IN THE MATTER OF

RELIANCE PHARMACAL COMPANY ET AL.

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

Docket 5712. Complaint, Nov. 30, 1949—Decision, May 21, 1953

The terms "arthritis" and "rheumatism" are general terms, sometimes used interchangeably, which may refer to any of many diseases or pathological conditions, including rheumatic fever, fibrositis, myositis, neuritis, sciatica, lumbago, and bursitis, all of which are characterized by one or more of such symptoms or manifestations as pain, stiffness, and inflammatory and destructive changes in the joints and tissues of the body.

The various pathological conditions generally referred to as "arthritis" and "rheumatism", which are of known as well as unknown origin, progress and develop differently. Likewise, they require different treatment, which will vary not only between different types of such ailments, but between different individuals suffering from the same ailment, and between different stages in the progress thereof. An adequate, effective, or reliable treatment for any kind of "arthritis" or "rheumatism" must, therefore, be predicated upon individual diagnosis, in order to determine whether the patient has arthritis or rheumatism, the particular kind of such ailment present, and whether it arose from a known or an unknown cause.

An adequate, effective, or reliable treatment for any of the various types of ailments included by the general terms "arthritis" and "rheumatism" may involve application of various therapeutic measures, including diet, rest or change of occupation, various types of physiotherapy such as orthopedic or thermal procedures, and medication; and delay of proper diagnosis, with consequent failure to administer appropriate treatment, may result in the evolution of irreversible pathological changes, causing a crippled, useless joint or extremity, especially in those forms of arthritis and rheumatism known to be caused by specific infections.

There is no drug, or combination of drugs, regardless of how administered, which will constitute an adequate, effective, or reliable treatment for the various forms of arthritis or rheumatism which can restore to normal the pathological changes which result from arthritic or rheumatic ailments.

Where a corporation and its three officers, engaged in the interstate sale and distribution of their "Artex" medicinal preparation; in advertising in newspapers and by radio, and through display cards and other display advertising disseminated to retail druggists, directly or by implication—

(*a*) Represented falsely that said product constituted an adequate, effective, and reliable treatment which would cure all forms of arthritis, rheumatism and kindred ailments, including neuritis, sciatica, bursitis, gout, and lumbago, and would arrest the progress and correct the underlying causes of arthritis, gout and lumbago;

(*b*) Represented falsely that, taken as directed, it would prevent arthritis; and

(*c*) Represented falsely that it constituted an adequate, effective, and reliable treatment for the symptoms of the aforesaid ailments and for migraine headaches and female period pains, including shooting pains, and also for the stiffness and crippling effects that accompany some of the aforesaid conditions;

The facts being that the aforesaid preparation, due to its salicylic or aspirin content as an analgesic and antipyretic, would do no more than afford temporary relief of minor aches, pains, and discomforts;

(*d*) Falsely represented that said product alkalized when absorbed into the bloodstream and helped nature to remove the uric acid;

(*e*) Falsely represented that calcium succinate, one of the ingredients of the product, stimulates cellular respiration, protects tissues and eliminates toxicity of acetylsalicylic acid, another ingredient;

The facts being that, taken orally, calcium succinate is converted by the liver to sugar, no significant amount of said substance as such reaches the bloodstream, and as an ingredient of said product it was therapeutically inoperative;

(*f*) Falsely represented that the ingredient para aminobenzoic acid was effective as a tissue builder and helped nature repair damaged joints;

(*g*) Falsely represented that the ingredient thiamin chloride promotes a sense of well being;

(*h*) Falsely represented that salicylic acid, one of the ingredients of the product, suppresses rheumatic activity and prevents the onset of arthritis;

With capacity and tendency to mislead and deceive, and with effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and into the purchase of substantial quantities of said drug preparation as a result:

Held, That such false and misleading representations constituted false advertisements within the intent and meaning of the Federal Trade Commission Act, and that the aforesaid acts and practices were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Frank Hier* and *Mr. Abner E. Lipscomb*, hearing examiners.

Mr. Joseph Callaway for the Commission.

Adams, Duque, Davis & Hazeltine, of Los Angeles, Calif., and *Mr. Andrew J. Eyman*, of San Francisco, Calif., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Reliance Pharmacal Company, a corporation, and Edward S. Morris, William Berrian,

and Florence T. Morris, individually and as officers of Reliance Pharmacal Company, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Reliance Pharmacal Company is a corporation organized under the laws of the State of California and having its office and principal place of business in Nevada City, California.

Respondents Edward S. Morris, William Berrian and Florence T. Morris are now and at all times mentioned herein, have been Directors of respondent Reliance Pharmacal Company and respectively the President, Vice President and Secretary-Treasurer thereof; all of said individual respondents have offices and principal places of business in Nevada City, California. The said individual respondents are now and at all times mentioned herein, have been in control of the management, policies and operation of Reliance Pharmacal Company, particularly, in respect to the acts, practices and methods herein alleged.

PAR. 2. Respondents are now and have been for approximately one year engaged in the business of selling and distributing a certain drug product as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondents for said product, and the formula, and directions, for the use thereof are as follows:

Designation: Artex

Formula:

Calcium Succinate	2.8 gr.
Acetylsalicylic Acid	3.7 gr.
Para Aminobenzoic Acid	10 gr.
Thiamin Chloride	1 mg.
Plus excipients	

Directions for use on the Artex bottle label are as follows:

Dosage: 6 to 12 tablets daily, or as directed by your physician. Read direction sheet in carton for more detailed directions. NOTE: Consult your physician when pains occur in children or adolescents, or if pains suffered by children or adolescents are accompanied by fever.

Dosage: 6 to 12 tablets daily or as directed by your physician. 12 tablets daily supply 12 times the established minimum daily requirements of Thiamin Chloride (Vitamin B_1) for individuals 12 years of age and over. The minimum daily requirement for Para Aminobenzoic Acid in human nutrition has not been established.

More detailed directions, which are referred to on the bottle label are furnished in the "Direction Sheet" enclosed within the carton and are as follows:

The greatest good can be anticipated when directions for the use of ARTEX TABLETS are followed carefully.

The Reliance Pharmacal Company suggests a maximum intake of TWELVE ARTEX TABLETS daily . . . three tablets with water before each meal, and three at bedtime, until severe pain is relieved. Then, reduce intake to EIGHT ARTEX TABLETS . . . that is . . . two tablets with water before each meal and two at bedtime . . . daily for ten weeks, or until all discomfort is gone. Then, reduce the dosage to FOUR ARTEX TABLETS . . . one before each meal and one at bedtime for a period of at least eight weeks.

DO NOT BE LULLED INTO CARELESS DISREGARD OF YOUR CONTINUED NEED FOR ARTEX TABLETS AFTER RELIEF FROM PAIN HAS BEEN OBTAINED. Truly effective results depend upon your continuance of the prescribed ARTEX routine for a few months longer, for although the actual pain may be gone, rheumatic activity continues in the body for a much longer period.

The time each day you take your ARTEX TABLETS is not nearly so important as TAKING them regularly. Space the dosage by meals and bedtime, but don't SKIP a single dosage and expect the same good results!

ARTEX TABLETS are a result of long years of scientific research, in process of which it has been established that the ingredients that comprise ARTEX not only offer effective relief of symptoms, but are also of material assistance in preventing an early repetition. Therefore, when relief of pain results from your faithful ARTEX TABLETS routine, it is earnestly advised that you CONTINUE TO TAKE ARTEX TABLETS for several months, to insure more lasting results.

IMPORTANT! Consult your physician when pains occur in children or adolescents, or if pains in children or adolescents are accompanied by a fever. * * *

Respondents cause the said product when sold to be transported from their place of business in the State of California to purchasers thereof located in other States of the United States. Respondents maintain and at all times mentioned herein have maintained a course of trade in the said product in commerce between and among the various States of the United States. Respondents' volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of their business, respondents subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning Artex by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act for the purpose of inducing and which were likely to induce directly or indirectly its purchase. These advertisements include but are not limited to the following:

ADVERTISEMENTS IN THE FOLLOWING NEWSPAPERS ON APPROXIMATELY THE FOLLOWING DATES:

The San Francisco Call-Bulletin, San Francisco, California, January 25, 27, and 31, 1949, February 3, 7, 10, 14, 17, 23, 25, and 28, 1949, March 3 and 11, 1949.

The Grass Valley Union, Grass Valley, California, January 27, 1949.

Chico Enterprise, Chico, California, January 29, 1949, February 14, 23 and 28, 1949, March 3, 10, 11, 17, 24 and 31, 1949.

Grit, Williamsport, Pennsylvania, February 6 and 20, 1949.

Modesto Bee, Modesto, California, February 14, 23, and 28, 1949, March 3, 10, 17, 24 and 31, 1949, and April 6, 1949.

Fresno Bee, Fresno, California, February 14, 23, and 28, 1949, March 3, 10, 17, 24, and 31, 1949, and April 7, 1949.

Santa Cruz Sentinel News, Santa Cruz, California, February 14, 23, and 28, 1949, March 3, 10, 17, 24, and 31, 1949.

San Mateo Times, San Mateo, California, February 14, 1949.

Marysville Appeal-Democrat, Marysville, California, March 14, 1949.

Long Beach Press-Telegram, Long Beach, California, March 24, 1949.

Radio continuities, three announcements per day, Monday through Friday for a specified number of times, usually 120 times, beginning on the following dates broadcast over the following radio stations:

February 3, 1949

KVCV—Redding, California
KVOE—Santa Ana, California
KVEC—San Luis Obispo, California
KYOS—Merced, California
KCRA—Sacramento, California
KTRB—Modesto, California
KMYC—Marysville, California
KLAC—Los Angeles, California

February 7, 1949

KUSN—San Diego, California
KWKW—Pasadena, California
KCSB—San Bernardino, California
KGDM—Stockton, California
KFRE—Fresno, California
KERO—Bakersfield, California
KTMS—Santa Barbara, California
KCOY—Santa Maria, California

February 9, 1949

XEGM—Tia Juana, Mexico
XECL—Mexicali, Mexico

February 20, 1949

KHSL—Chico, California

April 1, 1949

KLOK—San Jose, California

Respondents have disseminated and caused the dissemination of the advertisements referred to above for the purpose of inducing and the said advertisements were likely to induce, directly or indirectly, the purchase of Artex in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Through the use of the said advertisements respondents have made, directly and by implication the representations shown in the following subparagraphs identified as (*a*) to (*i*) inclusive. The said advertisements by reason of said representations are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act by reason of the true facts which are set forth in subparagraphs (1) to (10) inclusive.

(*a*) That Artex is an adequate, effective and reliable treatment for all forms of arthritis, rheumatism and kindred ailments including neuritis, sciatica, bursitis, gout, and lumbago.

(1) Artex, however taken is not an adequate, effective or reliable treatment for any kind of arthritis, rheumatism or any kindred ailments including neuritis, sciatica, bursitis, gout and lumbago.

(*b*) That Artex will arrest the progress of, will correct the underlying causes of and will cure all forms of rheumatism and arthritis.

(2) Artex, however taken, will not arrest the progress of, will not correct the underlying causes of, or cure any form of rheumatism or arthritis.

(*c*) That Artex, taken as directed will prevent arthritis.

(3) Artex, however taken will not prevent arthritis in any form.

(*d*) That Artex is an adequate, effective and reliable treatment for the symptoms of arthritis, rheumatism, neuritis, sciatica, gout, lumbago, migraine headaches and female period pains including shooting pains, and also the stiffness and crippling effects that accompany some of these conditions.

(4) Artex, however taken, is not an adequate or reliable treatment for the symptoms of arthritis, rheumatism, sciatica, gout, lumbago, migraine headaches or female period pains, or the stiffness or crippling

effects that accompany these conditions. The pains may be of such a nature that they will be in no way alleviated by the use of Artex, however taken, and in other cases the relief will be limited to such temporary and partial relief of minor aches and pains as its aspirin content may afford in the individual case.

(5) There is one type of neuritis, caused by vitamin B_1 deficiency, which is uncommon, and for the treatment of which, including the symptoms, Artex, because of its Thiamin content, may be of value. This type of neuritis is not a kindred ailment to any form of arthritis or rheumatism.

(*e*) That Artex alkalizes when absorbed into the blood stream and helps nature to remove the uric acid.

(6) Artex does not alkalize when absorbed into the blood stream nor does it help nature to remove the uric acid.

(*f*) That calcium succinate, one of the ingredients of Artex, stimulates cellular respiration, protects tissues and eliminates toxicity of acetylsalicylic acid, another ingredient of Artex.

(7) Calcium succinate as an ingredient of Artex or however taken does not stimulate cellular respiration, protect the tissues of the body or have any effect on the toxicity of acetylsalicylic acid, the common name for which is aspirin. If Artex is taken in sufficient quantities for the aspirin content to have a toxic effect, such effect will obtain regardless of the presence of calcium succinate. However, the amount of aspirin in Artex when that preparation is taken as directed, is not ordinarily toxic.

(*g*) That para aminobenzoic acid, one of the ingredients in Artex is effective as a tissue builder and helps nature repair damaged joints.

(8) Para aminobenzoic acid as an ingredient of Artex or however taken does not build tissues or help nature repair damaged joints.

(*h*) That thiamin chloride, one of the ingredients of Artex, promotes a sense of well being.

(9) Thiamin chloride as an ingredient of Artex or however taken does not promote a sense of well being.

(*i*) That acetylsalicylic acid, one of the ingredients of Artex suppresses rheumatic activity and prevents the onset of arthritis.

(10) Acetylsalicylic acid as an ingredient of Artex or however taken does not suppress rheumatic activity or prevent the onset of arthritis.

PAR. 5. The use by the respondents of the said false advertisements with respect to Artex has had the capacity and tendency to mislead and deceive and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the representations and statements contained therein were true and into

the purchase of substantial quantities of Artex by reason of said erroneous and mistaken belief.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated May 21, 1953, the initial decision in the instant matter of hearing examiner Abner E. Lipscomb, as set out as follows, became on that date the decision of the Commission, it appearing that while service of the initial decision was completed on April 20, 1953 and respondents filed notice of intention to appeal therefrom on April 29, 1953, they failed to file appeal brief before May 20, 1953.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 30, 1949, issued and subsequently served its complaint in this proceeding upon respondents Reliance Pharmacal Company, a corporation, and Edward S. Morris, William Berrian and Florence T. Morris, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the issuance of the complaint herein and the filing of respondents' answer thereto, hearings were held, at which evidence was received in support of the allegations of the complaint. On August 25, 1950, counsel for the respondents and counsel in support of the complaint entered into a stipulation, thereafter supplemented by a further stipulation dated June 30, 1952, in which they agreed that the above-named hearing examiner might be substituted for the hearing examiner originally designated herein; that the formula and therapeutic effect of respondents' preparation "Artex" are substantially the same as those of the preparation "Dolcin," involved in the proceeding before the Federal Trade Commission entitled "In the Matter of Dolcin Corporation, et al., Docket No. 5692"; and that the entire transcript of all hearings held in that proceeding, together with such evidence as had been and might thereafter be taken in the present proceeding, should be included in the record herein. Thereafter, this proceeding regularly came on for initial adjudication by the above-named hearing examiner on the entire record, including proposed find-

ings as to the facts and conclusions presented by counsel supporting the complaint, counsel for respondents not having submitted proposed finding as to the facts or conclusions; and the hearing examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public, and makes the following findings as to the facts, conclusions drawn therefrom, and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Reliance Pharmacal Company is a corporation organized under the laws of the State of California, and has its office and principal place of business in Nevada City, California.

At the time of the issuance of the complaint herein, respondents Edward S. Morris, William Berrian and Florence T. Morris were directors and, respectively, President, Vice President, and Secretary-Treasurer of said corporation; all of said individual respondents had offices in Nevada City, California, and were in control of the management, policies and operation of respondent Reliance Pharmacal Company with respect to the acts, practices and methods hereinafter set forth.

Respondents, at the time of the issuance of the complaint herein and for approximately one year prior thereto, engaged in the business of selling and distributing a certain medicinal preparation designated "Artex" which is a drug preparation within the meaning of the Federal Trade Commission Act.

PAR. 2. Respondent William Berrian, since April 7, 1950, has had no connection with the respondent corporation. He is not now engaged in or employed by any organization selling any preparation similar to the drug preparation "Artex," or for which claims are made similar to the claims that were made for "Artex," and has given his assurance, in writing, that he does not intend again to engage therein.

PAR. 3. The formula and directions for the use of respondents' said drug preparation "Artex" are as follows:

Formula:

Calcium Succinate	2.8 gr.
Acetylsalicylic Acid	3.7 gr.
Para Aminobenzoic Acid	10 gr.
Thiamin Chloride	1 mg.
Plus excipients	

Directions for use on the "Artex" bottle label are as follows:

DOSAGE: 6 to 12 tablets daily, or as directed by your physician. Read direction sheet in carton for more detailed directions. NOTE: Consult your physician when pains occur in children or adolescents, or if pains suffered by children or adolescents are accompanied by fever.

DOSAGE: 6 to 12 tablets daily or as directed by your physician. 12 tablets daily supply 12 times the established minimum daily requirements of Thiamin Chloride (Vitamin B1) for individuals 12 years of age and over. The minimum daily requirement for Para Aminobenzoic Acid in human nutrition has not been established.

More detail directions, which are referred to on the bottle label, are furnished in the "Direction Sheet" enclosed within the carton and are as follows:

The greatest good can be anticipated when directions for the use of ARTEX TABLETS are followed carefully.

The Reliance Pharmacal Company suggests a maximum intake of TWELVE ARTEX TABLETS daily . . . three tablets with water before each meal, and three at bedtime, until severe pain is relieved. Then, reduce intake to EIGHT ARTEX TABLETS . . . that is . . . two tablets with water before each meal and two at bedtime . . . daily for ten weeks, or until all discomfort is gone. Then, reduce the dosage to FOUR ARTEX TABLETS . . . one before each meal and one at bedtime for a period of at least eight weeks.

DO NOT BE LULLED INTO CARELESS DISREGARD OF YOUR CONTINUED NEED FOR ARTEX TABLETS AFTER RELIEF FROM PAIN HAS BEEN OBTAINED. Truly effective results depend upon your continuance of the prescribed ARTEX routine for a few months longer, for although the actual pain may be gone, rheumatic activity continues in the body for a much longer period.

The time each day you take your ARTEX TABLETS is not nearly so important as TAKING them regularly. Space the dosage by meals and bedtime, but don't SKIP a single dosage and expect the same good results!

ARTEX TABLETS are a result of long years of scientific research, in process of which it has been established that the ingredients that comprise ARTEX not only offer effective relief of symptoms, but are also of material assistance in preventing an early repetition. Therefore, when relief of pain results from your faithful ARTEX TABLETS routine, it is earnestly advised that you CONTINUE TO TAKE ARTEX TABLES for several months, to insure more lasting results.

IMPORTANT! Consult your physician when pains occur in children or adolescents, or if pains in children or adolescents are accompanied by a fever. * * *.

PAR. 4. Respondents caused the said drug preparation "Artex," when sold, to be transported from their place of business in the State of California to purchasers thereof located in other States of the United States. Respondents, at all times herein mentioned, maintained a course of trade in the said drug preparation "Artex" in commerce between and among the various States of the United States. Respondents' volume of business in said preparation averaged approximately $5,000 per month.

