respondents on said push card and punch board devices first hereinabove described. The only use to be made of said push card and punch board devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' said push card and punch board devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push cards and punch board devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punch boards in accordance with the sales plan as described in paragraph 2 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punch boards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute said merchandise together with said devices. Said persons, firms, or corporations have many competitors who sell or distribute like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said push card and punch board devices or other similar devices which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise, or to suffer the loss of substantial trade. Said competitors do not sell or distribute their merchandise by means of push card or punch board devices or similar devices because of the element of chance or lottery features involved therein, and because such practices are contrary to the public policy of the Government of the United States and in violation of criminal laws, and such competitors refrain from supplying to, or placing in the hands of, others push card or punch board devices, or any other similar devices which are to be used, or which may be

used in connection with the sale or distribution of the merchandise of such competitors to the general public by means of a lottery or chance. As a result thereof, substantial trade has been unfairly diverted to said persons, firms, and corporations from said competitors in said commerce, who do not sell or use such devices.

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

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

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

COUNT II

PARAGRAPH 1. Respondents Leo Lichtenstein, Libbie Lichtenstein, and Byron J. Lichtenstein are individuals trading as copartners under the names of Loomis Manufacturing Co. and Harlich Manufacturing Co., with their principal office and place of business located at 1417 West Jackson Boulevard, Chicago, Ill. Respondents are now and for more than 6 months last past have been engaged in the sale and distribution of cigarette chests or boxes to dealers. Respondents cause and have caused their said cigarette chests, when sold, to be shipped or transported from their aforesaid place of business in the State of

Illinois to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. There is now and for more than 6 months last past has been a course of trade by said respondents to purchase cigarette chests in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their business, respondents are and have been in competition with other individuals and with firms and corporations engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and have sold to dealers certain assortments of said chests so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said chests are sold and distributed to the purchasing public. One of said assortments is sold or distributed to the purchasing public in the following manner. This assortment consists of a punchboard and one of the treasure chests. Appearing on the face of the punchboard is the following legend:

(Picture of 2 Chests)	Treasure Chest in Rich Pig Grain — Packed with 550 Cigarettes — Number 100 Receives Treasure Chest Packed With 550 Cigarettes	
Ideal Chest for Hosiery, Handkerchiefs, Gloves, Trinkets and other articles.	Numbers 125–135–145–155–225–235–245–255–325–335–345–355–425–435–445 Each Receive 1 Package (20) Cigarettes	5¢ Per Sale
	Numbers 525–535–545–555–625 635–645–655–725–735–745–755 Each Receive 1 Package (20) Cigarettes	

Numbers 825–835–845 Each Receive 1 Package (20) Cigarettes

Said treasure chest is distributed to the purchasing public by means of said punch board in the following manner: Sales are 5 cents each and when a punch is made a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board but the numbers are not arranged in numerical sequence and said numbers are arranged in 10 sections. The board bears a statement informing purchasers and prospective purchasers that a certain specified number entitles the purchaser thereof to receive one of the

cigarette chests packed with cigarettes and certain other specified numbers entitle the purchaser thereof to receive a package of cigarettes. A customer who does not qualify by obtaining one of the specified numbers receives nothing for his money. The cigarette chest and the packages of cigarettes are worth more than 5 cents each and the purchaser who obtains a number calling for the cigarette chest or a pack of cigarettes receives the same for 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The cigarette chest and cigarettes are thus distributed to the purchasers of punches from the board wholly by lot or chance.

The respondents furnish and have furnished various punch boards and gift assortments for use in the sale and distribution of their cigarette chests by means of a game of chance, gift enterprise, or lottery scheme. Such punch boards are similar to the one hereinbefore described and vary only in detail.

PAR. 3. Retail dealers who purchase respondents' cigarette chests directly or indirectly expose and sell same to the purchasing public and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. The use by the respondents of said sales plan or method in the sale of a cigarette chest and the sale of said cigarette chests by and through the use thereof and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public by the method or sales plan hereinabove set forth involves a game of chance or the sale of a chance to procure a cigarette chest at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition with respondents as above alleged do not use said method or any method involving a game of chance, or the sale of a chance to win something by chance or by any other method which is contrary to public policy. Persons are attracted by said sales plans or methods employed by respondents in the sale and distribution of their merchandise and by the element of chance involved therein and are thereby induced to buy and sell respondent's merchandise in preference to merchandise of said competitors of respondents who do not use the same or equivalent methods.

The use of said methods by respondents because of said game of chance has a tendency and capacity to unfairly divert trade in com-

merce between and among the various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or equivalent methods and as a result thereof substantial injury is being done and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 18, 1943, issued and thereafter served upon the respondents named in the caption hereof its amended complaint in this proceeding, charging said respondents with the use of unfair methods of competition in commerce and unfair acts and practices in commerce in violation of the provisions of that act. After the filing of the respondents' answer, testimony, and other evidence in support of and in opposition to the allegations of the amended complaint were introduced before a trial examiner of the Commission theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the amended complaint, the respondents' answer thereto, the testimony and other evidence, the trial examiner's recommended decision and exceptions thereto filed on behalf of the respondents, and briefs and oral argument of counsel and the Commission, having disposed of the respondents' exceptions to the recommended decision and having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Leo Lichtenstein, Libbie Lichtenstein, and Byron J. Lichtenstein are individuals trading and doing business as copartners under the names of Loomis Manufacturing Co. and Harlich Manufacturing Co., with their principal office and

place of business located at 1401-1417 West Jackson Boulevard, in the city of Chicago, State of Illinois.