PAR. 5. In the course and conduct of their business, respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning the drug prepara-

tion "Artex," by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, its purchase. These advertisements included those published in newspapers in various cities in California during 1949, which were sent through the United States mails and had an interstate circulation; one periodical, "Grit," published in Williamsport, Pennsylvania, during 1949; various radio continuities broadcast in 1949 over various broadcasting stations located in the State of California and in Mexico; display cards and other other display advertising disseminated to retail druggists.

Respondents have disseminated and caused the dissemination of such advertisements for the purpose of inducing, and such advertisements were likely to induce, directly or indirectly, the purchase of the drug preparation "Artex" in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Typical of the statements and representations contained in said advertisements are the following:

CONCLUSIVE PROOF OF RESULTS: SUCCESS REPORTED IN HUNDREDS OF CASES.

A recent article* published by one of America's finest medical authorities states that 396 cases of arthritis, osteoarthritis, rheumatoid arthritis, mixed arthritis, spondylitis, hypertrophic and atrophic arthritis of the spine* and acute rheumatic polyarthritis were administered Calcium Succinate and Acetylsalicylic Acid in combination (ingredients used in ARTEX formula) and 208 cases of osteoarthritis treated showed 95% definite improvement in 8 days, "in 34 cases of acute rheumatic polyarthritis, the therapeutic response was more dramatic than in any other categories of arthritis studied . . . all evidence of rheumatic activity disappeared within 14 days!" Other arthritic types have shown similar results under the prescribed treatment.

ARTEX AIDS ALL FORMS OF ARTHRITIS

Rheumatic and arthritis pain can strike almost every joint, muscle and part of the body. Arthritis and rheumatism, however, have many forms each with different symptoms. Enlarged joints are known as osteoarthritis. Infection of the joints and accompanying fluids is known as rheumatoid arthritis, skin around infected areas may be swollen or red. Still another form of arthritis is the specific infectious type. The components of ARTEX have proved successful in every type.

YOU NEED NOT SUFFER THE PAIN OF ARTHRITIS, RHEUMATISM, NEURITIS, SCIATICA OR BURSITIS.

ARTEX for neutritis, gout, bursitis and kindred inflammatory diseases as well as arthritis and rheumatism. Work . . . play . . live again. ARTEX may be your answer.

If you are among the even greater numbers crippled by rheumatism, neuritis, sciatica, bursitis and lumbago, take heed. . . . ARTEX is here! ARTEX is clinically proven.

*Dr. Murrel M. Szucs, Ohio State Medical Journal, October, 1947.

ARTEX FOR THE RELIEF OF SYMPTOMS OF ARTHRITIS, RHEUMATISM, NEURITIS, SCIATICA, LUMBAGO, MIGRAINE HEADACHE, FEMALE PERIOD PAINS.

ARTEX seeks to reduce the swelling, stiffness, shooting pains and crippling effects that are the symptoms of arthritis and similar diseases.

ARTEX, another triumph of 20th century medical progress, is now available at low cost to every man, woman and child who knows what it is to suffer the searing torment of arthritis, rheumatism, neuritis, sciatica, lumbago, gout, bursitis, migraine headaches and female period pain.

ARTEX is non-toxic, alkalizing when absorbed into the blood stream, helping nature to remove the uric acid which often aggravates pain.

ARTEX contains:

CALCIUM SUCCINATE—not a drug but a normal constituent of tissues, a physiological catalyst which converts to citric acid in the body. Calcium succinate stimulates cellular respiration, protects tissues, eliminates toxicity of acetylsalicylic acid.

ACETYLSALICYCLIC ACID—an analgesic which suppresses rheumatic activity, acts favorably in preventing onset of arthritis and when combined as in ARTEX with Calcium Succinate may be taken in larger daily dosages without toxic effect, valvular reaction or gastrointestinal disturbances.

PARA AMINOBENZOIC ACID—is particularly effective as a tissue builder, and helps nature repair damaged joints.

THIAMIN HYDROCHLORIDE (Vitamin B1) promotes a sense of well being, an important daily requirement.

PAR. 7. Through the above-quoted advertisements and others similar thereto, respondents have represented, directly and by implication, as follows:

1. That Artex is an adequate, effective and reliable treatment for, will arrest the progress of, will correct the underlying causes of, and will cure all forms of arthritis and rheumatism and kindred ailments, including neuritis, sciatica, bursitis, gout and lumbago;

2. That Artex, taken as directed, will prevent arthritis;

3. That Artex is an adequate, effective and reliable treatment for the symptoms of arthritis, rheumatism, neuritis, sciatica, gout, lumbago, migraine headaches and female period pains, including shooting pains and also the stiffness and crippling effects that accompany some of these conditions;

4. That Artex alkalizes when absorbed into the blood stream and helps nature to remove the uric acid;

5. That calcium succinate, one of the ingredients of Artex, stimulates cellular respiration, protects tissues and eliminates toxicity of acetylsalicylic acid, another ingredient of Artex;

6. That para aminobenzoic acid, one of the ingredients of Artex, is effective as a tissue builder and helps nature repair damaged joints;

7. That thiamin chloride, one of the ingredients of Artex, promotes a sense of well being;

8. That acetylsalicylic acid, one of the ingredients of Artex, suppresses rheumatic activity and prevents the onset of arthritis.

PAR. 8. The terms "arthritis" and "rheumatism" are general terms, sometimes used interchangeably, which may refer to any of many diseases or pathological conditions, including, among others, rheumatic fever, fibrositis, myositis, neuritis, sciatica, lumbago, and bursitis, all of which are characterized by one or more of such symptoms or manifestations as pain, stiffness, and inflammatory and destructive changes in the joints and tissues of the body. These pathological conditions are of known as well as unknown origin. Examples of those of unknown origin are rheumatoid arthritis, osteomyelitis and rheumatic fever. Examples of such conditions of known causes are infectious arthritis, such as arthritis of syphilis, arthritis of gonorrhea, and arthritis associated with pneumonia and tubercular infections. In addition there are forms of arthritis, such as gout, which are connected with disturbances of metabolism.

Fibrositis is an irritation or discomfort, a syndrome of pain and stiffness which arises in the fibrous tissues of the body.

The term "neuritis" is a general term referring to an inflammation of the nerves, and denotes many different diseases resulting from various causes, such as infections, pressure on nerves from displaced organs or structures of the body, invasion of the nerve by neoplasm or tumor, intoxication with metals or toxins, and metabolic disturbances such as the form of neuritis occurring in diabetes.

Sciatica is a common form of neuritis felt along the course of the sciatic nerve. It is not a disease, but may occur as a sympton of many different diseases resulting from various causes, such as pressure on the sciatic nerve, a tumor in the spine, infection or inflammation of the sheath of the sciatic nerve, metabolic disturbances caused by toxins resulting from infection, fibrositis or arthritis involving the joints.

Lumbago is a form of fibrositis manifesting itself as a painful condition in the lower part of the back, of varying severity, sometimes so mild as hardly to interfere with a man's business, in other instances so violent as to render him unable to move in bed. Lumbago is associated with stiffness and muscle spasm provoked by attempts to move.

Bursitis is a form of fibrositis having specific reference to inflammation of a bursa, the fibrous sac or membrane surrounding a joint, and may reuslt from invasion of the bursa by various germs, such as streptococcus, mycobacterium, gonococcus, and the tubercle bacillus, and from rheumatic or fibrositic inflammation.

Infectious arthritis is a form of arthritis resulting from invasion of a joint by any one of various germs, such as staphlococcus and streptococcus, which are carried to the joint through the bloodstream from a focus of infection in the body, caused by an external wound or by various infectious diseases.

Osteoarthritis refers to a disease characterized by degenerative changes in the joints and other tissues and organs of the body. The clinical phenomena associated with osteoarthritis are pain, painful stiffness associated with movement of the joint, enlargement of some joints, narrowing of joint spaces, increase in size of joint surfaces, growth of spurs and increase in the extent of margins of the joint.

Rheumatoid arthritis is a chronic, progressive, destructive disease affecting joints and organs of the body, characterized by pain, swelling, stiffness and limitation of motion in joints and deterioration of the patient's general health. This disease is accompanied by pathological changes in the joints, such as thickening of the lining membrane; production of excessive fluid in the bursa in some instances, and absorption of fluid in others; atrophy of muscles, and sometimes destruction of portions of the bone ends, resulting in deformation of the joint. The cause of rheumatoid arthritis is unknown.

Gout is a disease connected with the disturbance of the metabolic functions of the body, and is accompanied by the symptoms of pain, swelling, redness and stiffness.

PAR. 9. The various pathological conditions generally referred to as "arthritis" and "rheumatism" progress and develop differently. Likewise, they require different treatment, which will vary not only between different types of such ailments, but between different individuals suffering from the same ailment, and between different stages in the progress thereof. An adequate, effective, or reliable treatment for any kind of "arthritis" or "rheumatism" must, therefore, be predicated upon individual diagnosis, in order to determine whether the patient has arthritis or rheumatism, the particular kind of such ailment present, and whether it arose from a known or an unknown cause. Such a diagnosis may require any or all of the following determinations:

1. History of the patient, including information as to age, sex, marital status, occupation, chronology of the present ailment; family history, such as age and cause of death of parents and relatives; any illnesses from which the patient may have suffered previously, particularly rheumatic fever, scarlet fever and streptococcus infections;

2. Detailed physical examination of every part of the patient's anatomy; and

3. Laboratory examination, such as blood count, serological test for syphilis, urinalysis, and certain other tests as they may seem useful in the individual case, such as X-ray and analysis of fluids in individual joints.

PAR. 10. An adequate, effective, or reliable treatment for any of the various types of ailments included in the general terms "arthritis"

and "rheumatism" may involve application of various therapeutic measures, including diet; rest or change of occupation; various types of physiotherapy, such as orthopedic or thermal procedures; and medication. Delay of proper diagnosis, with consequent failure to administer appropriate treatment, may result in the evolution of irreversible pathological changes, causing a crippled, useless joint or extremity, especially in those forms of arthritis and rheumatism known to be caused by specific infections. There is no drug, or combination of drugs, regardless of how administered, which will constitute an adequate, effective, or reliable treatment for the various forms of arthritis or rheumatism, nor is there any drug or combination of drugs which can restore to normal the pathological changes which result from arthritic or rheumatic ailments.

PAR. 11. The drug preparation "Artex," however taken, will not constitute an adequate, effective, or reliable treatment for any arthritic or rheumatic condition, including, among others, neuritis, sciatica, lumbago, and bursitis, nor will said preparation arrest the progress, correct the underlying causes, prevent or effect a cure of any of such conditions. The drug preparation "Artex," however taken, will not ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary relief thereof afforded by its salicylate content as an analgesic and antipyretic. The drug preparation "Artex," however taken, will have no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition, and will afford temporary relief of only minor aches, pains and discomforts. With the exception of such temporary relief, the drug preparation "Artex" cannot be depended upon to have any effect whatever upon the symptoms accompanying any arthritic or rheumatic condition, including, among others, neuritis, sciatica, lumbago and bursitis.

The drug preparation "Artex," because it contains acetylsalicylic acid, commonly known as aspirin, may have a transient and undependable effect upon the pain of gout, but will not have any effect upon the symptoms of swelling, redness and stiffness.

PAR. 12. The pain of migraine headaches is sometimes so severe that the drug preparation "Artex" will have practically no effect upon it. In no instance will relief be obtained in excess of such temporary and partial relief as the acetylsalicylic acid (aspirin) content of "Artex" will afford.

The drug preparation "Artex," taken as directed, will furnish only such temporary and partial relief from female period pains as its acetylsalicylic acid (aspirin) content will afford.

The drug preparation "Artex" does not alkalize when absorbed into the bloodstream, nor does it help nature to remove uric acid.

PAR. 13. Calcium succinate, when taken orally, as in the drug preparation "Artex," is converted by the liver into sugar, and no significant amount of succinate, as such, reaches the bloodstream. Calcium succinate, as an ingredient of "Artex," is therapeutically inoperative.

PAR. 14. Para aminobenzoic acid, as an ingredient of the drug preparation "Artex," or however taken, does not build tissues, nor help nature repair damaged joints.

Thiamin chloride, as an ingredient of the drug preparation "Artex," will not promote a sense of well being in persons having any form of arthritis or rheumatism.

PAR. 15. Respondents' representations concerning the drug preparation "Artex," as hereinbefore found, are false and misleading in material respects; have had the capacity and tendency to mislead and deceive, and have misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and into the purchase of substantial quantities of said drug preparation as a result thereof; and constitute false advertisements within the intent and meaning of the Federal Trade Commission Act.

CONCLUSIONS

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

In the light of the facts found in Paragraph Two, *supra*, there is no longer any public interest in proceeding further at this time as to respondent William Berrian. Accordingly, it appears that the complaint, insofar as it relates to respondent Berrian, should be dismissed, without prejudice.

ORDER

It is ordered, That respondent Reliance Pharmacal Company, a corporation, and its officers; respondents Edward S. Morris and Florence T. Morris, individually and as officers of said corporation; and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the drug preparation "Artex," or any preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from, 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, as follows:

(*a*) that said preparation constitutes an adequate, effective or reliable treatment for neuritis, sciatica, bursitis, gout, lumbago or any other kind of arthritic or rheumatic condition;

(*b*) that said preparation will arrest the progress of, correct the underlying causes of or cure rheumatism or arthritis;

(*c*) that the use of said preparation will prevent any form of arthritis;

(*d*) that said preparation will afford any relief of the severe pains of neuritis, sciatica, gout, bursitis, lumbago or any other kind of arthritic or rheumatic condition, or have any effect on the stiffness or crippling effects that accompany some of these conditions;

(*e*) that said preparation will have any therapeutic effect upon any of the symptoms or manifestations of neuritis, sciatica, gout, bursitis, lumbago or any other kind of arthritic or rheumatic conditions in excess of affording temporary relief of minor aches, pains or fever;

(*f*) that said preparation will have any therapeutic effect upon migraine headache or the pains thereof, in excess of such temporary and partial relief of pain as its acetylsalicylic acid (aspirin) content will afford;

(*g*) that said preparation will have any therapeutic effect upon female period pains in excess of such temporary and partial relief of pain as its acetylsalicylic acid (aspirin) content will afford;

(*h*) that said preparation alkalizes when absorbed in the bloodstream, or helps nature to remove the uric acid;

(*i*) that calcium succinate, one of the ingredients of Artex, stimulates cellular respiration, protects tissues or eliminates the toxicity of acetylsalicylic acid, another ingredient of Artex;

(*j*) that para aminobenzoic acid, one of the ingredients of Artex, is effective as a tissue builder or helps nature repair damaged joints;

(*k*) that thiamin chloride, one of the ingredients of Artex, promotes a sense of well being in persons afflicted with arthritis or rheumatism;

(*l*) that acetylsalicylic acid, one of the ingredients of Artex, suppresses rheumatic activity and prevents the onset of arthritis.

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

It is further ordered, That the complaint herein, insofar as it relates to respondent William Berrian, be, and the same hereby is, dismissed without prejudice to the right of the Commission to take future action as to said respondent, with respect to the issues here involved.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents, Reliance Pharmacal Company, a corporation, and its officers, and Edward S. Morris and Florence T. Morris, individually and as officers of said corporation, shall, within sixty (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 the order to cease and desist [as required by said declaratory decision and order of May 21, 1953].

IN THE MATTER OF

AQUELLA PRODUCTS, INC., AND PRIMA PRODUCTS, INC., ET AL.

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

Docket 5622. Complaint, Nov. 24, 1948—Decision, June 1, 1953

Water may penetrate the masonry walls or floor of a basement by seepage, a broad term, which includes (1) leakage, namely, penetration of moisture through openings considerably larger than pore spaces, and (2) capillary penetration, namely, penetration through pore spaces or openings similar in size.

Where a corporation and its four officers, engaged in the competitive interstate sale and distribution of a mineral coating, designated "Aquella", under rights conveyed to it by another concern; in advertisements in newspapers and periodicals of general circulation and by folders, pamphlets and other advertising material, directly or by implication—

(*a*) Falsely represented that said product operated on an entirely new principle in the control of water seepage through masonry, by means of such typical statements as "Over and over Aquella does 'the impossible' where all other materials failed. Working on an entirely new principle, this amazing mineral surface coating controls seepage above or below ground, inside or outside";

Notwithstanding the fact that the scrubbing of the product into the surfaces concerned did not, as contended, represent a new principle but was a method which had long been used in the application of cementitious water paint products;

(*b*) Falsely represented that said product was used in waterproofing and controlling seepage in the Maginot Line; and

(*c*) Represented that the manner of application of said product was as easy and almost as simple as whitewashing;

The facts being that while the directions for use were comparatively simple, they clearly indicated that proper application of the product was a painstaking task much more complicated and difficult than the simple process of whitewashing;

(*d*) Represented that application of said product to the surface of all forms of porous masonry would positively prevent water leakage, dampness, and seepage above and below grade, and would render such surface impermeable to the passage of water regardless of its kind, porosity, or condition;

The facts being that while such a cementitious water paint was of value as a coating on the outside surface of masonry walls above grade, it would not prevent capillary penetration through the coating when used below grade on the inside; and while, properly applied, it might reduce leakage through

cracks in the masonry if a sufficient number of coatings were used to cover all openings not too wide to be bridged, such capillary penetration might in time result in damp walls and high humidity as to make living conditions uncomfortable and the basement unsafe for storage of materials which might be thus damaged; and

(*e*) Falsely represented through use of the terms "waterproof" and "watertight" in connection with said product, and particularly through use of testimonials in pamphlets and other advertising material, that such product would render units or structures to which it was applied impermeable to and proof against the passage of water and moisture for their life under all conditions of water and moisture contact and exposure;

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

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

As respects testimony offered by respondent with reference to a purported test somewhere in Queens, and also with reference to an exhibit erected for display in one of the office buildings: such testimony was vague and indefinite and did not constitute scientific consideration of the matter; the towers involved were not so constructed as to simulate wall construction in a building; and it was concluded, after careful consideration, that the testimony was of little or no evidentiary value and in no way tended to effectively counteract or contradict tests of respondent's product made by the National Bureau of Standards as a result of which it was concluded that coatings of the product involved were equal to, but not better than, coatings made of a high-grade cement water paint; that the product might be considered to be an effective and durable preparation when applied to the exposed faces of masonry walls above grade; but that, used below grade, while the coating greatly reduced the rate of leakage, it was not waterproof.

With regard to respondent's claim as to successful use of the product to control seepage in the Maginot Line and use thereof to waterproof the same, and its description thereof: while no direct evidence was introduced as to such claims, the Commission was of the opinion, following the answer of an expert witness from the Bureau of Standards to a hypothetical question embodying the description of the Line as set out in said advertising, that the product under the conditions described would not prevent the penetration of water through such a wall, prevent seepage by capillary action, or prevent condensation, and would not waterproof under said circumstances; and was consequently of the opinion that the greater weight of the evidence established that such advertising representation was false and misleading.

With respect to respondent's contention that it participated in the trade practice rules of the Commission for the masonry waterproofing industry promulgated August 31, 1946, and that on or before October 1, 1946, their effective date, it destroyed and had not subsequently issued any of the advertising containing any of the representations referred to in the complaint, and that the term "waterproof" had not since been used in connection with its prod-

uct: respondent disregarded certain excerpts of testimonial letters which appeared in its current advertising, and also disregarded a circular which, as stipulated, was used by it during the two years preceding; and while there was some contradictory testimony on the part of one witness, the record as a whole sustained the facts as stipulated; it further appearing, moreover, that respondent vigorously contended that the representations charged in the complaint were proper, and did not constitute false or deceptive advertising.

Before *Mr. Earl J. Kolb*, hearing examiner.

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

Mr. Robert E. Kline, Jr., of Washington, D. C., and *Kirlin, Campbell & Keating*, of New York City, for Aquella Products, Inc., and the officers thereof.

Mr. Milton Elias Schattman, of New York City, for Prima Products, Inc., and the officers thereof.

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 Aquella Products, Inc., a corporation, Ira A. Campbell, L. J. Clarke, Leandro W. Tomarkin and Zella F. Campbell, individually and as officers of Aquella Products, Inc., and Prima Products, Inc., a corporation, Milton P. Schreyer, Charles S. Brody, Milton E. Schattman, and Edward P. Schreyer, individually and as officers of Prima Products, Inc., hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Aquella Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1270 Sixth Avenue, New York 20, New York. Individual respondent Ira A. Campbell is president, individual respondents L. J. Clarke and Leandro W. Tomarkin are vice presidents and individual respondent Zella F. Campbell is treasurer of respondent Aquella Products, Inc. Acting individually and in their official capacities, the said individual respondents formulate, direct and control the acts, policies, practices and business affairs of said respondent corporation.

PAR. 2. Respondent, Prima Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of

the State of New York, with its office and principal place of business at 10 East 40th Street, New York 16, New York.

Individual respondents Milton P. Schreyer, Charles S. Brody, Milton E. Schattman and Edward P. Schreyer are president, vice president, secretary, and treasurer, respectively, of the respondent Prima Products, Inc. Acting individually and in their official capacities, the said individual respondents direct and control the policies, acts, practices and business affairs of the said respondent corporation.

PAR. 3. Respondent Aquella Products, Inc., and the individual respondents Ira A. Campbell, L. J. Clarke, Leandro W. Tomarkin and Zella F. Campbell, are now and ever since the organization of said corporation have been engaged in the manufacture, sale and distribution of a mineral surface coating designated "Aquella," in commerce between and among the various States of the United States and in the District of Columbia.

Respondent corporation Prima Products, Inc., for more than one year last past has had and still has the exclusive right for the sale and distribtuion of Aquella in the United States, Canada, Hawaii and the Philippine Islands; and is now and ever since the acquisition of such right, has been engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of Aquella to retail dealers, who in turn sell to the consuming public. Respondent corporation Prima Products, Inc., has caused and now causes said product, when sold by it, to be shipped and transported by respondent corporation Aquella Products, Inc., from the place of business of said respondent Aquella Products, Inc., located in the State of New York, to the purchasers thereof located in the various States of the United States and in the District of Columbia.

All of the respondents maintain and at all times for more than one year last past have maintained a constant course of trade in the said product "Aquella" in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their said businesses all of the respondents are now and at all times for more than one year last past have been in substantial competition with other firms, partnerships, and corporations and individuals engaged in the manufacture, sale and distribution of products of the same general type and designed for the same purposes, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of their business, respondent Aquella Products, Inc., and its officers above set forth have furnished and now furnish certain statements, claims, representations and information concerning the product Aquella to respondent Prima Products,

Inc., and its officers above set forth, for the purpose of and with the intent and expectation that such statements, claims, representations and information shall be used by the said Prima Products, Inc., and its officers in advertising and promoting the sale of said product in commerce.

In the course and conduct of their business and for the purpose of inducing the sale of the product Aquella in commerce, respondent Prima Products Inc., and its officers have and do make use of said statements, claims, representations and information supplied to it by Aquella Products, Inc., and its officers, and circulate said statements, claims, representations, and claims, statements and representations based upon such information with the knowledge and consent, and for the benefit and profit of said Aquella Products, Inc. Among and typical of such claims, statements and representations used by Prima Products, Inc., and its officers and circulated by means of folders, pamphlets and labels and in advertisements inserted in newspapers and periodicals of general circulation and by other advertising media, are the following:

Aquella, the amazing mineral surface coating that controlled seepage in the Maginot Line, works on entirely new principle—where other materials fail! Use inside or outside, above or below ground, on all porous masonry surfaces—such as brick, concrete, stucco, stone, cement, cement plaster masonry units.

AQUELLA . . . . first used to waterproof the Maginot Line.

Aquella is the positive, easy way to remedy water leakage, dampness or seepage inside or outside . . . above or below ground . . . on all porous masonry surfaces.

Tests (by National Bureau of Standards) won Aquella a rating of "excellent" on ordinary brick or concrete walls.

Because of the filling of the pores with Aquella, the presence of a hydrostatic head of water on the unprotected side does not impair the integrity of the treated surface nor its property to resist capillary action or seepage of water.

Already scores of new buildings and even low priced homes have been made damp-proof by a process almost as simple as whitewashing.

. . . it becomes a substance which is water-tight and which continues to harden with age.

PAR. 6. Through the use of foregoing statements, representations and claims, and others of the same import but not specifically set out herein, all of the respondents represented that the product Aquella operates upon an entirely new principle in the control of water seepage through porous masonry; that it was used in waterproofing and controlling seepage in the Maginot Line; that its manner of application is easy and almost as simple as whitewashing; that its application to the surface of all forms of porous masonry will positively prevent water leakage, dampness and seepage, inside and out, above and below grade and will render such surface impermeable to the passage of

water regardless of the kind, porosity or condition of the surface to which it is applied, regardless of cracks or other structural failures resulting from ground movement, settlement or other cause arising subsequent to application, regardless of the location of the structure or of the water, moisture or atmospheric conditions which such structure may encounter, regardless of whether it is applied to the internal or external surfaces of masonry and regardless of whether it is applied above or below grade; that as a result of tests made by the National Bureau of Standards, Aquella was given a rating of "excellent" under all conditions of use on ordinary brick and concrete walls.

PAR. 7. The foregoing statements, representations and claims are false, misleading and deceptive. In truth and in fact, Aquella does not involve any new principle in attempting to control water seepage through porous masonry. It was not used in the Maginot Line for the purpose of waterproofing or controlling seepage. The application of the product is not easy and is not comparable in any manner to whitewashing. Many porous masonry surfaces are of such a kind, of such porosity, in such a condition, so located and exposed to such water, moisture and atmospheric conditions that application of the product whether applied above or below grade or to external or internal surfaces will not prevent water leakage, dampness and seepage, and will not render such surfaces impermeable to the passage of water. The application of said product to masonry surfaces will not prevent the passage of water through cracks or structural failure resulting from ground movement, settlement or other cause arising subsequent to application.

The rating of "excellent" given by the National Bureau of Standards was not based upon tests involving the various water exposures and pressures to which brick and concrete walls are subjected throughout the country but was limited to the results of a test in which the product Aquella was applied to the exposed surfaces of brick and concrete walls, above grade, and subjected to a water pressure equivalent to a head of two inches applied to the exposed faces.

PAR. 8. Through the use of the words "waterproof" and "watertight," respondents represented that the application of said product to porous masonry units and structures will render such units and structures impermeable to and proof against the passage of water and moisture throughout the life of such units and structures under all conditions of water and moisture contact and exposure.

PAR. 9. The foregoing representations set forth in Paragraph Eight are false, misleading and deceptive for the reasons set forth in Paragraph Seven, which are incorporated in and made a part of this paragraph by reference thereto.

PAR. 10. The use by all of the respondents of the foregoing false, deceptive and misleading statements, representations and claims, disseminated as aforesaid, has had, and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and claims are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief so induced, to purchase substantial quantities of respondents' product. As a result thereof, trade has been unfairly diverted to respondents from their competitors in commerce between and among the various States of the United States and in the District of Columbia. In consequence, substantial injury has been done by respondents to substantial competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 11. 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 and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 24, 1948, issued and subsequently served its complaint in this proceeding upon the respondents as above-named in the caption hereof, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the filing of answers to the complaint, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission, theretofore designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. On September 30, 1952, the hearing examiner filed his initial decision.

Thereafter, this matter came on to be heard by the Commission upon the appeals from said initial decision filed by the counsel for respondents, Prima Products, Inc., Milton P. Schreyer, Charles S. Brody, Milton E. Schattman and Edward P. Schreyer, and by counsel supporting the complaint, briefs in support of and in opposition to said appeals, and oral arguments of counsel; and the Commission, having duly considered and ruled upon said appeals and having considered

the record herein and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Aquella Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1270 Sixth Avenue, New York 20, New York. Individual respondent Ira A. Campbell is president, individual respondents L. J. Clarke and Leandro W. Tomarkin are vice presidents and individual respondent Zella F. Campbell is treasurer of respondent Aquella Products, Inc.

PAR. 2. Respondent Prima Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 10 East 40th Street, New York 16, New York. Respondent Milton P. Schreyer served until January 1951 as president of said corporate respondent and respondents Charles S. Brody, Milton E. Schattman and Edward P. Schreyer are vice president, secretary and treasurer, respectively, thereof. Acting individually and in their official capacities, the said individual respondents have directed and controlled the policies, acts, practices and business affairs of said respondent corporation.

PAR. 3. Respondent corporation Prima Products, Inc., for several years last past has been engaged in the sale and distribution of a mineral surface coating designated "Aquella." This corporate respondent causes said product, when sold by it, to be transported from the place of manufacture in the State of New York to the purchasers thereof located in the various other States of the United States and in the District of Columbia.

Said respondent maintains and at all times mentioned herein has maintained a course of trade in the said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its said business, the respondent Prima Products, Inc., at all times mentioned herein has been in substantial competition with other corporations and with firms, partnerships and individuals engaged in the manufacture, sale and distribution of products of the same general type and designated for

the same purposes, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. On March 28, 1945, one Rene Haguenauer entered into a contract with the respondents Ira A. Campbell and L. W. Tomarkin, at that time copartners trading as Modern Waterproofing Paint Company, granting to said respondents the exclusive right to manufacture and sell the product "Aquella." Thereafter on January 18, 1946, said respondents assigned said contract to the respondent Aquella Products, Inc., which thereafter granted to respondent Prima Products, Inc., the exclusive right for the sale and distribution of the product Aquella in the United States and certain other areas. Thereafter on December 6, 1949, the respondent Aquella Products, Inc., sold and assigned to respondent Prima Products, Inc., all of its right, title and interest in and to said contract of March 28, 1945, between Rene Haguenauer and Modern Waterproofing Paint Company and also assigned the registered name "Aquella" (U. S. Registration No. 405422) and the goodwill thereof so far as it applied to the territory of the United States, Canada, Alaska, Hawaii and the Philippine Islands. By said sale respondent Aquella Products, Inc., and its officers were divested of all interest in the product Aquella except as to royalties.

PAR. 6. The record indicates that the respondent Aquella Products, Inc., delivered to the respondent Prima Products, Inc., all information which it had concerning the product Aquella at the time exclusive sales rights were granted. There is, however, no evidence that respondent Aquella Products, Inc., or its officers, at any time advertised said product or otherwise participated in the advertising issued by the respondent Prima Products, Inc. From the time that the Prima Products, Inc., took over the exclusive sales of said product Aquella, the advertising of said product was entirely in the hands of said respondent Prima Products, Inc., under the contractual relations which existed between it and the respondent Aquella Products, Inc.

PAR. 7. In the course and conduct of their business and for the purpose of inducing the sale of the product Aquella in commerce, respondent Prima Products, Inc., and its officers have represented directly or by implication by means of advertisements inserted in newspapers and periodicals of general circulation and by folders, pamphlets or other advertising material:

(1) That the product Aquella operates on an entirely new principle in the control of water seepage through porous masonry;

(2) That Aquella was used in waterprooffing and controlling seepage in the Maginot Line;

(3) That the manner of application of Aquella is as easy and almost as simple as whitewashing;

(4) That the application of Aquella to the surface of all forms of porous masonry will positively prevent water leakage, dampness and seepage above and below grade and will render such surfaces impermeable to the passage of water regardless of the kind, porosity or condition of the surface to which it is applied; and

(5) That through the use of the terms "waterproof" and "watertight" in connection with the product Aquella and particularly by means of the use of testimonials in pamphlets and other advertising material, Aquella will render units or structures to which it is applied impermeable to, and proof against, the passage of water and moisture throughout the life of such units and structures under all conditions of water and moisture contact and exposure.

PAR. 8. The product Aquella is a cementitious water paint. The directions for use provide that before application the surface must be thoroughly scrubbed clean of all dirt, dust, loose particles, paint, oil, grease, lacquer, paraffin or any other substance which would prevent Aquella from striking in or bonding into the masonry pores. The surface to which Aquella is to be applied must then be wet down until uniformly moist but without visible water film. The first coat of Aquella is then applied with a stiff fibre fender brush with thorough and vigorous scrubbings of Aquella into every pore of the surface taking care not to leave pinholes through which water may penetrate. The finished surface must be kept moist for at least 48 hours by using a fine spray at frequent intervals. While these directions for use are comparatively simple, they clearly indicate that proper application of respondents' product is a painstaking task much more complicated and considerably more difficult than the simple process of whitewashing. Respondents' representation that the application of the product Aquella is almost as simple as whitewashing consequently is deemed to be deceptive and misleading.

PAR. 9. The product Aquella does not operate upon a new principle. Typical of the statements made by the respondent in its advertising with reference to the contention that the product Aquella operates on a new principle is the following: "Over and over Aquella does 'the impossible' where all other materials fail. Working on entirely new principle, this amazing mineral surface coating controls seepage above or below ground, inside or outside." By such statements the respondents represent that the product Aquella has some inherent property which constitutes a new principle in the control of water seepage. In their defense in this proceeding the respondents contended that the new principle involved was the scrubbing of the product into the surfaces to which applied. This is simply a method of application which has long been used in connection with the appli-

cation of cementitious water paint products; consequently, the representation that Aquella operates on a new principle is false, misleading and deceptive.

PAR. 10. The product Aquella is composed essentially of white Portland cement, calcium carbonate (probably either ground limestone or chalk) and quartz (fine sand or finely ground quartz rock). These materials are commonly used ingredients of cement water paints. In December 1942, the National Bureau of Standards of the United States Department of Commerce made certain tests of the product Aquella, samples of which were supplied by respondent L. W. Tomarkin. For the purpose of testing, four walls were built, two of highly absorptive brick and two of stone-concrete block. The tests simulated exposure to wind-driven rain. The exposed face of the walls was covered with a thin sheet of running water and subjected to an air pressure of 10 pounds per square foot above atmospheric pressure. The walls treated on the exposed faces were rated as "Excellent" and the walls treated on the back or unexposed faces with Aquella were rated "Poor" when tested after the application of the first coat, and "Good" after the application of the second coat. The pressure applied to the exposed surfaces of these walls was equivalent to a head of 2 inches of water and the test did not indicate how effective such coatings might be when subjected to higher water pressure. After making the above test, the walls were stored out of doors and the coatings allowed to weather for about eight months. Further tests after this period indicated that the walls painted on the exposed faces, which had been rated "Excellent," were rated "Good" in tests made after weathering. The walls painted on the back or unexposed faces were rated "Poor" after the weathering period. As a result of these subsequent tests, it was concluded by the Bureau of Standards that the coatings of Aquella paint were equal to but not better than coatings made of a high-grade cement water paint and that this product might be considered to be an effective and durable preparation when applied to the exposed faces of masonry walls above grade.

PAR. 11. In December 1946 further tests of the product Aquella were made by the National Bureau of Standards to determine the effectiveness of this product when used below grade. In this test the product was applied to walls about 8 inches thick, 46 inches long and 54 inches high. The bottoms, ends and tops of the walls were built of absorptive brick laid with all the mortar joints completely filled with mortar. The center portions of the walls were built of 3-cell, 8 x 16 x 8 cinder-concrete blocks. Aquella was applied to the wall as directed by the manufacturer and was liberally applied to the back of the wall with

a scrub brush. Two coats were applied. The coatings were wetted down daily for two days after they were applied and the treated walls were kept indoors at a temperature between 60 and 70 degrees Fahrenheit. The wall was tested more than a month after the coatings were applied. The treated test walls were placed so that their exposed (untreated) faces formed an inner face of a test chamber which was then filled with water to a depth of 4 feet. An overflow pipe at the 4-foot level prevented the water from rising higher than the top of the cinder block portion of the walls. After the chamber was filled, a small amount of water was continually added in order to maintain a constant head of 4 feet. The coating of Aquella as the result of this test was rated as "Poor." The entire area of the coating over the cinder block was damp or wet and droplets of water ran down the treated face to the flashing. The rate of leakage from the flashing reached a maximum of 1 liter per hour in 6 hours. At the end of one day the rate of leakage was 0.8 liter per hour. The points of leakage through the Aquella coating were widely distributed throughout the area of the coating on the cinder-concrete block and there were no large holes or openings in the coating through which the leakage poured in a continuous stream. Although the coating of Aquella greatly reduced the rate of leakage through the cinder-concrete block portion of the wall, the coating was not waterproof.

PAR. 12. Water may penetrate the masonry walls or floor of a basement by seepage. The term "seepage" is a broad one and includes (1) leakage and (2) capillary penetration. The penetration of moisture through openings considerably larger than pore spaces would be termed "leakage." The penetration through pore spaces or openings similar in size would be termed "capillary penetration." Capillary penetration may occur whether there is water pressure or not.

PAR. 13. Aquella or any other similar cementitious water paint is of value as a coating on the outside surface of masonry walls above grade. At such a point, cement water paints would prevent the leakage of water through fairly large-sized cracks. The penetration of moisture by capillarity through a coating of Aquella on the outside face of the masonry wall above grade would occur, but such moisture would probably be evaporated on the inside of the wall as fast as it came through unless very highly absorptive units were used, and such capillary penetration may not be objectionable or a serious matter.

PAR. 14. When used below grade on the inside of a basement wall, a coating of Aquella properly applied may reduce leakage through cracks in the masonry if a sufficient number of coatings are applied to cover all openings not too wide to be bridged by the paint. Such

a coating would not prevent capillary penetration from the wall through the coating. A coating of Aquella on a basement wall may not control dampness on the wall. In a closed room, like a basement, the moisture penetrating a coating of Aquella, through permeable concrete or other porous masonry walls by such capillarity, approaches the inner face of the coating and may be changed from a liquid state to water vapor by the air in the capillary cell, a process known as evaporation or diffusion. The air in the cell will then enter into the room of the basement and be taken up by the air of the basement. As this process continues, the ability of the air in the basement to take up moisture becomes diminished. The relative humidity of the air in the basement rises, and as the process continues, the ability of the air in the basement to take up the moisture from the walls may be less than the rate of flow of moisture through the walls, so that the moisture passing through the capillary pores will eventually reach the face of the wall in a liquid state making the walls damp with the possibility of droplets of water being visible on the walls. Long before the walls become damp, the relative humidity in the basement may be so high as to make living conditions uncomfortable and the basement may not be safely used for storage of materials which may be damaged by a high relative humidity.

PAR. 15. The respondent introduced testimony with reference to a purported test made somewhere in Queens and also with reference to an exhibit erected for display in one of the office buildings. The testimony with reference to these purported tests or exhibits was vague and indefinite and did not constitute scientific consideration of the matter. The towers involved were not so constructed as to simulate wall construction in a building. Careful consideration has been given to the testimony introduced with reference to these purported tests and it has been concluded that this testimony is of little or no evidentiary value and in no way tends to effectively counteract or contradict tests of respondents' product made by the National Bureau of Standards.