PAR. 2. Trading under the name of Harlich Manufacturing Co., the respondents are now, and for a number of years last past they have been, engaged in the manufacture of devices commonly known as punch boards and push cards, and in the sale and distribution of said devices to manufacturers of and dealers in various other articles of merchandise. The respondents cause and have caused said devices, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof at their respective points of location in the various States of the United States other than Illinois and in the District of Columbia. There is now and at all times mentioned herein there has been a regular course of trade in such devices by the respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Among the various types of punch boards and push cards manufactured and sold by the respondents, as aforesaid, are many which are designed for use by retail dealers in the sale and distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme. These boards and cards vary in detail, but all of them involve the same general principle. The punch boards contain a certain number of holes in which are placed slips of paper bearing different numbers or legends. These slips of paper are effectively concealed from view. Persons desiring to "play" the board pay to the operator thereof a designated sum, and thus become entitled to punch the board and to remove therefrom one of the slips of paper. Certain specified numbers or legends on the slips entitle purchasers to designated articles of merchandise without additional cost. Purchasers who do not punch a lucky or winning number receive nothing for their money other than the privilege of playing the board, or in some cases, merchandise which is of much less value than that which would be received if lucky numbers were punched. The articles of merchandise are thus distributed to the public wholly by lot or chance. On some of the boards, the amount to be paid for the privilege of making the punch is also determined by chance.

The push cards are operated in substantially the same manner except that instead of having holes, the cards usually have perforated discs which contain the numbers or legends. As in the case of the boards, the numbers or legends are effectively concealed from the purchaser of the chance until after the punch has been made and the disc separated from the card. The punch boards range in size from 50

holes to 10,000 holes, while the push cards usually are much smaller, ranging in size from 10 discs to 100 discs.

PAR. 4. Many of the punch boards and push cards bear picturizations and descriptions of certain articles of merchandise such as candy, cigarettes, cigarette lighters, cigarette chests, etc., as well as instructions which explain the operation of the device and the prizes to be awarded to those obtaining the lucky numbers.

Others have no pictures or instructions thereon, but have blank spaces in which the purchaser of the devices may insert his own instructions and a statement of the merchandise to be awarded as prizes.

Some of the punch boards are known as "cut out" boards, which means that the board contains a large hole or depression in which may be exhibited a sample of the merchandise offered by the dealer.

Many of the boards and cards sold by the respondents are made to order to meet the requirements of the particular purchaser.

Except in the case of so-called money boards used solely for gambling, the only use to be made of said punchboard and push card devices and the only manner in which they are used by the ultimate purchaser thereof is in combination with other merchandise so as to enable said ultimate purchaser to sell or distribute the other merchandise by means of lot or chance.

PAR. 5. Manufacturers, jobbers, and wholesale dealers in various articles of merchandise in commerce, such as candy, cigarettes, cigarette lighters, cigarette chests, knives, novelties, and other articles, purchase the respondents' punchboards and push cards and make up assortments consisting of various articles of merchandise and a board or card and sell their merchandise so packed and assembled to retail dealers for resale to the public.

PAR. 6. In addition to manufacturing and selling punchboards and push cards as separate items, as herein described, the respondents, trading as Loomis Manufacturing Co. and as Harlich Manufacturing Co. for a number of years have been engaged also in the sale and distribution of cigarette chests or boxes to dealers. The respondents have caused their said cigarette chests, when sold, to be shipped or transported from their place of business in the State of Illinois to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. At all times mentioned herein there has been a regular course of trade by the respondents in such cigarette chests or boxes in commerce between and among the various States of the United States and in the District of Columbia.

In connection with this phase of the respondents' business, it has been their practice to sell to dealers certain assortments of their cigarette chests or boxes so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said chests are sold and distributed to the purchasing public. One of such assortments has been sold or distributed to the purchasing public in the following manner. Said assortment has consisted of a punchboard and one of the chests. Appearing on the face of the punchboard was the following legend:

(Picture of two chests)	Treasure Chest in Rich Pig Grain —Packed with 550 Cigarettes— Number 100 Receives Treasure Chest Packed	
Ideal Chest for Hosiery, Handkerchiefs, Gloves, Trinkets and other articles.	With 550 Cigarettes Numbers 125–135–145–155–225 235–245–255–325–335–345–355 425–435–445 Each Receive 1 Package (20) Cigarettes	5¢ Per Sale
	Numbers 525–535–545–555–625 635–645–655–725–735–745–755 Each Receive 1 Package (20) Cigarettes	

Numbers 825–835–845 Each Receive 1 Package (20) Cigarettes

In such an assortment the plan was for the chest to be distributed to the purchasing public by means of said punch board in accordance with the above legend in the following manner. Sales were 5 cents each, and when a punch was made a number was disclosed. The numbers began with 1 and continued to the number of punches there were on the board, but the numbers were not arranged in numerical sequence and said numbers were arranged in 10 sections. The board bore a statement informing purchasers and prospective purchasers that a certain specified number entitled the purchaser thereof to receive one of the cigarette chests packed with cigarettes and certain other specified numbers entitled the purchasers thereof to receive a package of cigarettes. A customer who did not qualify by obtaining one of the specified numbers received nothing for his money. The cigarette chest and the packages of cigarettes were worth more than 5 cents each, and the purchaser who obtained a number calling for the cigarette chest or a pack of cigarettes received the same for 5 cents. The numbers were effectively concealed from the purchasers and prospective purchasers until a punch or selection had been made and the particular punch separated from the board. The cigarette chest and cigarettes

were thus distributed to the purchasers of punches from the board wholly by lot or chance.