PAR. 16. In its advertising the respondent Prima Products, Inc., has variously represented also that the product Aquella had been successfully used to control seepage in the Maginot Line and that said product had been used to waterproof the Maginot Line. In such advertising the Maginot Line was described as fortifications built hundreds of feet under ground with walls 20 to 30 feet thick, under valleys honeycombed with springs and water courses and in places built through marshes and swamps. There was no evidence introduced as to the use of the product Aquella on the Maginot Line, nor was any

direct evidence introduced as to the effectiveness or noneffectiveness of the product Aquella in controlling seepage on the Maginot Line. However, the expert witness from the National Bureau of Standards, C. C. Fishburn, was asked a hypothetical question embodying the description of the Maginot Line as set out in respondents' advertising and he testified that the use of Aquella under the conditions described would not prevent the penetration of water through such a wall, prevent seepage by capillary action, or prevent condensation, and would not waterproof under those circumstances. To the extent thus noted, the Commission is of the opinion that the greater weight of the evidence establishes that the advertising representation here under consideration is false and misleading.

PAR. 17. In the course of the hearings in this proceeding the respondent Prima Products, Inc., contended that it participated in, and subscribed to, the Trade Practice Rules of the Federal Trade Commission for the Masonry Waterproofing Industry promulgated August 31, 1946. Respondent further contended that on or before October 1, 1946, the effective date of said Trade Practice Rules, it destroyed and has not subsequently issued any advertising containing any of the representations referred to in the complaint in this proceeding and that the term "waterproof" has not since been used in conjunction with or descriptive of the product Aquella. In making this contention the respondent has disregarded excerpts from testimonial letters appearing in its current advertising and has also disregarded Commission's Exhibit No. 4 which is a circular which was stipulated, in the record, as having been used during the past two years and which was submitted to the Federal Trade Commission with respondent's transmittal letter dated July 30, 1947, as a sample of current advertising. While there is some contradictory testimony on the part of one witness, the record as a whole sustains the facts as stipulated in the record. Furthermore, the respondent has vigorously contended that the representations charged in the complaint were proper and did not constitute false or deceptive advertising.

PAR. 18. The use by the respondent, Prima Products, Inc., a corporation, and respondents, Milton P. Schreyer, Charles S. Brody, Milton E. Schattman and Edward P. Schreyer, individually and as officers of said corporation, of the false, deceptive and misleading statements, representations and claims, as hereinbefore described, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and claims are true and to induce them, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' product.

CONCLUSION

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

ORDER

It is ordered, That the respondents Prima Products, Inc., a corporation, and Milton P. Schreyer, Charles S. Brody, Milton E. Schattman and Edward P. Schreyer, individually and as officers of said corporation, and their respective agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' product, now designated "Aquella," or any other product of substantially similar composition or possessing substantially similar properties under whatever names sold do forthwith cease and desist from:

(1) Representing, directly or by implication, that respondents' product, now designated "Aquella," operates on an entirely new principle in the control of water seepage through porous masonry;

(2) Representing, directly or by implication, that respondents' products, now designated "Aquella," will waterproof or prevent the penetration of water through the walls of underground fortifications such as those constructed on the Maginot Line;

(3) Representing, directly or by implication, that the manner of application of respondents' product, now designated "Aquella," is as easy or simple as whitewashing or that the ease of application of said product in any way approaches the ease of application of whitewashing;

(4) Representing, directly or by implication, that the application of respondents' product, now designated "Aquella," to porous masonry surfaces below grade will render such structures impermeable to or proof against the passage of water or moisture; and

(5) Using the words "waterproof" or "watertight" or any other word or words of similar import or meaning to designate respondents' product or to describe or refer, directly or by implication, to use thereof, when applied to below grade masonry surfaces or structures.

It is further ordered, That the complaint be dismissed as to the respondents Aquella Products, Inc., a corporation, Ira A. Campbell,

L. J. Clarke, Leandro W. Tomarkin, and Zella F. Campbell, individually and as officers of Aquella Products, Inc.

It is further ordered, That respondents, Prima Products, Inc., Milton P. Schreyer, Charles S. Brody, Milton E. Schattman and Edward P. Schreyer, shall, within sixty (60) days after service 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 the terms of this order.

Commissioner Howrey not participating for the reason that oral argument was heard prior to his appointment to the Commission.

IN THE MATTER OF

MIRACLE HEARING AID, INC. ET AL.

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

Docket 6067. Complaint, Nov. 28, 1952—Decision, June 2, 1953

Where a corporation and an officer thereof, engaged in the interstate sale and distribution of a device designated "Miracle Hearing Aid" designed for insertion in the external auditory canal; in advertising their said product in newspapers and other advertising literature and on letterheads—

(*a*) Falsely represented that said device was a hearing aid and that by its use the hearing of deaf persons, or those with a partial or complete loss of hearing, would be benefited;

(*b*) Falsely represented that said device had been approved by physicians; and

(*c*) Falsely represented that the initial cost thereof was the only expense to the purchaser as there was nothing to wear out or replace;

(*d*) Falsely represented through the use of the words "Hearing Aid" as a part of the corporate name and of the trade name, that the device would be of benefit to deaf persons with partial or complete loss of hearing; and

(*e*) Failed to reveal facts material with respect to the consequences which might result from the use of the device under prescribed and usual conditions in that they failed to disclose that, used as directed, it might cause serious injury to the auditory canal or ear drum and might cause the extension of an infection should such be present;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations were true, and that the use of said device was free from danger, and because of such erroneous and mistaken belief to purchase respondents' said device:

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

Before *Mr. John Lewis*, hearing examiner.
Mr. A. S. Scott, Jr. for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Miracle Hearing Aid, Inc., a corporation, and Henry Pollack and Ruth Miller, indi-

vidually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Miracle Hearing Aid, Inc., is a corporation chartered and doing business under the laws of the State of New Jersey, with its principal place of business located at 587 Main Street, East Orange, New Jersey. The individual respondents, Henry Pollack and Ruth Miller, are, respectively, President and Secretary-Treasurer of corporate respondent with their address the same as that of the corporate respondent and, as such officers, control the acts, practices and policies of corporate respondent.

PAR. 2. Respondents are now, and for more than ten months last past have been, engaged in the business of advertising, selling and distributing a device, as "device" is defined in the Federal Trade Commission Act, designated "Miracle Hearing Aid." Said device consists of a small U-shaped wire with a coil at the base on which a small disc of thin rubber is attached. Said device is designed for insertion in the external auditory canal.

PAR. 3. Respondents cause said device, when sold, to be transported from their place of business in the State of New Jersey to the purchasers thereof located in various States of the United States other than the State of New Jersey and in the District of Columbia and at all times mentioned herein have maintained a course of trade in said device in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their aforesaid business, respondents have disseminated, and have caused and are now causing the dissemination of, advertisements concerning their said device by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers and other advertising literature and on letterheads; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning said device, by various means, for the purpose of inducing, and which were and are likely to induce, directly or indirectly, the purchase of said device in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in said advertisements, disseminated and caused to be disseminated, as hereinabove set forth, are the following:

SENSATIONAL, NEW MIRACLE HEARING AID THE NATURAL WAY TO BETTER HEARING.

So close to Natural Hearing . . . it's a Miracle!

You hear Naturally.

Say, "GOODBYE" to DEAFNESS

Does impaired hearing limit YOUR chances in business . . . harm your relationships with your family and friends . . . spoil your enjoyment of life? NOW, you can hear BETTER, CLEARER without cords, batteries, buttons or ear molds. The remarkable new Miracle Hearing Aid is lightweight, tiny . . . hardly visible in your ear! Based on the recognized sound-vibration principle . . . and approved by physicians. Your ONLY expense is the original cost—just $19.85 complete and ready to use!

Remember . . . No Batteries! NO UPKEEP AFTER PURCHASE

PAR. 5. By use of the aforesaid statements and others similar thereto, not specifically set forth herein, respondents represented that their device is a hearing aid and by its use the hearing of deaf persons, that is, those persons with a partial or complete loss of hearing, will be benefited; that said device has been approved by physicians; and that the initial cost thereof is the only expense to the purchaser as there is nothing to wear out or replace.

Through the use of the words "Hearing Aid" as a part of the name of corporate respondent and as part of the trade name for said device, respondents represented that their said device will be of benefit to deaf persons with partial or complete loss of hearing.

PAR. 6. The foregoing advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, deaf persons will not be benefited by use of said device. Physicians have not approved the use of this device. Parts of the device will wear out and must be replaced at the expense of the purchaser.

The use by respondents of the words "Hearing Aid" as a part of the corporate respondent's name and as part of the trade name is misleading in material respects since the device will be of no benefit to deaf persons.

PAR. 7. Respondents' advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material with respect to the consequences which may result from the use of said device to which the advertisements relate, under the conditions prescribed in said advertisements and under such conditions as are customary and usual. In truth and in fact, the use of the device as directed may cause serious injury to the auditory canal or ear drum. There is a possibility of traumatizing the canal wall or puncturing the ear drum when inserting the device. There is the further possibility of causing the extension of an infection should

this be present. Respondents do not disclose these material facts in their advertising.

PAR. 8. The use by the respondents of the foregoing false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and that the use of said device is free from danger and injury, and because of such erroneous and mistaken belief to purchase respondents' said device.

PAR. 9. The aforesaid acts and practices of respondents, as hereinabove 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.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated June 2, 1953, the initial decision in the instant matter of hearing examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 28, 1952, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, except the respondent Henry Pollack (as to whom service of the complaint was not made, said respondent having theretofore departed this life), charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. The said respondents failed to file answer to the complaint and failed to appear at the time and place fixed for hearing. At said hearing before the above-named hearing examiner, theretofore duly designated by the Commission, the attorney in support of the complaint moved that the hearing be closed without the taking of testimony and that the hearing examiner proceed, in due course, to find the facts to be as alleged in the complaint and issue an order to cease and desist in the form set forth in the "Notice" portion of said complaint. It appearing that the aforesaid "Notice" provided that the failure of respondents to file timely answer and to appear at the time and place fixed for hearing would be deemed to authorize the

Commission and the hearing examiner to find the facts to be as alleged in the complaint and to issue an order in the form therein set forth, the hearing examiner granted said motion and the hearing was thereupon closed. Thereafter, the proceeding regularly came on for final consideration by the said hearing examiner upon the complaint and said motion of the attorney in support of the complaint; and said hearing examiner having duly considered the record herein, finds that this proceeding is in the interest of the public and, pursuant to Rules V and VIII of the Rules of Practice of the Commission, makes the following findings as to the facts, conclusion drawn therefrom, and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Miracle Hearing Aid, Inc., is a corporation chartered and doing business under the laws of the State of New Jersey, with its principal place of business located at 587 Main Street, East Orange, New Jersey. Henry Pollack, now deceased, was the President of said corporation during his lifetime and the respondent Ruth Miller was and now is the Secretary-Treasurer of said corporation, the address of the individual respondent being the same as that of the corporate respondent. The individual respondent formulates, directs and controls the acts, practices, and policies of the corporate respondent.

PAR. 2. Respondents are now, and for more than ten months last past have been, engaged in the business of advertising, selling and distributing a device, as "device" is defined in the Federal Trade Commission Act, designated "Miracle Hearing Aid." Said device consists of a small U-shaped wire with a coil at the base of which a small disc of thin rubber is attached. Said device is designed for insertion in the external auditory canal.

PAR. 3. Respondents cause said device, when sold, to be transported from their place of business in the State of New Jersey to the purchasers thereof located in various States of the United States other than the State of New Jersey and in the District of Columbia and at all times mentioned herein have maintained a course of trade in said device in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their aforesaid business, respondents have disseminated, and have caused and are now causing the dissemination of, advertisements concerning their said device by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers and other advertising literature and on letterheads; and respondents have also

disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning said device, by various means, for the purpose of inducing, and which were and are likely to induce, directly or indirectly, the purchase of said device in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in said advertisements, disseminated and caused to be disseminated, as hereinabove set forth, are the following:

SENSATIONAL, NEW MIRACLE HEARING AID THE NATURAL WAY TO BETTER HEARING.

So close to Natural Hearing . . . it's a Miracle!

You hear Naturally.

Say, "GOODBYE" to DEAFNESS

Does impaired hearing limit YOUR chances in business . . . harm your relationships with your family and friends . . . spoil your enjoyment of life? NOW, you can hear BETTER, CLEARER without cords, batteries, buttons or ear molds. The remarkable new Miracle Hearing Aid is lightweight, tiny . . . hardly visible in your ear! Based on the recognized sound-vibration principle . . . and approved by physicians. Your ONLY expense is the original cost—just $19.85 complete and ready to use!

Remember . . . No Batteries! NO UPKEEP AFTER PURCHASE

PAR. 5. By use of the aforesaid statements and others similar thereto, not specifically set forth herein, respondents represented that their device is a hearing aid and by its use the hearing of deaf persons, that is, those persons with a partial or complete loss of hearing, will be benefited; that said device has been approved by physicians; and that the initial cost thereof is the only expense to the purchaser as there is nothing to wear out or replace.

Through the use of the words "Hearing Aid" as a part of the name of corporate respondent and as part of the trade name for said device, respondents represented that their said device will be of benefit to deaf persons with partial or complete loss of hearing.

PAR. 6. The foregoing advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, deaf persons will not be benefited by use of said device. Physicians have not approved the use of this device. Parts of the device will wear out and must be replaced at the expense of the purchaser.

The use by respondents of the words "Hearing Aid" as a part of the corporate respondent's name and as part of the trade name is misleading in material respects since the device will be of no benefit to deaf persons.

PAR. 7. Respondents' advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material with respect to the consequences which may

result from the use of said device to which the advertisements relate, under the conditions prescribed in said advertisements and under such conditions as are customary and usual. In truth and in fact, the use of the device as directed may cause serious injury to the auditory canal or ear drum. There is a possibility of traumatizing the canal wall or puncturing the ear drum when inserting the device. There is the further possibility of causing the extension of an infection should this be present. Respondents do not disclose these material facts in their advertising.

PAR. 8. The use by the respondents of the foregoing false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and that the use of said device is free from danger and injury, and because of such erroneous and mistaken belief to purchase respondents' said device.

CONCLUSION

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

ORDER

It is ordered, That the respondent, Miracle Hearing Aid, Inc., a corporation, and its officers, and respondent Ruth Miller, individually and as an officer of said corporation, and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their device now designated as Miracle Hearing Aid, or any other device of substantially similar construction or design or possessing substantially similar properties whether sold under the same name or any other name do forthwith cease and desist from, directly or indirectly:

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

(*a*) That the use of said device enables persons with complete loss of hearing to hear; that its use improves the hearing of persons with impaired hearing; or that it is of any value as a hearing aid.

(*b*) That physicians have approved this device.

(*c*) That the initial cost of said device is the only cost to the purchaser.

2. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement fails to reveal that the use of said device may result in serious injury to the auditory canal and ear drum.

3. Disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said device in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representations prohibited in paragraph 1 of this order or which fails to comply with the affirmative requirements set forth in paragraph 2 of this order.

It is further ordered, That the respondent, Miracle Hearing Aid, Inc., a corporation, and its officers, and respondent Ruth Miller, individually and as an officer of said corporation, and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of their device now designated as Miracle Hearing Aid, or any other device of substantially similar construction or design or possessing substantially similar properties whether sold under the same name or any other name do forthwith cease and desist from directly or indirectly:

Using the words "Hearing Aid" or any other word or words of similar import or meaning as a part of their corporate or trade name.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Henry Pollack, deceased.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents Miracle Hearing Aid, Inc., a corporation, and Ruth Miller, individually and as an officer of said corporation, shall, within sixty (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 the order to cease and desist [as required by said declaratory decision and order of June 2, 1953].

IN THE MATTER OF

RUDOLPH R. SIEBERT, TRADING AS RUDOLPH R. SIEBERT COMPANY AND AS R. R. SIEBERT COMPANY

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

Docket 6085. Complaint, Mar. 18, 1953—Decision, June 6, 1953

Where an individual engaged in the manufacture and interstate sale and distribution of a liquid silver polish designated "Pernet", which, containing about 30% carbon tetrachloride, bore no warning as to the dangers attendant upon its use, and was guaranteed in advertising as containing no "abrasives, cyanide or other harmful materials used in some silver polishes", with "nothing injurious or harmful", and as not harming the skin—

Represented directly and by implication that said product contained no injurious or harmful ingredients and was safe under all conditions of use as a silver polish, through aforesaid statements and failure to place a warning on the label thereof; when, in fact, by virtue of its tetrachloride content, it was a poison, the fumes of which, inhaled, might cause serious illness or even death, in a closed room, in absence of adequate ventilation, and might cause injury to the skin when contact therewith was frequent or prolonged;

With effect of deceiving a substantial portion of the purchasing public into the erroneous belief that said product was safe under all conditions of use, and inducing purchase and use of substantial quantities thereof under potentially dangerous conditions, and with capacity and tendency so to do; and with result of placing in the hands of retailers and others a means whereby prospective purchasers and users might be deceived and misled:

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

Before *Mr. John Lewis*, hearing examiner.
Mr. Harold A. Kennedy for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Rudolph R. Siebert, an individual hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest,

hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Rudolph R. Siebert is an individual trading as Rudolph R. Siebert Company and as R. R. Siebert Company with its principal place of business located at 183 St. Paul Street, Rochester, New York.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the manufacture, sale and distribution of a liquid silver polish designated as "Pernet" which contains approximately thirty percent carbon tetrachloride.

The instructions for use appearing on the label of said product are as follows:

Shake before Using

Saturate a small piece of cheese cloth with polish and rub surface lightly. When dry polish lightly with soft flannel cloth. For chaised or filagree work use soft brush.

Respondent causes his said product, when sold, to be transported from his place of business in the State of New York to purchasers 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 said product 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 and for the purpose of inducing the purchase of his silver polish, respondent has been and is now distributing an advertising circular to retailers and consumers containing the following false, deceptive and misleading statements:

We guarantee that it does not contain any abrasives, cyanide or other harmful materials used in some silver polishes.

There is nothing injurious or harmful in Pernet. Does not harm the skin.

PAR. 4. Through the use of said statements and through failure to place a warning on the label of said product of the dangers attendant upon its use, respondent has represented and is now representing directly and by implication that said product contains no injurious or harmful ingredients and is safe under all conditions of use as a silver polish.

PAR. 5. The aforesaid representations are false, deceptive, and misleading. In truth and in fact, respondent's said product, because of its carbon tetrachloride content, is a poison, and inhaling its fumes may cause serious illness or even death, when the product is used in

a closed room or in any place without adequate ventilation. When contact with said preparation is frequent or prolonged, it may cause injury to the skin.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and his failure to adequately warn the purchasing public of the dangers attendant upon the use of his product has had and now has the capacity and tendency to and does deceive and mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said product is safe under all conditions of use, and into the purchase and use, under potentially dangerous conditions, of substantial quantities of said product.

Respondent further has by his said acts placed in the hands of retailers and others a means and instrumentality whereby prospective purchasers and users may be deceived and misled as aforesaid.