The respondents have furnished various punch boards and gift assortments for use in the sale and distribution of their cigarette chests by means of a game of chance, gift enterprise, or lottery scheme. Such punch boards were similar to the one hereinabove described and varied only in detail.

PAR. 7. Retail dealers who have purchased the assortments of merchandise herein referred to, both those packed and assembled by the respondents and those packed and assembled by the purchasers of the respondents' punch boards and push cards as separate items, have directly or indirectly exposed and sold said merchandise to the purchasing public by the use of the punch boards and push cards in accordance with the aforesaid sales plan. Thus, both in the sale of their cigarette chests or boxes packed and assembled by the respondents as hereinabove described and in the sale of their punch boards and push cards as separate items, the respondents have supplied to and placed in the hands of others the means of conducting lotteries, gift enterprises or games of chance in the sale and distribution of their merchandise.

PAR. 8. Because of the element of chance involved in the purchase of merchandise by means of punch boards and push cards, members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing their merchandise through the use of such devices. As a result, many retail dealers have been induced to deal or trade with manufacturers, wholesale dealers and jobbers who sell and distribute their products together with said punch board and push card devices.

Such retail dealers have competitors who sell or distribute like or similar articles of merchandise. Said competitors are faced with the alternative of also using punch boards and push cards and other similar devices in connection with the sale and distribution of their merchandise or suffering the loss of substantial trade.

Manufacturers, wholesale dealers, and jobbers who use punch boards, push cards and similar devices in connection with the sale of their merchandise to retailers also have competitors who do not use such devices. Such manufacturers, wholesalers, and jobbers who do not use lottery devices in promoting the sale of their merchandise often have their sales and potential sales diverted to those who do use these devices.

PAR. 9. The sale of merchandise to the purchasing public through the use or by means of punch boards and push cards in the manner

above described involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling, all to the prejudice of the public. The use of said sales plan or method in the sale of merchandise, and the sale of merchandise by and through the use thereof, and by the aid of said sales plan or method, is a practice which is contrary to an established policy of the Government of the United States.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the amended complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, 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, Leo Lichtenstein, Libbie Lichtenstein, and Byron J. Lichtenstein, individually and trading as Harlich Manufacturing Co. and as Loomis Manufacturing Co., or trading under any other name or trade designation, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, punchboards, pushcards, or other lottery devices, which are to be used, or may be used, in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That said respondents 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 Commis-

sion Act, of cigarette chests or boxes, or other articles of merchandise, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others punchboards, pushcards, or other lottery devices, either with assortments of cigarette chests or boxes or other merchandise, or separately, which said punchboards, pushcards, or other lottery devices, are to be used, or may be used, in selling or distributing such cigarette chests or boxes or other merchandise to the public.

2. Selling or distributing cigarette chests or boxes, or other articles of merchandise, so packed or assembled that sales thereof to the public are to be made or, due to the manner in which such merchandise is packed or assembled at the time it is sold by the respondents, may be made by means of a game of chance, gift enterprise, or lottery scheme.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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.

Commissioner Mason concurring in the findings as to the facts and conclusion, but not concurring in the form of order to cease and desist, for the reasons stated in his opinion concurring in part and dissenting in part in docket 5203—Worthmore Sales Co.[1]

[1] See *ante*, at p. 622 et seq.

IN THE MATTER OF

UNITED STATES RUBBER CO.

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

Docket 4972. Complaint, May 28, 1943—Decision, June 30, 1950

Where the largest single manufacturer of waterproof rubber footwear and, prior to its discontinuance of said line in 1942, of canvas footwear, in the United States, engaged in the interstate sale and distribution of such products to jobbers or wholesalers, national and regional and local retail chain store organizations, mail order houses and single retail store customers, selling its first grade products under its advertised and unadvertised brands through its numerous branch warehouses and sales agencies to single retail stores and local chains, and also under customers' private labels or special brands to mail order houses and national and regional chain stores;

In selling to retailers, many of which were engaged in competition with one another and with customers of its competitors in different trade areas, its said products of first grade and quality—other than its "U. S." and "U. S. Specialities Line" of waterproof footwear and its "Kedettes" and "Kedsman" canvas footwear, which it sold to all customers at uniform prices—under a discount schedule under which its advertised and nonadvertised brands were sold to retailers through its branch store system at list prices or at one of several discounts which ranged from 3 to 13 percent and 5 percent off list, depending upon the method and conditions of sale in each separate transaction, and under which its private brand footwear was sold to national stores and mail order houses at prices equivalent to 18 percent off list—

Discriminated in price through certain price differences thus brought about in the sale of its advertised and unadvertised brands of footwear to retailers under said branch store system, which exceeded differences in cost of manufacture, sale, and delivery by amounts ranging from $0.0047 to $0.0480 per dollar of gross sales in the case of certain of said discounts;

Effect of which discriminations in price had been or might be substantially to lessen competition in the line of commerce in which said corporation and its competitors were engaged and to injure, destroy, or prevent competition in the sale and distribution of rubber and canvas footwear between its purchasers who received the benefits of such discriminations and competing purchasers who did not;

Held, That such acts and practices under the circumstances set forth, were violative of subsection (a) of the Clayton Act as amended.