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

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated June 6, 1953, the initial decision in the instant matter of hearing examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 18, 1953, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the service of said complaint upon said respondent a stipulation as to the facts was entered into and signed by respondent and by Harold A. Kennedy, counsel supporting the complaint, for the Federal Trade Commission, said stipulation being approved by William M. King, Chief, Division of Litigation, whereby it was stipulated and agreed that, subject to approval of the hearing examiner, a statement of facts therein set forth may be made a part of the record and taken as the facts in this proceeding and in lieu of evidence in support of the charges stated in the complaint, or in opposition thereto, and that the hearing examiner may proceed upon said statement of facts to make his Initial Decision stating his findings as to the facts, including inferences which he may draw from the said stipulation of

facts, and his conclusion based thereon, and enter his order disposing of the proceeding, without the filing of proposed findings and conclusions or the presentation of oral argument. Said stipulation expressly provides that the Commission may, if the proceeding comes before it upon appeal from the Initial Decision of the hearing examiner or by review upon the Commission's own motion, set aside the stipulation and remand the case to the hearing examiner for further proceedings upon the complaint. Thereafter, this proceeding regularly came on for final consideration by the above-named hearing examiner, theretofore duly designated by the Commission, upon the complaint, and the aforesaid stipulation as to the facts, said stipulation having been approved and made part of the record by the hearing examiner, who, after duly considering the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Rudolph R. Siebert is an individual trading as Rudolph R. Siebert Company and as R. R. Siebert Company with his principal place of business located at 183 St. Paul Street, Rochester, New York.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the manufacture, sale and distribution of a liquid silver polish designated as "Pernet" which contains approximately thirty percent carbon tetrachloride.

The instructions for use appearing on the label of said product are as follows:

Shake before Using.

Saturate a small piece of cheese cloth with polish and rub surface lightly. When dry polish lightly with soft flannel cloth. For chaised or filagree work use soft brush.

Respondent causes his said product, when sold, to be transported from his place of business in the State of New York to purchasers 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 said product 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 and for the purpose of inducing the purchase of his silver polish, respondent, up to August 1, 1952, distributed an advertising circular to retailers and consumers containing the following statements:

We guarantee that it does not contain any abrasives, cyanide or other harmful materials used in some silver polishes.

There is nothing injurious or harmful in Pernet. Does not harm the skin.

PAR. 4. Through the use of said statements respondent has represented, and through the failure to place a warning on the label of said product of the dangers attendant upon its use, respondent has represented and is now representing, directly and by implication, that said product contains no injurious or harmful ingredients and is safe under all conditions of use as a silver polish.

PAR. 5. The aforesaid representations are false, deceptive, and misleading. In truth and in fact, respondent's said product, because of its carbon tetrachloride content, is a poison, and inhaling its fumes may cause serious illness or even death, when the product is used in a closed room or in any place without adequate ventilation. When contact with said preparation is frequent or prolonged, it may cause injury to the skin.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and his failure to adequately warn the purchasing public of the dangers attendant upon the use of his product has had and now has the capacity and tendency to and does deceive and mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said product is safe under all conditions of use, and into the purchase and use, under potentially dangerous conditions, of substantial quantities of said product.

Respondent further has by his said acts placed in the hands of retailers and others a means and instrumentality whereby prospective purchasers and users may be deceived and misled as aforesaid.

CONCLUSION

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

ORDER

It is ordered, That respondent Rudolph R. Siebert, an individual trading as Rudolph R. Siebert Company and as R. R. Siebert Company, or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of Pernet silver polish, or any other product of substantially similar composition, whether sold under the same name or under any other name,

in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing directly or by implication that said product contains nothing injurious or harmful or that it will not harm the skin;

(2) Failing to disclose on the label of said preparation:

(*a*) that it should not be taken internally,

(*b*) that its fumes or vapors are harmful and that said product should only be used with adequate ventilation, and

(*c*) that when contact with said preparation is frequent or prolonged it may cause injury to the skin.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist [as required by said declaratory decision and order of June 6, 1953].

IN THE MATTER OF

CARTER PRODUCTS, INC., AND SMALL & SEIFFER, INC.

Docket 4960. Order, June 8, 1953

Order further modifying prior order of Commission, as theretofore modified on May 24, 1951, 47 F. T. C. 1348, in accordance with the opinion and decision of the Court of Appeals for the Seventh Circuit on February 2, 1951, in *Carter Products, Inc. et al.* v. *Federal Trade Commission*, 186 F. (2d) 821, and the court's final decree in said matter (which modified and affirmed, as modified, the Commission's said cease and desist order to *Carter Products, Inc. et al.*, July 14, 1949, 46 F. T. C. 64) ;

So as to permit respondents to represent through the modification of Paragraph 1 (e) of said prior cease and desist order, that respondents' preparation "Arrid" is safe for use on normal skin, as in said order below set out.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. R. P. Bellinger for the Commission.

Breed, Abbott & Morgan, of New York City, for respondents.

ORDER (1) GRANTING RESPONDENTS' PETITION TO MODIFY ORDER TO CEASE AND DESIST AND (2) MODIFYING SUCH ORDER

This matter came on to be considered by the Commission upon the petition of respondents for further modification of Paragraph 1 (e) of the modified order to cease and desist issued herein by the Commission on May 24, 1951. This portion of the order requires respondents to cease and desist from disseminating in commerce, or disseminating by any means for the purpose of inducing or which is likely to induce the purchase in commerce of the cosmetic product "Arrid," any advertisement which represents:

"That said preparation is safe or harmless to use without disclosing that it may cause irritation of sensitive skin."

Respondents ask that this provision be so modified as to permit them to represent that the product is safe for use on normal skins.

Counsel supporting the complaint does not object to the granting of the petition to the extent of modifying the said provision to read:

"That said preparation is safe and harmless, unless limited to normal skin."

The Commission having considered the matter, and being of the opinion that modification of the said order in the manner requested by respondents is consonant with its action in other cases involving competitive preparations:

It is ordered, That respondents' petition be, and the same hereby is, granted; and

It is further ordered, That Paragraph 1 (e) of the modified order to cease and desist issued by the Commission herein on May 24, 1951, be, and the same hereby is, further modified to read as follows:

"That said preparation is safe and harmless, unless such representation is limited to safety and harmlessness for normal skins."

NOTE.—Said modified order of May 24, 1951, 47 F. T. C. 1348, read as follows:

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and other evidence in support of the complaint and in opposition thereto, taken before a trial examiner of the Commission theretofore duly designated by it, the recommended decision of the trial examiner and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, 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 and issued its order to cease and desist on July 14, 1949; and

Respondents having filed in the United States Court of Appeals for the Seventh Circuit their petition to review and set aside the order to cease and desist issued herein, and that Court having heard the matter on briefs and oral argument, fully considered the matter, and, on February 20, 1951, entered its final decree modifying and affirming, as modified, the aforesaid order to cease and desist pursuant to its opinion announced on February 2, 1951:

Now therefore it is hereby ordered, That respondents, Carter Products, Inc., a corporation, and Small & Seiffer, Inc., a corporation, and their respective agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of a cosmetic preparation designated "Arrid," or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated, 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 through inference:

(*a*) That the application of said preparation stops underarm perspiration; provided, however, that nothing herein shall prevent the respondents from representing that the use of Arrid will prevent the appearance of perspiration when used as directed, namely, "daily" or "as frequently as you find necessary."

(*b*) That said preparation will keep the armpits dry or odorless, provided that nothing herein shall prevent respondents from representing that the use of Arrid will keep the armpits dry or odorless when used as directed, namely, "daily" or "as frequently as you find necessary."

(*c*) That the use of said preparation immediately after shaving will not irritate the skin.

(*d*) That said preparation will prevent the accumulation of odor-creating secretions or excretions in the armpits, provided that nothing herein shall prevent respondents from representing that the use of Arrid will prevent the accumulation of odor-creating body secretions or excretions in the armpits when used as directed, namely, "daily" or "as frequently as you find necessary."

(*e*) That said preparation is safe or harmless to use, without disclosing that it may cause irritation of sensitive skin.

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

It is further ordered, That the respondents shall, within ninety (90) days after the entry of the aforesaid decree by the United States Court of Appeals for the Seventh Circuit, 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

SAYLES FINISHING PLANTS, INC., SPECIAL FABRICS, INC., ET AL.

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

Docket 5878. Complaint, May 3, 1951—Decision, June 10, 1953

Where four corporate manufacturers of starch-filled or pyroxylin-impregnated book cloth, and sales subsidiary of one, constituting a substantial proportion of the interstate sellers of said product, and sellers of a major part of all the book cloth sold to dealers and consumers in the United States—

Engaged in practices, discussions, common understandings, and courses of action relative to the establishment of prices, terms, and conditions of sale in interstate commerce of such product; and in pursuance of such practices, etc.; as the case might be—

(1) Discussed with others of their number, changes in prices for book cloth, including discounts and terms and conditions of sale under which they offered to and did sell the cloth;

(2) Changed their method of pricing so as to eliminate quantity discounts and adopted in lieu thereof a uniform quantity to which list prices would be applied, with uniform premium charges for lesser quantities:

(3) Adopted uniform premium charges for specified services in connection with the manufacture of book cloth, e. g., embossing;

(4) Changed their freight allowance policy so as to eliminate free delivery points and adopted in lieu thereof the policy of allowing full freight to all customers located east of the Mississippi River and purchasing roll lots or more, and selling f. o. b. St. Louis, Missouri, to customers located west of said Mississippi River and purchasing like quantities; and

(5) Increased their prices from time to time:

Held, That such acts and practices, under the circumstances set forth, tended to lessen competition, were oppressive to the public interest and unfair within the intent and meaning of the Federal Trade Commission Act, and, if not checked, would unduly suppress competition; and that said interest and the provisions of the Act required the restraining of said respondents involved by appropriate order to cease and desist.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. Lynn C. Paulson and *Mr. Joseph J. Gercke* for the Commission.

Mr. Raymond S. Smethurst, of Washington, D. C., and *Edwards & Angell*, of Providence, R. I., for Sayles Finishing Corp. and Special Fabrics, Inc.

Mr. William A. Graham, of Providence, R. I., for Winterbottom Book Cloth Co., Ltd. and Interlaken Mills.

Sullivan & Worcester, of Boston, Mass., for Holliston Mills, Inc.

Davis, Polk, Wardwell, Sunderland & Kiendl, of New York City, for Joseph Bancroft and Sons Co., Albert D. Smith and Co. and Banco, Inc.

Bond, Schoeneck & King, of Syracuse, N. Y., for Albert D. Smith and Co. and The Columbia Mills, Inc.

McBride & Baker, of Chicago, Ill., for Joanna-Western Mills Co.

Covington & Burling, of Washington, D. C., for E. I. duPont de Nemours and Co., Inc.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act (52 Stat. 111; 15 U. S. C. A. Sec. 45), 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 as follows:

PARAGRAPH 1. Respondent Sayles Finishing Corporation is a corporation duly organized and existing under and by virtue of the laws of Rhode Island and has its main office and principal place of business at Saylesville, Rhode Island. Respondent Special Fabrics, Inc., a wholly-owned subsidiary of the aforesaid Sayles Finishing Corporation, is also a corporation duly organized under and by virtue of the laws of Rhode Island and likewise has its main office and principal place of business in Saylesville, Rhode Island.

Respondent Winterbottom Book Cloth Company, Ltd., is a corporation duly organized and existing under and by virtue of the laws of the United Kingdom and has its main office and principal place of business at 12 Newton Street, Manchester 1, England. Respondent Interlaken Mills, a wholly-owned subsidiary of the aforesaid Winterbottom Book Cloth Company, Ltd., is a corporation duly organized and existing under and by virtue of the laws of Rhode Island and has its main office and principal place of business in Fiskeville, Rhode Island.

Respondent Holliston Mills, Inc., is a corporation duly organized and existing under and by virtue of the laws of Massachusetts and has its main office and principal place of business at Lenox Street, Norwood, Massachusetts.

Respondent Joseph Bancroft and Sons Company is a corporation duly organized and existing under and by virtue of the laws of Delaware and has its main office and principal place of business at "Rockford," Wilmington, Delaware. Respondent Albert B. Smith and Company, a wholly-owned subsidiary of the aforesaid Joseph Bancroft and Sons Company, is a corporation duly organized and existing under and by virtue of the laws of New York and has its main office and principal place of business at 40 Worth Street, New York, New York. Respondent Banco, Inc., likewise a wholly-owned subsidiary of the aforesaid Joseph Bancroft and Sons Company, is a corporation duly organized and existing under and by virtue of the laws of New York and has its main office and principal place of business at 40 Worth Street, New York, New York.

Respondent The Columbia Mills, Inc., is a corporation duly organized and existing under and by virtue of the laws of New York and has its main office and principal place of business at 428 South Warren Street, Syracuse, New York.

Respondent Joanna-Western Mills Company is a corporation duly organized and existing under and by virtue of the laws of Illinois and has its main office and principal place of business at South Jefferson and West Cermak Streets, Chicago, Illinois.

Respondent E. I. du Pont de Nemours and Company, Inc., is a corporation duly organized and existing under and by virtue of the laws of Delaware and has its main office and principal place of business at 1007 Market Street, Wilmington, Delaware.

In addition to the respondents named above, Brookfield Mills, Inc., a corporation duly organized in 1946 and existing under and by virtue of the laws of Massachusetts and having its main office and place of business in East Brookfield, Massachusetts, is named herein as co-conspirator and as having participated in and been a party to the matters, transactions, practices and methods of competition hereinafter detailed and charged. Said Brookfield Mills, Inc., has not been made a respondent herein because complete ownership and control of said corporation was acquired in 1948 by respondent Holliston Mills, Inc., and therefore no longer functions as a competitive entity in the industry with which this complaint is concerned.

PAR. 2. Respondents, either directly or through their wholly-owned subsidiaries named also as respondents herein, manufacture and sell book cloth for use by book manufacturers or binderies in the process of binding books. Book cloth is classified as starch-filled or pyroxylin-impregnated, according to the materials used in the processing of the cotton cloth from which said book cloth is manufactured.

PAR. 3. Each of the respondents herein has been and is now engaged in interstate commerce in the sale and distribution of book cloth to purchasers who deal in or consume book cloth, and said purchasers are located throughout the United States. Pursuant to such sales and in the regular course of their business, respondents have shipped and do ship such products to their said customers at their respective places of business located at various points in the United States or in the District of Columbia other than in the States of the origin of such shipments.

Respondents now constitute, and throughout the periods of time hereinafter mentioned have constituted, substantially all of the sellers of book cloth and have been the sellers of substantially all the book cloth sold to dealers and consumers, and as such respondents have had and now have the power and capacity to dominate and manipulate the markets supplied by them and thus frustrate, destroy, suppress, lessen and eliminate competition in the industry.

PAR. 4. *Historical Background.* Respondents organized the Institute of Book Cloth and Impregnated Fabrics Manufacturers in June, 1933, and at that time entered into and thereafter carried out a planned common course of action, agreement, combination and conspiracy to suppress, restrain and eliminate competition in the sale of starch-filled and pyroxylin-impregnated book cloth. Pursuant to said course of action, agreement, combination and conspiracy and in furtherance of it respondents did the acts and things described below. From time to time members of the industry, other than those herein named as respondents, became parties to and cooperated in carrying out said course of action, agreement, combination and conspiracy. Each of the respondents hereinabove named was a member of the aforesaid Institute and cooperated with the members thereof in the acts, practices and methods determined, agreed upon and maintained by the members of said Institute.

Using the Institute as a central medium, these respondents and others agreed with one another to fix and maintain, and did fix and maintain prices, terms and conditions of sale for book cloth.

They agreed upon and maintained agreement concerning cash discounts and credit terms, uniform discounts off list prices for specified quantity purchases, and uniform premiums to be charged in addition to list prices for specified quantity purchasers.

They fixed and maintained minimum and maximum standards for classifications in accordance with which book cloth is priced and sold.

They exchanged price lists and schedules in advance of publication thereof to the trade.

They induced adherence to announced prices by threats, coercion and persuasion.

By joint action through the aforesaid Institute they fixed and maintained uniform freight allowances and designated free delivery points for the purpose and with the effect of depriving customers of the benefits of competition to be derived from geographical locations.

They entered into and carried out agreements not to sell book cloth classified as seconds, remnants or job lots in excess of five percent of the yardage manufactured each month.

The aforesaid Institute was dissolved in 1941. Following the dissolution of the aforesaid Institute, respondents have engaged in and continued the unfair methods of competition set forth in Paragraph 5 below.

PAR. 5. *Offenses Charged.* Respondents have for some time past and are now engaging in the use of unfair methods of competition in that they are discussing, composing, establishing and maintaining prices for book cloth through a planned common course of action, agreement, combination and conspiracy. More particularly, in pursuance of the present aforesaid course of action, agreement, combination and conspiracy:

1. Each of the respondents agreed to discuss, and does discuss, with other respondents any proposed change in prices for book cloth, including discounts and the terms and conditions of sale under which said respondent offers to sell or does sell book cloth.

2. Each of said respondents agreed with other respondents to change, and did change its method of pricing so as to eliminate quantity discounts and adopt in lieu thereof a uniform base quantity to which list prices would be applied, with uniform premium charge for lesser quantities.

3. Each of said respondents agreed with other respondents to adopt, and did adopt, uniform premium charges for specified services in connection with the manufacture of book cloth, e. g., embossing.

4. Each of the respondents agreed to change, and did change, its freight allowance policy so as to eliminate free delivery points and adopt in lieu thereof the policy of allowing full freight to all customers located east of the Mississippi River and purchasing roll lots or more, and selling f. o. b. St. Louis, Missouri, to customers located west of said Mississippi River and purchasing like quantities.

5. Each of the respondents agreed with other respondents to increase its prices, and pursuant thereto did increase its prices, from time to time.

PAR. 6. Each of said respondents acted in concert and in cooperation with one or more of the other respondents in doing and perform-

ing the acts and things hereinabove alleged in furtherance of the aforesaid understandings, agreements, combinations and conspiracies.

PAR. 7. The understandings, agreements, combinations and conspiracies hereinabove described and the acts and things done thereunder and pursuant thereto, as hereinabove alleged, have had and do have the effect of unreasonably and unduly restricting and restraining trade and commerce in book cloth between and among the several States of the United States and in the District of Columbia; of substantially enhancing prices to the purchasers of book cloth and maintaining prices at artificial levels and depriving the public of the benefits that otherwise would flow from competition among and between the respondents; of eliminating competition between the respondents and having the tendency and capacity to create a monopoly in the sale of book cloth in said commerce; of promoting discrimination against some buyers and users of respondents' products; of having a dangerous tendency to hinder, frustrate, suppress and prevent competition in book cloth in trade and commerce between and among the several States of the United States and in the District of Columbia; and the aforesaid acts, practices, methods and policies constitute unfair methods of competition and unfair practices in commerce, within the meaning of Section 5 of the Federal Trade Commission Act, as amended.