In said proceeding in which exhaustive cost studies disclosed that certain of respondent's price differences, including those between the prices on private brand footwear sold to national chains and mail order houses, and the prices on advertised and unadvertised brands sold to other retailers through its

branch store systems, were justified by differences in cost of manufacture, sale, and delivery, and that certain of the other price differences were not so justified in that they exceeded the differences in the cost of manufacture, sale, and delivery by amounts ranging from $0.0064, $0.0047, and $0.0092, per dollar of gross sales, up to amounts ranging from $0.0424 to $0.0480; the Commission was of the opinion that such unjustified price differences as those first set forth, which were less than 1 cent per dollar of gross sales, were de minimis and would not warrant the issuance of an order were it not for the other substantial amounts by which the differences in costs failed to justify the differences in prices.

In said proceeding in which respondent, in selling its unadvertised second grade and quality footwear, both rubber and canvas, effected a discount to chain stores and mail order houses of approximately 15 percent from the gross price by way of net prices which reflected such a discount on said products of like grade and quality, no cost studies or order were made with respect thereto, it appearing that production and sale of said products were discontinued in December 1941.

Before *Mr. Earl J. Kolb*, trial examiner.
Mr. James I. Rooney and *Mr. James S. Kelaher* for the Commission.
Arthur, Dry & Dole, of New York City, for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, United States Rubber Co., is a Delaware corporation with its principal office and place of business located at 1790 Broadway, New York City.

PAR. 2. Respondent is now and has been for many years last past engaged in the manufacture, sale, and distribution of numerous rubber products, including rubber and canvas footwear. Respondent through its wholly owned subsidiary, United States Rubber Products, Inc., and since said subsidiary's dissolution on January 1, 1939, through its Rubber Footwear Division, is now and has been since June 19, 1936, engaged in the business of manufacturing, selling and distributing rubber and canvas footwear which it sells to jobbers or wholesalers, national retail chain organizations, mail-order houses, and other retail customers. Respondent has annual dollar sales of rubber and canvas footwear of approximately $20,000,000 and it is the

largest single factor in the rubber and canvas footwear industry. Respondent has factories located at Naugatuck, Conn., and Mishawaka, Ind., and maintains branches and warehouses functioning as sales agencies in 24 of the principal cities throughout the various States of the United States.

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

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

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

Respondent's first grade rubber footwear is made up of six nationally advertised brands: "United States Rubber Co.," "United States Royal," "Goodyear," "Goodyear Glove," and "Topnotch," all manufactured at its Naugatuck factory, its "Ball" brand, manufactured at its Mishawaka factory, and is unadvertised "Titan" and "American" brands and private brands or special specification products privately branded or carrying no brand, all manufactured in its Naugatuck factory. Respondent's nationally advertised brands are sold principally to small retailers, although some of said brands are sold by its branches to department stores and small local chains designated by it as large retailers. Respondent's "Titan" and "American" brands and private brands or special specification products are sold exclusively to large retail chains and mail-order houses. All of said first grade rubber footwear of respondent, regardless of the various brand names as above described, are of like grade and quality. Department stores and small local chain customers of respondent designated by it as large retailers and mail-order houses and large chain customers desig-

nated by it as national accounts which purchase rubber footwear of respondent under the "Titan" or "American" brands or private brands or no brands resell such products in many parts of the United States in competition with other retail customers of respondent selling respondent's regular advertised brands. Such unadvertised brands or private brands or special specification products are of like grade and quality to respondent's nationally advertised brands above described, which latter products are sold by respondent's small retail customers in competition with said unadvertised brands or private brands or special specification products.

Respondent's second-grade rubber footwear is made up of its "Dry Shod" and "Woonsocket" brands sold principally to small retailers and its "Acme" brand sold principally to large retailers or national accounts. Such second-grade rubber footwear regardless of the brand name under which same is sold and regardless of the class or type of retailer to whom such products are sold is of like grade and quality and the various classes or respondent's customer purchasers resell said products in competition with each other in many parts of the United States.

Respondent's first-grade canvas footwear is made up of its "Kedettes" brand, "United States Sport Shoes" brand, both of which are sold principally to small retailers, "Grips" and "Keds" brands sold both to small retailers and to department stores and small chain organizations designated by respondent as large retailers, and private brands or special specification products sold to large chain organizations and mail-order houses designated by respondent as national accounts. Such first-grade canvas footwear regardless of the brand name under which same is sold and regardless of the class or type of retailer to whom such products are sold, is of like grade and quality and the various classes of respondent's customers purchasers resell said products in competition with each other in various parts of the United States.

Respondent's second-grade canvas footwear is made up of its "Sprinter's" brand sold principally to small retailers and to department stores and small chain organizations designated by it as large retailers, and its "Crusader" brand sold both to small and large retailers and to national accounts. Such second-grade canvas footwear regardless of the brand name under which same is sold and regardless of the class or type of retailer to whom such products are sold, is of like grade and quality and the various classes of respondent's customer purchasers resell said product in competition with each other in various parts of the United States.

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

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

Discounts allowed small retailers by respondent on sales of its advertised brands of both first- and second-grade rubber and canvas footwear are:

	Branch sales and shipments (percent)	Branch sales shipped by factory	
		Stock (percent)	Makeup (percent)
On single shipments of—			
(1) Less than 144 pairs	None	None	None
(2) 144–479 pairs	3	3	3
(3) 480 pairs or more	3	3	8

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

Discounts allowed department stores and local chain organizations designated as large retailers for the same advertised brands of first-grade rubber and canvas footwear are—

	Branch sales and shipments—stock (percent)	Branch sales shipped by factory		Factory sales and shipments	
		Stock (percent)	Makeup (percent)	Stock (percent)	Makeup (percent)
On single shipments of—					
(1) Less than 144 pairs	0	0	0	0	0
(2) 144–479 pairs	3	3	3	3	3
(3) 480 pairs or more	3	3	13	3	13

To the extent, if any, that such large retailers purchase second-grade rubber and canvas footwear they are allowed by respondents the same discounts as allowed them on first-grade products.

Discounts allowed by respondents to its national accounts on its unadvertised brands and no brand and special specification rubber and canvas footwear, all of which are first-grade products of like grade and quality to its first-grade advertised brands, are—

	Factory sales and shipments	
	Stock (percent)	*Makeup (percent)*
First-grade waterpoof and canvas:		
On individual shipments in standard case lots of a kind, regardless of quantity, whether more or less than 144 pairs	18 and 5	18 and 5

Discounts allowed by respondent to its national accounts on its second-grade rubber and canvas footwear are—

	Factory sales and shipments	
	Stock (percent)	*Makeup (percent)*
Second-grade waterproof and canvas footwear:		
On individual shipments in standard case lots of a kind, regardless of quantity, whether more or less than 144 pairs	17.7	17.7

The discounts from list prices above described in general terms are more fully set forth in respondent's sales policies for the year 1937, which were published and circulated by respondent to its retail trade in various general letters under, among others, the following titles:

Water Proof Footwear—1937 Season.

Rubber Footwear—1937 Season (Woonsocket Brand).

Rubber Footwear—1937 Season (Dry Shod Brand).

Revision—Keds Sales Policy.

Revision—Grips Sales Policy.

Crusaders—Revised Prices Quantity Discount.

Respondent's discounts to its national accounts, above described, were not circulated in the form of published sales policies.

The pricing policies of respondent as above described in general terms and as more particularly described in respondent's published sales policies above referred to, have been continued in force by respondent with minor variations to date and such discounts as therein described and/or as later modified constitute the means by which respondent has been and now is discriminating in price as alleged in paragraph 4 hereof.

The discounts above described do not include certain cash and early order discounts likewise allowed by respondent but said discounts are in addition thereto.

PAR. 6. The effect of such discrimination in price as set forth in paragraphs 4 and 5 hereof has been or may be substantially to lessen

competition in the line of commerce in which respondent and its competitors are engaged and may be to injure, destroy, or prevent competition in the sale and distribution of rubber and canvas footwear between those of respondent's purchasers who receive the benefits of such discriminations and competing purchasers who do not receive the same benefits.

PAR. 7. The foregoing alleged acts and practices of said respondent as set forth herein constitute violations of the provisions of section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13).

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 the act of Congress approved June 19, 1936 (the Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid act, the Federal Trade Commission, on May 28, 1943, issued and subsequently served its complaint in this proceeding on respondent, United States Rubber Company, a corporation, charging it with violation of subsection (a) of section 2 of said Clayton Act as amended. After the issuance of the complaint and the filing of respondent's answer thereto, a stipulation as to the facts, dated July 30, 1945, was entered into by and between W. T. Kelley, Chief Counsel for the Federal Trade Commission, and respondent, which provided, among other things, that subject to the approval of the Federal Trade Commission the statement of facts contained therein may be taken as the facts in this proceeding and in lieu of all testimony in support of and in opposition to the charges stated in the complaint and that the Commission may proceed upon such statement of facts to make its findings as to the facts (including inferences which may be drawn from said statement of facts) based thereon and enter its order disposing of this proceeding without the presentation of argument or the filing of briefs. Said stipulation as to the facts was subsequently modified by supplemental stipulations as to the facts dated March 1, 1947, and January 14, 1949, entered into by and between Everette MacIntyre, Chief, Division of Antimonopoly Trials, of the Federal Trade Commission, and respondent, which stipulations provided among other things that subject to the approval of the Federal Trade Commission the respective parties might adduce certain additional evidence, and a trial examiner was duly appointed

by the Commission for the purpose of receiving such additional evidence. Thereafter, on January 31, 1949, and additional supplemental stipulation as to the facts was entered into by and between Everette MacIntyre and respondent, in which it was stipulated and agreed that, subject to the approval of the Federal Trade Commission, if certain witnesses were called to testify they would testify as set forth therein. Respondent expressly waived the filing of a recommended decision by the trial examiner. Briefs of counsel in support of and in opposition to the allegations of the complaint were filed, respondent having requested and obtained permission to file same.