DECISION, FINDINGS AS TO THE FACTS, CONCLUSION, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 3, 1951, issued and subsequently served upon the respondents hereinafter described its complaint in this proceeding, charging said respondents with the use of unfair methods of competition in commerce in violation of section 5 of said Act. All of said respondents (except Winterbottom Book Cloth Company, Ltd., which appeared specially) filed appearances and answers in this matter; testimony was taken and evidence in support of the complaint was introduced by counsel supporting the complaint; and thereafter such counsel rested the case on behalf of the Commission. Thereafter, this matter having come on to be heard by the Commission upon a proposal for settlement dated March 18, 1953, submitted by all of the respondents except those as to whom the complaint is hereby dismissed, said proposal for settlement having been accepted and recommended by counsel in support of the complaint, the Director of the Bureau of Antimonopoly, the Chief of the Division of Investigation and Litigation, and the Hearing Examiner, and the Commission having duly considered said proposal for settlement and being of the opinion that said proposal for settlement provides for disposition of this proceeding in the public interest, accepts the same

and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The States of incorporation and location of the main offices and principal places of business of the following named corporate respondents are, respectively, as follows:

Name of corporation	State of incorporation	Main office and principal place of business
Special Fabrics, Inc	Rhode Island	Saylesville, R. I.
Interlaken Mills	Rhode Island	Fiskeville, R. I.
Holliston Mills, Inc	Massachusetts	Lenox Street, Norwood, Mass.
Joseph Bancroft & Sons Co	Delaware	"Rockford," Wilmington, Del.
Albert D. Smith & Company, Inc.	New York	40 Worth Street, New York, N. Y.

The Brookfield Mills, Inc., named in the complaint in this case, but not as a respondent, is a corporation organized in 1946 and existing under and by virtue of the laws of Massachusetts and has its main office and principal place of business in East Brookfield, Massachusetts. Complete control of said Brookfield Mills, Inc., was acquired by respondent, Holliston Mills, Inc., in 1948.

The evidence of record does not establish participation by the following named companies, named as respondents in the complaint, in the practices hereinafter found. Therefore, they are not hereinafter included in the term "respondents."

Name of corporation	State of incorporation	Main office and principal place of business
Sayles Finishing Plants, Inc.	Rhode Island	Saylesville, R. I.
The Winterbottom Book Cloth Company, Ltd.	England	12 Newton Street, Manchester 1, England.
Banco, Inc	New York	40 Worth Street, New York, N. Y.
Joanna Western Mills Company.	Delaware	So. Jefferson and West Cermak Streets, Chicago, Illinois.
E. I. duPont de Nemours & Co., Inc.	Delaware	1007 Market Street, Wilmington, Delaware.
The Columbia Mills, Inc	New York	428 So. Warren St., Syracuse, New York.

PAR. 2. Respondents Special Fabrics, Inc., Interlaken Mills, and Holliston Mills, Inc., manufacture and sell book cloth. The respondent, Joseph Bancroft & Sons Co., manufactures book cloth, and its subsidiary, the respondent, Albert D. Smith & Company, Inc., sells book cloth. Book cloth is classified as starch filled or pyroxylin impregnated, according to the materials used in the processing of the cotton cloth from which said book cloth is manufactured.

PAR. 3. Each of the respondents is engaged in interstate commerce in the sale or distribution of book cloth to purchasers who deal in or consume book cloth and said purchasers are located throughout the United States, and pursuant to such sales and in the regular course of their business the respondents, with the exceptions above stated, have shipped and do ship such products to the respective places of business of their customers located at various points in the United States or in the District of Columbia other than in the State of origin of such shipments.

The respondents now constitute and since June, 1933, have constituted a substantial proportion of the sellers of book cloth in the United States, and have been the sellers of a major part of all the book cloth sold to dealers and consumers in the United States.

PAR. 4. Respondents made subject to the annexed order to cease and desist, up to about May, 1950, engaged between and among themselves in practices, discussions and common understandings and courses of action with relation to the establishment of prices, terms and conditions of sale of book cloth in interstate commerce, although not all such respondents engaged in all such practices, discussions and common understandings and courses of action. In pursuance of the above:

1. Some of the respondents discussed with other respondents changes in prices for book cloth, including discounts and the terms and conditions of sale under which said respondents offer to sell or do sell book cloth.

2. Some of said respondents changed their method of pricing so as to eliminate quantity discounts and adopted in lieu thereof a uniform base quantity to which list prices would be applied, with uniform premium charges for lesser quantities.

3. Some of said respondents adopted uniform premium charges for specified services in connection with the manufacture of book cloth, e. g., embossing.

4. Some of the respondents changed their freight allowance policy so as to eliminate free delivery points and adopted in lieu thereof the policy of allowing full freight to all customers located east of the Mississippi River and purchasing roll lots or more, and selling f. o. b.

St. Louis, Missouri, to customers located west of said Mississippi River and purchasing like quantities.

5. Some of the respondents increased their prices from time to time.

PAR. 5. The acts and practices hereinbefore described and found, taken together and under the circumstances stated, have tended to lessen competition, are oppressive to the public interest and unfair within the intent and meaning of the Federal Trade Commission Act.

PAR. 6. For the reasons hereinabove stated, dismissal of the complaint as to Sayles Finishing Plants, Inc., The Winterbottom Book Cloth Company, Ltd., Banco, Inc., Joanna Western Mills Company, E. I. du Pont de Nemours & Co., Inc., and The Columbia Mills, Inc., is warranted.

CONCLUSION

The acts and practices hereinbefore described and found, if not checked, would unduly suppress competition. Therefore, the public interest and the provisions of the Federal Trade Commission Act require that the respondents should be restrained as provided in the following order.

ORDER TO CEASE AND DESIST

I. *It is ordered*, That respondents, Special Fabrics, Inc., a corporation, Interlaken Mills, a corporation, Holliston Mills, Inc., a corporation, Joseph Bancroft & Sons Co., a corporation, and Albert D. Smith & Co., Inc., a corporation, through and by means of their respective officers, agents, representatives and employees, in or in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of starch-filled and pyroxylin-impregnated book cloth, do forthwith cease and desist from entering into, cooperating in, carrying out or continuing, directly or indirectly, any planned common course of action, understanding or agreement between any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, engaged in competition with any of said respondents, to do or perform any of the following acts and things:

1. Establishing, fixing, maintaining or changing prices, terms or conditions of sale.

2. Eliminating or fixing discounts for quantities or establishing and maintaining premium charges in lieu thereof.

3. Establishing, fixing or maintaining premium charges, e. g., for embossing, in connection with the manufacture and sale of book cloth.

4. Establishing, fixing or maintaining any method, practice, policy or system with respect to delivery charges or allowances.

Provided: That nothing contained in this order shall be construed as prohibiting the establishment or maintenance of any lawful bona fide relationships between respondents Joseph Bancroft & Sons Co. and Albert D. Smith & Co., Inc., as parent corporation and subsidiary, respectively, when such relationships are not established or maintained with the purpose or effect of lessening competition or restraining trade.

II. *It is further ordered*, That the complaint be, and the same hereby is, dismissed as to the respondents Sayles Finishing Plants, Inc., The Winterbottom Book Cloth Company, Ltd., Banco, Inc., E. I. du Pont de Nemours and Company, Inc., Joanna Western Mills Company, and The Columbia Mills, Inc.

III. *It is further ordered*, That the complaint be, and it is hereby, amended by striking out the names "Sayles Finishing Corporation" and "Albert B. Smith and Company," where they appear in the caption and wherever they appear in the body of the complaint and inserting in lieu thereof the correct names of said respondents, as follows: "Sayles Finishing Plants, Inc." and "Albert D. Smith & Co., Inc."

IV. *It is further ordered*, That the respondents Special Fabrics, Inc., Interlaken Mills, Holliston Mills, Inc., Joseph Bancroft & Sons Co., and Albert D. Smith & Co., Inc., shall within sixty (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

SPENCER INCORPORATED

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

Docket 5995. Complaint, May 23, 1952—Decision, June 23, 1953

Where a corporation engaged in the business of making, selling, and distributing its "Spencer Supports," individually designed, cut, and fitted in accordance with the measurements of the wearer as taken by a corsetier in local shops operated by said corporation in various states and cities, or as prescribed by a physician; in advertising in circulars, leaflets, pamphlets, newspapers, magazines, and other periodicals of interstate circulation—

(*a*) Falsely represented, directly and by implication, that its said "Spencer Breast Supports" were effective in guarding against breast diseases and guarding health of the breasts generally; would improve circulation in the breasts, and would give the wearer vitality, new and glowing health and energy, a quicker acting mind, and added pep;

(*b*) Represented falsely that said devices would be effective in helping to maintain and restore firmness and contour of the breasts, cause flabby muscles to become firm and trim, and enable the abdomen to regain its natural, healthful flatness;

(*c*) Represented falsely that they would help to prevent tuberculosis of the lungs, cancer of the breasts and abscessed breasts, and were of value in treating cerebral palsy, diabetes, chronic nephritis, anginoid pain due to radiculitis, arthritis, tired feet or nervousness, and would be helpful in preventing pooling of the blood in extremities;

(*d*) Falsely represented that said products would rid the wearer of bulges and posture imperfections, overcome impairment of digestion and elimination due to postural imperfections, promote healthful posture, relieve and correct lordosis and conditions resulting therefrom, maintain spinal balance and give the support intended by nature, put the abdominal organs in position to function normally and raise them to their natural position, and could be relied upon to place equal weight on each of the discs of the spinal column;

(*e*) Represented falsely that sagging or pendulous breasts exert harmful or significant pressure on the heart, lungs, and diaphragm, invite breast diseases, tend to induce scoliosis, and that such diseases and conditions would be relieved, improved, and prevented by respondent's said devices;

(*f*) Represented falsely that said devices were of value as preventives of backache and other back troubles and were effective in relieving, correcting, and eliminating back fatigue, backache, general fatigue, and a tired-out feeling;

When in fact preventative, corrective, or therapeutic properties of said devices were limited to the measure of support to, and changee of position of, the

parts of the body to which they might be applied at the actual time they were worn:

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

Before *Mr. Earl J. Kolb*, hearing examiner.

Mr. R. P. Bellinger for the Commission.

Mr. Leonard J. Saccio, of New Haven, Conn., 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 Spencer Incorporated, a corporation, hereinafter referred to as respondent, has violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Spencer Incorporated is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business at 145 Derby Avenue, New Haven 7, Connecticut. The respondent is now, and for some years last past has been, engaged in the business of manufacturing, selling and distributing certain devices, as "device" is defined in the Federal Trade Commission Act, called "Spencer Supports," which are individually designed, cut and fitted in accordance with the measurements of the wearer, as determined by a Spencer corsetier, or as prescribed by a physician. The devices are designed ostensibly to furnish support and corresponding comfort to the abdomen, back, breasts or other parts of the body. The supports are sold principally through local Spencer Corset Shops located in various states and cities thereof, wherein a Spencer corsetier measures the customer and sends the resulting data to respondent's headquarters in New Haven, where the support is manufactured.

In the course and conduct of its aforesaid business, the respondent causes its devices, when thus manufactured and sold, to be transported from its place of business in the State of Connecticut to purchasers thereof, or to its said local corset shops for delivery to the purchasers thereof, located in various other states of the United States and in the District of Columbia. At all times mentioned herein, respondent has maintained a course of trade in said devices in commerce between and

among the various states of the United States and in the District of Columbia. The business which respondent does in said manner is substantial, the gross annual volume thereof being in excess of $1,000,000.

PAR. 2. In the course and conduct of its aforesaid business, respondent has disseminated and has caused the dissemination of advertisements concerning its said devices by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said devices; and respondent has also disseminated and has caused the dissemination of advertisements concerning its said devices by means of circulars, leaflets, pamphlets and advertisements published or caused to be published in various newspapers, magazines and other periodicals of interstate circulation, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of its said devices in commerce as aforesaid.

PAR. 3. Through the use of said advertisements, respondent has, directly and by implication, represented that: Spencer Breast Supports are effective in guarding against breast diseases, in improving circulation of blood in the breasts, in guarding the health of the breasts, in helping maintain and restore the firmness and contour of the breasts, in restoring tissue tone of sagging breasts, and in preventing tuberculosis of the lungs and cancer of the breasts; sagging or pendulous breasts exert pressure on the heart, lungs and diaphragm, leading to scoliosis, impair circulation of blood and invite breast diseases, which conditions and diseases will be relieved, improved or prevented by wearing a Spencer Support; Spencer Maternity Breast Supports are effective in preventing abscessed breasts and are essential in guiding the breasts back to healthful firmness after childbirth; Spencer Supports will rid the wearer of bulges and posture imperfections, will improve and correct poor posture, and will overcome impairment of blood circulation, digestion and elimination when due to postural imperfections; they will promote healthful posture, relieve and correct lordosis and the conditions resulting from lordosis, will maintain spinal balance and give the support which nature intended, and will place equal weight on each of the discs of the spinal column; the use of said supports will cause flabby muscles to become firm and trim, and will enable the abdomen to regain its natural healthful flatness; Spencer Supports are indicated to put abdominal organs in position to function normally and to raise such organs to their normally natural positions; Spencer Supports offer effective relief in non-

pathological nausea associated with pregnancy; they are effective in treating cerebral palsy, diabetes, chronic nephritis, arthritis, anginoid pain due to radiculitis, tired feet and nervousness, and will help prevent the pooling of blood in extremities; the use of Spencer Supports is therapeutically indicated for normal persons and can be relied upon to avoid backache or prevent future back troubles; Spencer Supports will relieve, eliminate and rid the wearer of such symptoms and conditions as back fatigue, backache, general fatigue, generally run-down health and a tired-out feeling; Spencer Supports will give the wearer vitality, new and glowing health and energy, a quicker acting mind and added pep.

PAR. 4. The aforesaid statements and representations are misleading in material respects and constitute "false" advertisements as that term is defined in the Federal Trade Commission Act. In truth and in fact, Spencer Breast Supports are not effective in guarding against breast diseases, nor in guarding the health of the breasts generally. Respondent's said devices will not improve circulation of blood in the breasts. Wearing said devices will not be effective in helping to maintain or restore the firmness of the breasts, in restoring tissue tone of sagging breasts, nor will they be effective in helping to maintain or restore the contour of the breasts in excess of the support afforded while being worn. They are not effective in preventing tuberculosis of the lungs or cancer of the breasts. Sagging or pendulous breasts do not usually exert any significant pressure on the heart, lungs or diaphragm, have no tendency to induce scoliosis, do not impair circulation of blood in the breasts or invite breast diseases, and such conditions and diseases will not be relieved, improved or prevented by wearing a Spencer Support. Spencer Maternity Breast Supports are not effective in preventing abscessed breasts, and are not essential in guiding the breasts back to healthful firmness after childbirth. Spencer Supports will not rid the wearer of bulges or posture imperfections, nor will they overcome impairment of digestion, regardless of the cause; they will neither improve nor correct poor posture, nor overcome impairment of elimination due to postural imperfections, and they will not exert any influence on bulges or posture in excess of the temporary benefit afforded by pressure or support during the time they are actually being worn; they will not be of any benefit in impairment of blood circulation other than in those cases of hypotension where temporary benefit is afforded by the constriction and pressure while the support is being worn. They will not promote healthful posture, will not relieve or correct lordosis or the conditions resulting from lordosis,

nor will they maintain spinal balance or give the support intended by nature, in excess of the temporary benefit afforded in some cases by the supporting effect of the device while worn. They cannot be relied upon to place equal weight on each of the discs of the spinal column. The use of respondent's devices will not cause flabby muscles to become firm and trim and will not enable the abdomen to regain its natural healthful flatness. Spencer Supports cannot be depended upon to put the abdominal organs in position to function normally, or to raise such organs to their normally natural positions, nor will such supports otherwise promote normal functioning of said organs. The wearing of such supports will not be effective in relieving non-pathological nausea or other type of nausea, either when accompanied by pregnancy or otherwise. Said supports have no value in treating cerebral palsy, diabetes, chronic nephritis, anginoid pain due to radiculitis, tired feet or nervousness, and will not be helpful in preventing the pooling of blood in extremities. They have no therapeutic value in treating arthritis, in excess of the possible temporary relief of pain afforded while the support is being worn. The use of Spencer Supports would be therapeutically worthless for normal persons, and said devices have no value as preventives of backache or other back troubles, in excess of affording support as long as worn. Respondent's devices will not serve to relieve, eliminate or rid the wearer of back fatigue, backache, general fatigue, generally run-down health or a tired-out feeling, in excess of the effect afforded by support in some cases while the device is worn. A Spencer Support will have no effect upon the wearer's vitality, energy, general health, mental alertness or pep, except in those infrequent cases where impairment of said conditions may be attributed to the need of the temporary support derived from the use of such a device while being worn.

In some selected cases, physicians prescribe abdominal supports with beneficial results, but such adjunct measures are only palliative, not curative. Except in such cases thus referred to, respondent's said devices have no usefulness other than providing a measure of support to, and a change of position of, certain parts of the body to which they may be applied during the actual time said devices are worn. When the support is removed, the organs or parts of the body contacted, return to their former positions.

PAR. 5. Respondent, in the course of promoting the sale of its said devices, has used advertising material in the manner aforesaid in which have appeared incomplete, inaccurate and fragmentary quotations from medical and other scientific authorities. Respondent's use of said incomplete, inaccurate and fragmentary quotations has

had the effect of distorting and misrepresenting the meaning and true import of the authors of the respective articles, and the meaning attributed to the medical and other scientific literature in general in the pertinent field.

PAR. 6. The use by respondent of the above referred to advertising representations, disseminated as aforesaid, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase its said devices.

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

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated June 23, 1953, the initial decision in the instant matter of hearing examiner Earl J. Kolb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 23, 1952, issued and subsequently served its complaint in this proceeding upon the respondent, Spencer Incorporated, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the filing of respondent's answer to the complaint, hearings were held at which testimony and other evidence in support of, and in opposition to the allegations of the complaint, including a stipulation as to the facts entered into between counsel for the respondent and counsel supporting the complaint, were introduced before the above-named Hearing Examiner theretofore duly designated by the Commission, and said 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 said Hearing Examiner on the complaint, the answer thereto and testimony and other evidence, including said stipulation as to the facts, (filing of proposed findings as to the facts and conclusions having

been waived), and said Hearing Examiner having duly considered the record herein finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Spencer Incorporated is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business at 145 Derby Avenue, New Haven 7, Connecticut. The respondent is now, and for some years last past has been, engaged in the business of manufacturing, selling and distributing certain devices, as "device" is defined in the Federal Trade Commission Act, called "Spencer Supports," which are individually designed, cut and fitted in accordance with the measurements of the wearer, as determined by a Spencer corsetier, or as prescribed by a physician. The devices are designed ostensibly to furnish support and corresponding comfort to the abdomen, back, breasts or other parts of the body. The supports are sold principally through local Spencer Corset Shops located in various States and cities thereof, wherein a Spencer corsetier measures the customer and sends the resulting data to respondent's headquarters in New Haven, where the support is manufactured. In the course and conduct of its aforesaid business, the respondent causes its devices, when thus manufactured and sold, to be transported from its place of business in the State of Connecticut to purchasers thereof, or to its said local corset shops for delivery to the purchasers thereof, located in various other States of the United States and in the District of Columbia. At all times mentioned herein, respondent has maintained a course of trade in said devices in commerce between and among the various States of the United States and in the District of Columbia. The business which respondent does in said manner is substantial, the gross annual volume thereof being in excess of $1,000,000.

PAR. 2. In the course and conduct of its aforesaid business, respondent has disseminated and has caused the dissemination to the consuming public, as distinguished from the medical profession, of advertisements concerning its said devices by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said devices by the consuming public, as distinguished from the medical profession; and respondent has also disseminated and has

caused the dissemination of advertisements concerning its said devices by means of circulars, leaflets, pamphlets and advertisements published or caused to be published in various newspapers, magazines and other periodicals of interstate circulation, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of its said devices, by the consuming public, in commerce as aforesaid; however, no advertisement of respondent's device is deemed to be false if it is disseminated only to members of the medical profession and contains no false representation of a material fact.

PAR. 3. Through the use of said advertisements, to the said consuming public, respondent has, directly and by implication, represented that: Spencer Breast Supports are effective in guarding against breast diseases, in improving circulation of blood in the breasts, in guarding the health of the breasts, in helping maintain and restore the firmness and contour of the breasts, in restoring tissue tone of sagging breasts, and in preventing tuberculosis of the lungs and cancer of the breasts; sagging or pendulous breasts exert pressure on the heart, lungs and diaphragm, leading to scoliosis, impair circulation of blood and invite breast diseases, which conditions and diseases will be relieved, improved or prevented by wearing a Spencer Support; Spencer Maternity Breast Supports are effective in preventing abscessed breasts and are essential in guiding the breasts back to healthful firmness after childbirth; Spencer Supports will rid the wearer of bulges and posture imperfections, will improve and correct poor posture, and will overcome impairment of blood circulation, digestion and elimination when due to postural imperfections; they will promote healthful posture, relieve and correct lordosis and the conditions resulting from lordosis, will maintain spinal balance and give the support which nature intended, and will place equal weight on each of the discs of the spinal column; the use of said supports will cause flabby muscles to become firm and trim, and will enable the abdomen to regain its natural healthful flatness; Spencer Supports are indicated to put abdominal organs in position to function normally and to raise such organs to their normally natural positions; Spencer Supports offer effective relief in non-pathological nausea associated with pregnancy; they are effective in treating cerebral palsy, diabetes, chronic nephritis, arthritis, anginoid pain due to radiculitis, tired feet and nervousness, and will help prevent the pooling of blood in extremities; the use of Spencer Supports is therapeutically indicated for normal persons and can be relied upon to avoid backache or prevent future back troubles; Spencer Supports will relieve, eliminate and rid

the wearer of such symptoms and conditions as back fatigue, backache, general fatigue, generally run-down health and a tired-out feeling; Spencer Supports will give the wearer vitality, new and glowing health and energy, a quicker acting mind and added pep.

PAR. 4. The aforesaid statements and representations are misleading in material respects and constitute "false" advertisements as that term is defined in the Federal Trade Commission Act. In truth and in fact, Spencer Breast Supports are not effective in guarding against breast diseases nor in guarding the health of the breasts generally. Respondent's said devices will not improve circulation of blood in the breasts in excess of the benefit afforded to excessively sagging or pendulous breasts. Wearing said devices will not be effective in helping to maintain or restore the firmness of the breasts, in restoring tissue tone of sagging breasts, nor will they be effective in helping to maintain or restore the contour of the breasts, in excess of the support afforded while being worn. They are not effective in preventing tuberculosis of the lungs or cancer of the breasts. Sagging or pendulous breasts do not usually exert any significant pressure on the heart, lungs or diaphragm, have no tendency to induce scoliosis, do not invite breast diseases, and such conditions and diseases will not be relieved, improved nor prevented by wearing a Spencer Support. Spencer Maternity Breast Supports are not effective in preventing abscessed breasts, and are not essential in guiding the breasts back to healthful firmness after childbirth. Spencer Supports will not rid the wearer of bulges or posture imperfections, and will not overcome impairment of digestion, irrespective of the cause; they will neither improve nor correct poor posture, nor will they overcome impairment of elimination due to postural imperfections, and they will not exert any influence on bulges or posture in excess of the temporary benefit afforded by pressure or support during the time they are actually being worn; they will not be of any benefit in impairment of blood circulation other than in those cases of hypotension where temporary benefit is afforded by the constriction and pressure while the support is being worn. They will not promote healthful posture, will not relieve or correct lordosis or the conditions resulting from lordosis, nor will they maintain spinal balance or give the support intended by nature, in excess of the temporary benefit afforded in some cases by the supporting effect of the device while being worn. They cannot be relied upon to place equal weight on each of the discs of the spinal column. The use of respondent's devices will not cause flabby muscles to become firm or trim, and will not enable the abdomen

to regain its natural healthful flatness. Spencer Supports cannot be depended upon to put the abdominal organs in position to function normally, or to raise such organs to their normally natural positions, nor will such supports otherwise promote normal functioning of said organs, in excess of the benefit afforded in supporting weakened or relaxed abdominal muscles while being worn. Wearing such supports will not be effective in relieving non-pathological nausea or any other type of nausea either when accompanied by pregnancy or otherwise. Respondent's supports have no value in treating cerebral palsy, diabetes, chronic nephritis, anginoid pain due to radiculitis, tired feet or nervousness, and will not be helpful in preventing the pooling of blood in extremities. They have no therapeutic value in treating arthritis in excess of the possible temporary relief of pain afforded while the support is being worn. The use of Spencer Supports is not indicated nor do they possess any preventive value, for normal individuals, in excess of affording proper support as long as worn, in those cases in which the individual customarily wears a support or corset. Respondent's said devices have no value as preventives of backache or other back troubles, in excess of affording proper support as long as worn. Respondent's devices will not serve to relieve, eliminate or rid the wearer of back fatigue, backache, general fatigue, generally run-down health or a tired-out feeling, in excess of the effect afforded by support in some cases while the device is worn. Wearing a Spencer body or breast support will have no effect upon the wearer's vitality, energy, general health, mental alertness or pep, except in those infrequent cases where impairment of said conditions may be attributed to the need of the temporary support derived from the use of such a device while being worn.

In a substantial number of cases, physicians prescribe Spencer Supports for the back, breasts or abdomen as an adjunct in the treatment or the alleviation of symptoms of various diseases of the body, or as a preventive measure particularly in cases of faulty posture. Preventive, corrective or therapeutic properties of said devices are limited, however, to the measure of support to and change of position of such parts of the body to which they may be applied at the actual time said devices are worn.

CONCLUSION

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

ORDER

It is ordered, That the respondent, Spencer Incorporated, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its Spencer Supports, or any other product of substantially similar composition, design or construction, do forthwith cease and desist from:

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

(*a*) That wearing a Spencer Breast Support will effectively guard against breast diseases, or will guard the health of the breasts generally.

(*b*) That wearing a Spencer Breast Support will improve circulation of blood in the breasts in excess of the benefit afforded to excessively sagging or pendulous breasts.

(*c*) That wearing said devices will be effective in helping to maintain or restore the firmness of the breasts or in restoring tissue tone of sagging breasts.

(*d*) That wearing said devices will be effective in helping to maintain or restore the contour of the breasts, in excess of the support afforded while being worn.

(*e*) That wearing said supports will help to prevent tuberculosis of the lungs or cancer of the breasts.

(*f*) That sagging or pendulous breasts exert harmful or significant pressure on the heart, lungs or diaphragm, invite breast diseases, tend to induce scoliosis, or that such diseases or conditions could be relieved, improved or prevented by wearing a Spencer Support.

(*g*) That Spencer Maternity Breast Supports will prevent abscessed breasts, or are essential in guiding the breasts back to healthful firmness after childbirth.

(*h*) That Spencer Supports will rid the wearer of bulges or posture imperfections or will overcome impairment of digestion.

(*i*) That Spencer Supports will improve or correct poor posture, or overcome impairment of elimination due to postural imperfections, or will exert any influence on bulges or posture in excess of the temporary benefit afforded by pressure or support during the time they are actually being worn.

(*j*) That Spencer Supports will be of benefit in any impairment of blood circulation other than those cases of hypotension where temporary benefit is afforded by the constriction and pressure while the device is being worn.

(*k*) That wearing such a support will promote healthful posture, will relieve or correct lordosis or the conditions resulting from lordosis, will maintain spinal balance or give the support intended by nature, in excess of the temporary benefit afforded in some cases by the supporting effect of the device while worn.

(*l*) That said supports can be relied upon to place equal weight on each of the discs of the spinal column.

(*m*) That the use of respondent's devices will cause flabby muscles to become firm or trim, or will enable the abdomen to regain its natural healthful flatness.

(*n*) That Spencer Supports can be depended upon to put the abdominal organs in position to function normally, or to raise such organs to their normally natural positions, or otherwise promote normal functioning of these organs, in excess of the benefit afforded in supporting weakened or relaxed abdominal muscles while being worn.

(*o*) That wearing a Spencer Support will effectively relieve non-pathological nausea or any other type of nausea, either in pregnancy or otherwise.

(*p*) That said devices have any value in treating cerebral palsy, diabetes, chronic nephritis, anginoid pain due to radiculitis, tired feet or nervousness, or will be helpful in preventing the pooling of blood in extremities.

(*q*) That said devices have any therapeutic value in treating arthritis, in excess of the possible temporary relief of pain afforded while the support is being worn.

(*r*) That Spencer Support are indicated for or possess any preventive value for normal individuals, in excess of affording proper support as long as worn, in those cases in which the individual customarily wears a support or corset.

(*s*) That respondent's said devices have any value as preventives of backache or other back troubles, in excess of affording proper support as long as worn.

(*t*) That wearing a Spencer Support will be effective in relieving, correcting or eliminating back fatigue, backache, general fatigue or a tired-out feeling, in excess of the effect afforded by support in some cases while the device is worn.

(*u*) That wearing a Spencer body or breast support will have any effect upon one's vitality, energy, pep, mental alertness or general health, except in those infrequent cases where impairment of said conditions may be attributed to the need of the temporary support derived from the use of such a device while being worn.

(*v*) That respondent's said devices have any preventive, therapeutic or corrective properties, or that they have any such usefulness other than providing a measure of support to and a change of position of certain parts of the body to which they may be applied during the time the said devices are worn.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said devices by the consuming public, as distinguished from the medical profession, in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's said devices, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (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 the order to cease and desist [as required by said declaratory decision and order of June 23, 1953].

IN THE MATTER OF

ELI TEMPKIN AND ALLEN GORDON DOING BUSINESS AS NATIONAL STORES

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

Docket 6017. Complaint, July 28, 1952—Decision, June 24, 1953

When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public, not marked to show foreign origin, or with foreign markings covered or otherwise concealed, such public understands and believes such articles to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products manufactured in the United States over products manufactured in whole or in part in foreign countries, including sewing machines.

The word "Eureka" and other well-known domestic names are the names or parts of the names of, or used as trade names, marks, or brands by, business organizations doing business in the United States, which are and have been well and favorably known to the purchasing public and which are and have been well and long-established in various industries, and there is a preference among members of the purchasing public for products manufactured by such concerns whose identity is connected with the word "Eureka" and other well-known domestic names.

Where two partners engaged in the competitive interstate sale to the purchasing public of sewing machines with heads imported from Japan, on the back of the vertical arm of which the word "Japan" became covered by attachment of a motor, and on the front of some of which a medallion displayed the word so small and indistinct as not to constitute adequate notice that said heads were imported—

(*a*) Failed adequately to disclose on their said sewing machine heads that they were manufactured in Japan;

(*b*) Falsely represented that they manufactured their sewing machines for sale direct from their factory in the United States to purchasers, through such statements in their advertising as "This is a direct factory savings to you done in hopes that you will aid our present advertising campaign";

(*c*) Represented that their product was manufactured by or connected in some way with favorably known American firms through the featured use of such trade or brand names as "Eureka" on the front horizontal arm of the head, and in their advertising matter, and thereby enhanced the belief by the public that said machines were of domestic origin;

(*d*) Represented that they were offering to sell a Singer portable electric rebuilt sewing machine for the sum $21.50 through such statements in their advertising as "We will not be undersold. Singer Portable Electric Rebuilt with parts by National", etc., together with depiction of a Singer electric portable sewing machine, and the words "$21.50 full cash price. Free button hole making Attachment";

The facts being that said offer was not genuine and bona fide but was made to obtain the names of those interested in purchasing machines to whom, with no effort to sell such machines, they attempted to sell different and more expensive ones, and particularly those with heads made in Japan; and that the attachment was not given free but its cost was included in the price charged for the machine;

(*e*) Confusingly and misleadingly made use of the term "five-year guarantee" in their aforesaid advertising, in which they did not disclose the nature and extent of such a guarantee and the manner in which the guarantor would perform thereunder;

(*f*) Represented falsely in their advertising that $189.50 was the customary and usual price charged by them for their sewing machines; that the machines had been tested, approved, and awarded a gold seal by a responsible, competent and impartial testing organization, through the words "Gold Seal Tested and Approved"; and that they had stores in principal cities from New York to California;

The facts being that the aforesaid price was greatly in excess of that usually charged for their said product and was wholly fictitious; their said machines had not been thus tested, etc.; and they had stores in only three cities in the United States;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that all such representations were true and thereby induce the purchase of substantial quantities of their said machines; whereby substantial trade in commerce was unfairly diverted to them from their competitors, to the substantial injury of competition in commerce:

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

Before *Mr. John Lewis*, hearing examiner.
Mr. William L. Taggart for the Commission.
Mr. Jerry S. Berk, of Los Angeles, Calif., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Eli Tempkin and

Allen Gordon, copartners doing business as National Stores, hereinafter referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Eli Tempkin and Allen Gordon are copartners doing business under the name of National Stores, with their office and principal place of business located at 3332 W. Olympic Boulevard, Los Angeles, California.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of sewing machines, of which heads imported from Japan are a part, to members of the purchasing public. In the course and conduct of their business, respondents cause their product, when sold, to be transported from their places of business in the States of California, Utah and New York to the purchasers thereof located in various other States of the United States and maintain, and at all times mentioned herein have maintained, a course of trade in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. When the sewing machines are sold by respondents to members of the purchasing public, the word "Japan" appears on the back of the vertical arm covered by the motor so that it is not visible. In some instances, said heads, when received by respondents, are marked with a medallion placed on the front of the vertical arm upon which the word "Japan" appears. This word is, however, so small and indistinct that it does not constitute adequate notice to the public that the heads are imported.

PAR. 4. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public, and such articles are not marked or are not adequately marked, showing they are of foreign origin, or if marked and the markings are covered, or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products manufactured in the United States over products manufactured in whole or in part in foreign countries, including sewing machines.

PAR. 5. Respondents, in their advertising, make statements such as the following:

This is a direct factory savings to you done in hopes that you will aid our present advertising campaign.

By and through the use of the afore-mentioned statement, respondents represented, directly or by implication, that they manufacture the sewing machines for sale direct from their factory in the United States to the purchasers thereof.

The aforesaid representations were false, misleading and deceptive. In truth and in fact, the said sewing machines or any parts thereof were not manufactured in a factory either owned or controlled by respondents.

PAR. 6. Respondents use the word "Eureka" and other well known domestic names as trade or brand names for their sewing machine heads and sewing machines, which words are printed or embossed on the front horizontal arm of the head in large, conspicuous letters and use said trade or brand names in their advertising matter. The word "Eureka" and the other well known domestic names are the names or parts of the names of, or used as trade names, marks or brands by one or more business organizations transacting and doing business in the United States, which are and have been well and favorably known to the purchasing public and which are and have been well and long established in various industries.

PAR. 7. By using trade or brand names such as "Eureka" and other well known domestic names for their sewing machine heads, respondents represent, directly or by implication, that their product is manufactured by, or connected in some way with, the well and favorably known American firm or firms with which said names have long been associated, which is contrary to the fact.

PAR. 8. There is a preference among members of the purchasing public for products manufactured by well and favorably known and long established concerns whose identity is connected with the word "Eureka" and other well known domestic names. The use of said trade or brand names by respondents on their sewing machines and heads enhances the belief on the part of the public that the said sewing machines are of domestic origin.

PAR. 9. Respondents, in their advertising, make further statements such as the following:

We will not be undersold
Singer Portable Electric Rebuilt
with parts by National

New motor	Picturization of
New carry case	Singer Electric Portable
Round Bobbin	Sewing Machine
New foot control	$21.50 full cash price
New Sew Light	Free button hole making
5 year guarantee	Attachment.

By and through the use of the afore-mentioned statements, respondents represented, directly or by implication, that they were making a bona fide offer to sell Singer portable electric rebuilt sewing machines for the sum of $21.50, and that a button hole making attachment was given free with the purchase of a machine.

The aforesaid representations were false, misleading and deceptive. In truth and in fact, the offer to sell rebuilt Singer sewing machines for $21.50 was not a genuine and bona fide offer, but was made for the purpose of obtaining the names of persons interested in purchasing sewing machines. After obtaining said names, respondents make no effort to sell the advertised sewing machines to such persons, but attempt to sell different and more expensive machines, particularly machines, of which heads made in Japan, are a part. A button hole making attachment was not given free with the purchase of a machine, but the cost of said attachment was included in the price charged for the said machine. The use of the term "5 year guarantee" in said advertisement without disclosing the terms and conditions of the guarantee is confusing and misleading to the public and purchasers and constitutes an unfair and deceptive act and practice.

PAR. 10. Respondents, in their advertising, make further statements such as the following:

Eureka Goodhousekeeper Sewing Machine
$189.50
Gold Seal Tested and Approved.
National Sewing Machine Stores in
principal cities from New York
to California.

By and through the use of the afore-mentioned statements, respondents represented, directly or by implication, that $189.50 was the customary and usual price charged by them for said sewing machines; that said sewing machines have been tested, approved and awarded a gold seal by a responsible, competent and impartial testing organization; and that respondents have stores in principal cities from New York to California.

PAR. 11. The aforesaid representations were false, misleading and deceptive. In truth and in fact, the sum of $189.50 was greatly in excess of the amount usually and ordinarily charged for said sewing machines by respondents, and was a wholly fictitious price. Said sewing machines have not been tested, approved or awarded a gold seal by any responsible, competent and impartial testing organization. Respondents have stores in only three cities in the United States.

PAR. 12. The use by the respondents of the foregoing false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations were and are true, and to induce the purchase of substantial quantities of their sewing machines as a result of this erroneous and mistaken belief.

PAR. 13. Respondents, in the course and conduct of their business, are in substantial competition in commerce with the sellers of domestic sewing machines and also sellers of imported sewing machines, some of whom adequately disclose to the public that their sewing machines, or parts thereof, are of foreign origin.

PAR. 14. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan has the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin and to cause substantial numbers of the purchasing public to purchase sewing machines of which said heads are a part because of said erroneous and mistaken belief.

The use of trade or brand names such as "Eureka" and other well known domestic names have the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their product is of domestic origin, and is manufactured by the well and favorably known firm or firms with which said names have long been associated, and to induce members of the purchasing public to purchase sewing machines, of which said heads are a part, because of such erroneous and mistaken belief.

As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

PAR. 15. 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 and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

CONSENT SETTLEMENT[1]

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 28, 1952, issued and conse-

[1] The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on June 24, 1953, and ordered entered

quently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth and in lieu of answer to said complaint, filed August 28, 1952, hereby

(1) Admit all the jurisdictional allegations set forth in the complaint.

(2) Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondents, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.

(3) Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in Paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Eli Tempkin and Allen Gordon are copartners doing business under the name of National Stores, with their office and principal place of business located at 3332 W. Olympic Boulevard, Los Angeles, California.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of sewing machines, of which heads imported from Japan are a part, to members of the purchasing public. In the

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of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

course and conduct of their business, respondents cause their product, when sold, to be transported from their places of business in the States of California, Utah and New York to the purchasers thereof located in various other States of the United States and maintain, and at all times mentioned herein have maintained, a course of trade in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. When the sewing machines are sold by respondents to members of the purchasing public, the word "Japan" appears on the back of the vertical arm covered by the motor so that it is not visible. In some instances, said heads, when received by respondents, are marked with a medallion placed on the front of the vertical arm upon which the word "Japan" appears. This word is, however, so small and indistinct that it does not constitute adequate notice to the public that the heads are imported.