Thereafter this proceeding came on for final consideration by the Commission on the complaint and answer, stipulations as to the facts (said stipulations having been approved by the Commission), and briefs of counsel; 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 United States Rubber Co. is a corporation organized and existing under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 1230 Sixth Avenue in the city of New York, State of New York.

PAR. 2. The respondent is now, and has been since June 19, 1936, engaged in the business of manufacturing, selling, and distributing rubber products, including waterproof rubber footwear. From June 19, 1936, to May 31, 1942, the respondent was also engaged in the business of manufacturing, selling and distributing canvas products, including canvas footwear.

The respondent, through its rubber footwear division, since June 19, 1936, has been selling and distributing the waterproof rubber footwear and, up to May 31, 1942, canvas footwear to jobbers or wholesalers, national and regional and local retail chain store organizations, mail order houses, and single retail store customers. The respondent, by volume of sales, is as to waterproof rubber footwear, and was, up to May 31, 1942, as to canvas footwear the largest single producer in the United States. It operates for the manufacture of waterproof rubber footwear, and operated up to May 31, 1942, for the manufacture of canvas footwear factories at Naugatuck, Conn., and Mishawaka, Ind. The respondent maintains and operates branch warehouses and sales agencies for the sale and distribution of waterproof

footwear in 18 of the principal cities located throughout the United States, and up to May 31, 1942, maintained and operated similar branch warehouses and sales agencies for the sale and distribution of canvas footwear.

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

PAR. 3. In the course and conduct of its business, as aforesaid, and during the time herein mentioned, the respondent was, and as to waterproof rubber footwear now is, in substantial competition with other corporations and firms engaged in the business of manufacturing and selling waterproof rubber footwear and canvas footwear in interstate commerce, and many of its retail customers are competitively engaged one with the other and with customers of the respondent's competitors in the resale of waterproof rubber footwear and heretofore were as to canvas footwear, within the several trading areas in which respondent's said customers respectively offer or offered for sale and sell or sold waterproof rubber footwear and canvas footwear purchased from the respondent.

Since June 19, 1936, respondent has sold in interstate commerce first-grade waterproof rubber footwear and has advertised the same under the following brand names: "U. S.," "Goodyear Glove," "Beacon Falls Topnotch" and "Ball Band." Said respondent has sold waterproof rubber footwear without advertising under the following brand names: "American" and "Titan." Said respondent has also engaged in the business of manufacturing waterproof rubber footwear for customers under such customers' private labels or special brands.

Such advertised brands and unadvertised brands of waterproof rubber footwear are generally sold by the respondent to single retail store customers and local retail chain store customers and such waterproof rubber footwear bearing the private or special brands of customers are sold by the respondent to mail order houses and national and regional retail chain store customers.

All of said first grade and quality waterproof rubber footwear, regardless of the various brand names, is of like grade and quality.

Single retail store, retail chain store and mail order house customers of respondent, who purchase waterproof rubber footwear from the respondent under the "Titan" or "American" brands or private brands resell such products in many parts of the United States in competition with other retail customers of respondent selling respondent's regular advertised brands. Such unadvertised brands, or private brands, are of like grade and quality to respondent's nationally advertised brands heretofore described, which latter products are sold by respondent's retail store customers in competition with said unadvertised brands or private brands.

Such waterproof footwear of first grade and quality bearing the brand "U. S." and sold as the "U. S. Specialties Line" of footwear is sold to all customers at uniform prices and is not subject to the discount schedule hereinafter set forth in the paragraph numbered 5.

From June 19, 1936, to December 18, 1941, respondent sold, in interstate commerce to retailers generally, articles known in the trade as waterproof rubber footwear of second grade and quality without advertising under the following brands, among others, namely: "Woonsocket" and "Dry Shod." Such second-grade waterproof rubber footwear, regardless of the brand name under which same was sold, and regardless of the class or type of retailer to whom such products were sold, was of like grade and quality and the various purchasers resold said products in competition with each other in many parts of the United States.

From June 19, 1936, to May 31, 1942, the respondent sold in interstate commerce articles known in the trade as canvas footwear of first grade and quality and advertised the same under the following brands, among others, namely: "Keds," "Kedettes," "Kedsman," "Ball Band," and "Grips." Respondent also sold canvas footwear without advertising under the following brand names from time to time, among others, namely: "Oneida," "American," and "Titan." Said respondent also sold such articles branded with private or special brands of its customers. Respondent's advertised and unadvertised brands of canvas footwear were sold to retailers generally, and the canvas footwear bearing private labels or special brands of customers were sold by the respondent to mail order houses and national and regional retail chain store customers.

Such canvas footwear of first grade and quality sold under the brand names of "Kedettes" and "Kedsman" were, during said period, sold to all customers at uniform prices and were not subject to the discount schedule hereinafter set forth in the paragraph numbered 5.

Such first-grade canvas footwear, regardless of the brand name under which same was sold, and regardless of the class or type of retailer to whom such products were sold, was of like grade and quality and the various classes of respondent's customer-purchasers resold said products in competition with each other in various parts of the United States.

From June 19, 1936, to December 18, 1941, respondent sold in interstate commerce articles known as canvas footwear of second grade and quality without advertising under the following brands from time to time, among others, namely: "Sturdy," "Leader" and "Sprinter." Such second grade and quality canvas footwear, regardless of the brand name under which same was sold, and regardless of the class or type of retailer to whom such products were sold, was of like grade and quality and the various classes of respondent's customer-purchasers resold said products in competition with each other in various parts of the United States.

PAR. 4. Respondent, in the course and conduct of its business, as hereinbefore set forth, has been, since June 19, 1936, and now is, discriminating in price between different retail purchasers of its first grade and quality waterproof rubber footwear of like grade and quality, other than the "U. S. Specialties Line," by selling said products to some of its customers at higher prices than it sells such products of like grade and quality to others of its customers who are competitively engaged one with the other in the resale of said products within the United States, and the same was the case from June 19, 1936, to May 31, 1942, as to its first grade and quality canvas footwear other than "Kedettes" and "Kedsman."

PAR. 5. The discriminations in price referred to in paragraph 4 hereof have been effectuated through the use by the respondent in its pricing plan of a schedule of discounts from list price described in general terms as follows: Discounts allowed retailers by respondent on sale of its first grade and quality waterproof rubber and canvas footwear are:

First grade and quality waterproof rubber footwear, other than the "U. S. Specialties Line"

(1) List price on any order sold by the branches at any time during the year for any quantity in full or less than case lots for immediate delivery.

(2) Three percent on advertised brands for any order of less than 144 pairs or in any other quantities of less than case lots sold by the

branches during the period from January 1 to June 30, inclusive, for shipment April 1 to October 25 for payment December 1.

(3) Five percent on advertised brands for any order of 144 pairs or more but less than 480 pairs in case lots sold by the branches during the period from January 1 to June 30, inclusive, for shipment April 1 to October 25 with payment due December 1.

(4) Eight percent on advertised brands for any order of 480 pairs or more in case lots sold by the branches during the period from January 1 to June 30, inclusive, for shipment April 1 to October 25 with payment due December 1, or any order accepted during the balance of the year for 480 pairs or more in case lots (which are sufficiently large to permit individual manufacture), providing such order is placed sufficiently early to permit orderly manufacture and delivery.

(5) Thirteen percent on advertised brands for any order of 480 pairs or more sold by the branches to customers whose business is solicited and handled by the branch sales executives providing such order is placed sufficiently early to permit orderly manufacture and delivery.

(6) Thirteen and 5 percent on unadvertised brands for any order of 480 pairs or more sold by the branches to customers whose business is solicited and handled by the branch sales executives, providing such order is placed sufficiently early to permit orderly manufacture and delivery.

(7) Eighteen and 5 percent on any order accepted from national chain and mail order customers sold by the wholesale division located at the factory for private brand unadvertised footwear, by way of net prices which reflect 18–5 percent discount from the gross price.

First grade and quality canvas footwear other than "Kedettes" and "Kedsman"

(1) List price on any order sold by the branches at any time during the year for any quantity in full or less than case lots for immediate delivery.

(2) Three percent on advertised brands for any order of less than 144 pairs or in any other quantities of less than case lots sold by the branches during the period from August 1 to December 31, for shipment December 1 to April 25 with payment due June 1.

(3) Five percent on advertised brands for any order of 144 pairs or more, but less than 480 pairs, in case lots sold by the branches during the period from August 1 to December 31, inclusive, for shipment December 1 to April 25 with payment due June 1.

(4) Eight percent on advertised brands for any order of 480 pairs or more, in case lots, sold by the branches during the period from August 1 to December 31, inclusive, for shipment from December 1 to April 25 with payment due June 1, or any order accepted during the balance of the year for 480 pairs or more in case lots (which are sufficiently large to permit individual manufacture) providing such order is placed sufficiently early to permit orderly manufacture and delivery.

(5) Thirteen percent on advertised brands for any order of 480 pairs or more sold by the branches to customers whose business is solicited and handled by the branch sales executives, providing such order is placed sufficiently early to permit orderly manufacture and delivery.

(6) Thirteen and 5 percent on unadvertised brands for any order of 480 pairs or more sold by the branches to customers whose business is solicited and handled by the branch sales executives, providing such order is placed sufficiently early to permit orderly manufacture and delivery.

(7) Eighteen and 5 percent on any order accepted from national chain and mail order customers sold by the wholesale division located at the factory for private brand unadvertised footwear by way of net prices which reflect an 18–5 percent discount from the gross price.

PAR. 6. The discounts above set forth do not include cash discounts allowed by respondent but said discounts are in addition to such cash discounts. The pricing policies of respondent as above described in general terms and as more particularly described in respondent's published sales policies have been continued in full force and effect by respondent as to its first grade and quality waterproof rubber footwear with minor variations to date, and as to its first grade and quality canvas footwear to May 31, 1942, and such discounts as herein described and as described in the published sales policies constitute the means by which respondent has been and is now discriminating in price as set forth in paragraph 4 hereof.

From August 1, 1939, to December 18, 1941, respondent effected a discount of approximately 15 percent from the gross price for second grade and quality private brand unadvertised canvas footwear to national and regional retail chain store and mail order house customers by way of net prices which reflected approximately 15 percent discount from the gross price. From January 1, 1940, to December 18, 1941, the same discount was effected by the respondent as to second grade and quality private brand unadvertised waterproof rubber footwear. On December 18, 1941, respondent discontinued the produc-

tion and sale of second grade and quality canvas and waterproof rubber footwear.

PAR. 7. The effect of such discriminations in price as set forth in paragraphs 4, 5, and 6 hereof has been or may be substantially to lessen competition in the line of commerce in which respondent and its competitors are engaged and may be to injure, destroy, or prevent competition in the sale and distribution of rubber and canvas footwear between those of respondent's purchasers who receive the benefit of such discriminations and competing purchasers who do not receive the same benefits.

PAR. 8. Respondent's defense to this proceeding is that the differences in the prices charged make only due allowance for differences in cost of manufacture, sale, and delivery resulting from the differing methods and quantities in which it sold waterproof rubber and canvas footwear. Exhaustive cost studies of respondent's operations were conducted and the results of these studies are a part of the record in this proceeding as exhibits to the stipulations as to the facts entered into by and between counsel supporting the complaint and respondent.

The cost studies conducted were primarily based upon costs and expenses incurred during the year 1940, the last year of normal operations during the period covered by the complaint, and are concerned with certain of respondent's advertised and unadvertised brands of footwear sold to retailers through its branch store system and private brands sold through its wholesale division to national chains and mail order houses, all of which footwear was manufactured at its plant at Naugatuck, Conn., and with other brands of footwear manufactured at its plant at Mishawaka, Ind., and sold mainly to retailers.

In the sale of its advertised and unadvertised brands of footwear to retailers through its branch store system, respondent sold at list prices or at one of several discounts ranging from 3 percent to 13 and 5 percent, depending upon the method and conditions of sale in each separate transaction. Sales of private brands through the wholesale division to national chains and mail order houses were made at net prices equivalent to 18 and 5 percent off list prices. Sales of the footwear manufactured at respondent's Mishawaka, Ind., plant were made in the same price brackets as in the branch store system up to and including only the discount of 8 percent off list.

The stipulated testimony of accountants for the Commission is to the effect that certain of respondent's price differences, including the differences between the prices on private brand footwear sold to national chains and mail order houses and the prices on advertised and unadvertised brands sold to other retailers through its branch store

system, were justified by differences in cost of manufacture, sale, and delivery, and that certain of the price differences were not so justified.

From the cost data presented by respondent as its defense to this proceeding and the stipulated testimony of accountants for the Commission pertaining thereto, the Commission finds that the differences in the prices at which respondent sold canvas and waterproof rubber footwear manufactured at its Naugatuck plant to retailers in the price categories indicated below exceeded the differences in the cost of manufacture, sale, and delivery to the extent shown in the following tabulation, and were therefore not justified.

CANVAS

Between—	Price difference	Cost difference	Excess of price difference over cost difference
	(per dollar of gross sales)		
List price less 5 percent and list price less 13 percent	$0.0800	$0.0361	$0.0439
List price less 8 percent and list price less 13 percent	.0500	.0050	.0450

WATERPROOF

List price less 3 percent and list price less 13 percent	$0.1000	$0.0936	$0.0064
List price less 5 percent and list price less 13 percent	.0800	.0376	.0424
List price less 8 percent and list price less 13 percent	.0500	.0020	.0480
List price less 8 percent and list price less 13 and 5 percent	.0935	.0888	.0047

It is further found that respondent's price difference of 0.03 per dollar of gross sales on waterproof footwear manufactured at its Mishawaka plant between retailers sold at list price less 5 percent and those sold at list price less 8 percent was not justified by the difference in cost of manufacture, sale, and delivery to the extent of 0.0092 per dollar of gross sales.

The unjustified price differences shown above in the amounts of 0.0064, 0.0047, and 0.0092 per dollar of gross sales would be considered by the Commission to be de minimi and would not warrant the issuance of an order to cease and desist if they were the only price differences found to be not justified by differences in costs. However, the other amounts by which the differences in costs fail to justify the differences in prices are substantial.

CONCLUSION

The acts and practices of respondent as herein found are violative of subsection (a) of section 2 of the Clayton Act as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission; answer of the respondent;

stipulation as to the facts entered into by and between W. T. Kelley, chief counsel for the Federal Trade Commission, and respondent, in which stipulation it was provided, among other things, that, subject to the approval of the Commission, the statement of facts contained therein may be taken as the facts in this proceeding and in lieu of all testimony in support of and in opposition to the charges stated in the complaint and that the Commission may proceed upon such statement of facts to make its findings as to the facts (including inferences which it may draw from said stipulated facts) and its conclusion based thereon and enter its order disposing of this proceeding without the presentation of argument or the filing of briefs; supplemental stipulations as to the facts entered into by and between Everette MacIntyre, assistant chief trial counsel for the Federal Trade Commission, and respondent; and briefs of counsel, request having been made by respondent for permission to file same; and the Commission having approved said stipulations as to the facts and having made its findings as to the facts and its conclusion that the respondent has violated the provision of subsection (a) of section 2 of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act):

It is ordered, That respondent, United States Rubber Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in the sale of waterproof rubber footwear or canvas footwear in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from directly or indirectly discriminating in the price of waterproof or canvas footwear by charging or receiving from different purchasers of such products of like grade and quality net prices which differ as much as, or more than, 2 percent of the highest of such net prices: *Provided*, *however*, That the foregoing shall not be construed to prevent the respondent from defending any alleged violation of this order by showing that the different prices make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which the products were sold or delivered.

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.