PAR. 4. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public, and such articles are not marked or are not adequately marked, showing they are of foreign origin, or if marked and the markings are covered, or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products manufactured in the United States over products manufactured in whole or in part in foreign countries, including sewing machines.

PAR. 5. Respondents, in their advertising, make statements such as the following:

This is a direct factory savings to you done in hopes that you will aid our present advertising campaign.

By and through the use of the afore-mentioned statement, respondents represented, directly or by implication, that they manufacture the sewing machines for sale direct from their factory in the United States to the purchasers thereof.

The aforesaid representations were false, misleading and deceptive. In truth and in fact, the said sewing machines or any parts thereof were not manufactured in a factory either owned or controlled by respondents.

PAR. 6. Respondents use the word "Eureka" and other well known domestic names as trade or brand names for their sewing machine heads and sewing machines, which words are printed or embossed on

the front horizontal arm of the head in large, conspicuous letters and use said trade or brand names in their advertising matter. The word "Eureka" and the other well known domestic names are the names or parts of the names of, or used as trade names, marks or brands by one or more business organizations transacting and doing business in the United States, which are and have been well and favorably known to the purchasing public and which are and have been well and long established in various industries.

PAR. 7. By using trade or brand names such as "Eureka" and other well known domestic names for their sewing machine heads, respondents represent, directly or by implication, that their product is manufactured by, or connected in some way with, the well and favorably known American firm or firms with which said names have long been associated, which is contrary to the fact.

PAR. 8. There is a preference among members of the purchasing public for products manufactured by well and favorably known and long established concerns whose identity is connected with the word "Eureka" and other well known domestic names. The use of said trade or brand names by respondents on their sewing machines and heads enhances the belief on the part of the public that the said sewing machines are of domestic origin.

PAR. 9. Respondents, in their advertising, make further statements such as the following:

We will not be undersold
Singer Portable Electric Rebuilt
with parts by National

New motor	Picturization of
New carry case	Singer Electric Portable
Round Bobbin	Sewing machine
New foot control	$21.50 full cash price
New Sew Light	Free button hole making
5 year guarantee	Attachment.

By and through the use of the aforementioned statements, respondents represented, directly or by implication, that they were making a bona fide offer to sell Singer portable electric rebuilt sewing machines for the sum of $21.50, and that a button hole making attachment was given free with the purchase of a machine.

The aforesaid representations were false, misleading and deceptive. In truth and in fact, the offer to sell rebuilt Singer sewing machines for $21.50 was not a genuine and bona fide offer, but was

made for the purpose of obtaining the names of persons interested in purchasing sewing machines. After obtaining said names, respondents make no effort to sell the advertised sewing machines to such persons, but attempt to sell different and more expensive machines, particularly machines, of which heads made in Japan, are a part. A button hole making attachment was not given free with the purchase of a machine, but the cost of said attachment was included in the price charged for the said machine. The use of the term "5 year guarantee" in said advertisement without disclosing the terms and conditions of the guarantee is confusing and misleading to the public and purchasers and constitutes an unfair and deceptive act and practice.

PAR. 10. Respondents, in their advertising, make further statements such as the following:

Eureka Goodhousekeeper Sewing Machine
$189.50
Gold Seal Tested and Approved.
National Sewing Machine Stores in
principal cities from New York
to California.

By and through the use of the aforementioned statements, respondents represented, directly or by implication, that $189.50 was the customary and usual price charged by them for said sewing machines; that said sewing machines have been tested, approved and awarded a gold seal by a responsible, competent and impartial testing organization; and that respondents have stores in principal cities from New York to California.

PAR. 11. The aforesaid representations were false, misleading and deceptive. In truth and in fact, the sum of $189.50 was greatly in excess of the amount usually and ordinarily charged for said sewing machines by respondents, and was a wholly fictitious price. Said sewing machines have not been tested, approved or awarded a gold seal by any responsible, competent and impartial testing organization. Respondents have stores in only three cities in the United States.

PAR. 12. The use by the respondents of the foregoing false, misleading and deceptive statements and representation has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations were and are true, and to induce the purchase of substantial quantities of their sewing machines as a result of this erroneous and mistaken belief.

PAR. 13. Respondents, in the course and conduct of their business, are in substantial competition in commerce with the sellers of domestic sewing machines and also sellers of imported sewing machines, some of whom adequately disclose to the public that their sewing machines, or parts thereof are of foreign origin.

PAR. 14. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan has the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin and to cause substantial numbers of the purchasing public to purchase sewing machines of which said heads are a part because of said erroneous and mistaken belief.

The use of trade or brand names such as "Eureka" and other well known domestic names have the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their product is of domestic origin, and is manufactured by the well and favorably known firm or firms with which said names have long been associated, and to induce members of the purchasing public to purchase sewing machines, of which said heads are a part, because of such erroneous and mistaken belief.

As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

CONCLUSION

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

ORDER TO CEASE AND DESIST

It is ordered, That the respondents, Eli Tempkin and Allen Gordon, individually and as copartners, doing business as National Stores, or doing business under any other name or names, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machine heads or sewing machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing foreign-made sewing machine heads, or sewing machines of which foreign-made heads are a part, without clearly and conspicuously disclosing on the heads the country of origin thereof.

2. Using the word "Eureka," or any simulation thereof, as a trade or brand name to designate, describe, or refer to their sewing machines or sewing machine heads, or represent, through the use of any other words or in any other manner, that their sewing machines or sewing machine heads are made by anyone other than the actual manufacturers.

3. Representing that sewing machines are offered for sale when such offer is not a bona fide offer to sell the machines so offered.

4. Representing, directly or by implication, that any product sold by them has been tested or approved or awarded a seal of approval unless said product has actually been tested by some responsible, competent and impartial testing organization and has been approved or awarded a seal of approval based upon such tests.

5. Representing, directly or by implication, that certain amounts are the prices of their sewing machines when such amounts are in excess of the prices at which their said sewing machines are ordinarily sold in the usual and regular course of business.

6. Representing, directly or by implication, that their sewing machine heads or sewing machines are guaranteed for 5 years or for any other period of time, or that they are otherwise guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

7. Representing, through the use of advertising of the word "factory," or any other word or term of similar import or meaning, or in any other manner, that said respondents are the manufacturers of the sewing machine heads or sewing machines sold by them, unless and until such respondents actually own and operate, or directly and absolutely control, a factory wherein said products are manufactured by them.

8. Representing that a button hole attachment or any other attachment is given free with the purchase of a sewing machine.

9. Misrepresenting the number of stores operated by them or otherwise misrepresenting the extent of their business.

It is further ordered, That the respondents, Eli Tempkin and Allen Gordon, co-partners doing business as National Stores, shall within sixty 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.

ELI TEMPKIN and
ALLEN GORDON,
Co-partners, doing business as NATIONAL STORES, with office and principal place of business at 3332 West Olympic Blvd., Los Angeles, California.

Respondents.

JERRY S. BERK,
629 South Hill Street,
Los Angeles, California

Attorney for respondents.

[s] ELI TEMPKIN
[s] ALLEN GORDON

December 17, 1952

[s] JERRY S. BERK

December 17, 1952

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 24th day of June, 1953.

Syllabus

IN THE MATTER OF

JACOBS MANUFACTURING COMPANY

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

Docket 6061. Complaint, Nov. 19, 1952—Decision, June 24, 1953

Where a corporation which for 50 years had been the leading manufacturer in the United States of industrial chucks for use in the portable machine tool industry, produced and sold about 95% of all such chucks sold in the United States, and had as its largest original equipment customer the manufacturer which occupied a dominant position in the production and sale of portable drills in the United States; and which was in competition, necessarily limited by its dominant position, with other manufacturers of industrial chucks who sold to original equipment manufacturers;

In selling under an annual quantity discount and rebate plan applicable to its sales of drill chucks to manufacturers of motor-driven, hand, or portable tools, and light power-driven machinery for use as original and replacement equipment, pursuant to which it sent a statement to each of such purchasers at the end of the calendar year showing the total amount of purchases for such period, together with a credit memorandum and check for the amount of the discount and rebate earned under the plan, which provided for discounts and rebates amounting to 2.5% on aggregate purchases ranging from $25,000.00 to $50,000.00, returned 4.9% on purchases from $50,000 to $100,000.00; 7.31% on purchases between $100,000.00 and $200,000.00; and 9.63% on purchases of $200,000.00 and over—

Discriminated in price between its different manufacturer-purchasers in commerce of commodities of like grade and quality by charging some higher prices than it charged others, through the allowance and payment of discounts and rebates under its said annual quantity discount and rebate plan, in which the making of small additional purchases to bring the annual total within a higher discount bracket, resulted in the equivalent of free goods;

With tendency to cause original equipment manufacturer-purchasers to concentrate all their purchases of chucks and parts upon respondent's products, to the exclusion of respondent's competitors and to their injury, and to discourage and prevent prospective competition with respondent by reason of the inducements thus offered to respondent's purchasers to concentrate all purchases of their chuck requirements with it in order to receive the discounts and rebates provided by said plan, under which, as illustrative, such a purchaser in 1950 received a quantity discount and rebate of $633.18 by reason of purchases amounting to $25,327.12, qualifying for the first bracket discount by the small additional purchases above $25,000.00; and

respondent's largest purchaser received quantity discounts and rebates amounting to nearly $77,000.00 on purchases slightly under $798,000.00;

Effect of which substantial discriminations in price in commerce might be substantially to lessen competition or tend to create a monopoly in the line of commerce in which it was engaged, or to injure or destroy competition with it and its competitors, or to prevent competition with it by its competitors:

Held, That such discriminations in price, under the circumtances set forth, were in violation of the provisions of Sec. 2 (a) of the Clayton Act as amended.

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

Mr. William H. Smith for the Commission.

Robinson, Robinson & Cole, of Hartford, Conn., 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, 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 stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Jacobs Manufacturing Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located on Jacobs Road, West Hartford, Connecticut.

PAR. 2. For many years past respondent has been, and is now, engaged in the manufacture of industrial chucks, parts, and accessories therefor. The chuck is a mechanical device for holding a tool or piece of work, and is used principally on motor driven, hand and portable tools, drills, lathes, and milling machines.

Respondent's manufacturing activities being limited to the production of chucks, parts and acccessories therefor, respondent sells its products to manufacturers of appliances and machines upon which its said products are adaptable, for use as original equipment, and for resale as replacement equipment upon products of their own manufacture. Respondent also sells its products for replacement purposes to machinery dealers, service stations, distributors, wholesale hardware distributors, and other dealers. Respondent's total volume of sales of its products for 1950 was approximately $4,550,000.

PAR. 3. In the course and conduct of its business, respondent engaged in commerce as "commerce" is defined in the Clayton Act having sold and shipped its products manufactured by it at its factory located in the State of Connecticut, and caused the same to be transported from said State to purchasers located in other States of the United States and in other places subject to the jurisdiction of the United States and in foreign countries. Respondent also sold a substantial quantity of its products to purchasers located in the State of Connecticut. At least one of the purchases involved in each of the discriminations in price hereinafter alleged were in interstate commerce.

PAR. 4. During 1925 respondent inaugurated and put into effect an annual quantity discount and rebate plan applicable to its sales of drill chucks to original equipment manufacturers for use as original and replacement equipment, as hereinbefore described. Under said plan it was usually respondent's practice to send a statement to each of such purchasers at the end of the calendar year showing the total amount of purchases for such period accompanied by a credit memorandum and check for the amount of said discount and rebate earned pursuant to the terms and conditions of said annual quantity discount and rebate plan, which will hereinafter be more particularly described.

PAR. 5. From the time of its inauguration in 1925 to and including 1947 respondent effected various changes in its annual quantity discount and rebate plans both as to the annual volumes of purchases upon which said discounts and rebates were computed, and also as to the percentages of annual volumes of purchases which were allowed and paid.

Purchasers Classified According to Their Respective Volume Brackets
1950

1	2	3	4	5	6	7	8
Volume brackets	Discounts and Rebates			Volume of purchases	Dollar discounts and rebates		
	Multiple percentages given	Single percent equivalent	Number of purchasers		Discounts	Rebates	Total
Less than $25,000	0	0	14	$127,004.08	0	0	0
$25,000 to $50,000	2½	2.5	4	130,780.65	0	$3,269.51	$3,269.51
$50,000 to $100,000	2½ and 2½	4.94	7	492,640.85	0	26,560.91	26,560.91
$100,000 to $200,000	2½ and 2½ and 2½	7.31	7	993,189.30	$2,915.58	69,726.91	72,642.49
$200,000 and over	2½ and 2½ and 2½ and 2½	9.63	1	797,733.52	56,888.05	19,943.34	76,831.39
Total			33	2,541,348.40	59,803.63	119,500.67	179,304.30

Respondent's present annual quantity discount and rebate plan has been in effect since 1948, and is illustrated by the table herein set forth which is for the year 1950. This table is substantially correct; but there are some of respondent's manufacturer-purchasers who received discriminatory discounts and rebates which do not conform to the percentages of volumes appearing in said table.

PAR. 6. Respondent generally computes and pays quantity discounts and rebates under its annual quantity discount and rebate plan, as described in Paragraph 5, upon the basis of respondent's net prices charged its several original equipment manufacturer-purchasers. During 1950 respondent sold its drill chucks and parts to thirty-three of such purchasers for use as original equipment and replacement purposes upon motor driven hand and portable tools of their own manufacture, whose total purchases from respondent amounted to $2,541,348.40. Nineteen of such manufacturer-purchasers, whose purchases amounted to $2,414,344.32 in 1950 received rebate checks under respondent's annual quantity discount and rebate plan on December 30, 1950, amounting to $119,500.67. Some of these nineteen manufacturer-purchasers, including the largest, were allowed discounts amounting to $59,803.63 which were deducted currently by respondent from bills and invoices submitted by respondent to said purchasers for goods bought during 1950. Thus augmented, respondent's total quantity discounts and rebates paid for 1950 based upon the total purchases herein stated are increased from $119,500.67 to $179,304.30. The remaining fourteen manufacturer-purchasers whose individual purchases were less than $25,000 for 1950 received nothing under said plan.

All of said thirty-three purchasers, except two, who were located in the State of Connecticut and who received nothing under respondent's annual quantity discount and rebate plan by reason of insufficient annual volumes of purchases, were located in other States of the United States; and therefore, respondent's sales of its drill chucks and parts to such purchasers were in interstate commerce, as hereinbefore alleged, and were sold by respondent for use, consumption, or resale within the United States, in places subject to the jurisdiction of the United States and the District of Columbia.

PAR. 7. Respondent in the allowance and payment of discounts and rebates by means of its annual quantity discount and rebate plan, as hereinbefore described has been, and is, discriminating in price between its different purchasers, in commerce, of commodities of like grade and quality by charging some of said purchasers higher prices than respondent charges to others.

PAR. 8. Respondent is the largest manufacturer of industrial chucks in the United States. For approximately fifty years respondent has been the leading manufacturer of industrial chucks used in the portable machine tool industry. It produces and sells approximately 95% of all industrial chucks sold in the United States for use in connection with portable machine tools. There are other manufacturers of industrial chucks in the United States who are in competition with respondent in the sale of such chucks and parts to original equipment manufacturers; but by reason of respondent's predominant position in the chuck manufacturing industry which has existed for many years, such competition is necessarily limited. One of respondent's original equipment manufacturer customers, which is its largest, and which purchases all, or substantialy all of its chuck requirements from respondent, occupies a dominant position in the production and sale of portable drills in the United States.

PAR. 9. Respondent manufactures and sells a wide variety of industrial chucks suitable to the requirements of the original equipment manufacturers and in sufficient quantities to supply their needs. Respondent's annual quantity discount and rebate plan, as hereinbefore described, tends to cause such original equipment manufacturer-purchasers to concentrate all their purchases of chucks and parts upon respondent's products to the exclusion of respondent's competitors and to their injury. Respondent's annual quantity discount and rebate plan also tends to discourage and prevent prospective competition with respondent by reason of the inducements offered thereby to respondent's original equipment manufacturer-purchasers to concentrate all purchases of their chuck requirements with respondent in order to receive the discounts and rebates provided by said plan. As an illustration, of respondent's original equipment manufacturer-purchasers for 1950, one purchased $25,327.12 of respondent's chucks and received a quantity discount and rebate of $633.18. Thus the small additional purchases made by such purchaser to bring it within the 2½ percent discount bracket not only resulted in the equivalent of free goods to that extent, but also to the extent of the difference between the necessary additional goods bought and the total amount of the quantity discount and rebate received. Another purchaser bought $51,270.47 of respondent's chucks and received a quantity discount and rebate of $2,531.48, thereby increasing its maximum quantity discount and rebate of 2½ percent on all purchases less than $50,000 to 4.94 percent on all purchases up to and including $50,000.00, as well as on those above that amount. Another of respondent's purchasers bought $101,365.06 of respondent's chucks and received a quantity discount and re-

bate of $7,413.90, and thereby increased its maximum quantity discount and rebate of 4.94 percent on all purchases less than $100,000 to 7.31 percent on all purchases up to and including $100,000.00, as well as on those above that amount. Respondent's largest purchaser, with purchases of respondent's chucks and parts amounting to $797,733.52, and the only one in the $200,000 bracket, in addition to receiving $19,-943.34 from respondent as a quantity rebate at the end of the year, currently received as discounts from invoices of respondent's goods, as alleged, additional quantity discounts amounting to $56,888.05 which constituted an immediate and distinct incentive to such purchaser, to concentrate its purchases in respondent's products. Similar incentives were given to other of respondent's purchasers as alleged in Paragraph 6.

PAR. 10. Respondent's discriminations in price in commerce, as herein before alleged, are substantial. The effect of such discriminations may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which respondent is engaged, or to injure, or to destroy competition with respondent and its competitors, or to prevent competition with respondent by its competitors.

The discriminations in price, as hereinabove alleged, are in violation of the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

CONSENT SETTLEMENT [1]

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, (the Clayton Act) as amended by an Act of Congress approved June 19, 1936, (the Robinson-Patman Act) (15 U. S. C. A. Section 13) the Federal Trade Commission on November 19, 1952, issued and subsequently served its complaint on the respondent named in the caption hereof, charging it with discriminating in price between different purchasers of commodities of like grade and quality in violation of the provisions of subsection (a) of Section 2 of said Clayton Act, as amended.

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[1] The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on June 24, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, and review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of the answer and amended answer to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, are to be withdrawn from the record, hereby:

1. Admits all the jurisdictional allegations set forth in the complaint.

2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or denying that it has engaged in any of the acts or practices stated therein to be in violation of law.

3. Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondent consents may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Jacobs Manufacturing Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located on Jacobs Road, West Hartford, Connecticut.

PAR. 2. For many years past respondent has been, and is now, engaged in the manufacture of industrial chucks, parts, and accessories therefor. The chuck is a mechanical device for holding a tool or piece of work, and is used principally on motor driven, hand and portable tools, drills, lathes, and milling machines.

Respondent's manufacturing activities being limited to the production of chucks, parts and accessories therefor, respondent sells its products to manufacturers of appliances and machines upon which

its said products are adaptable, for use as original equipment, and for resale as replacement equipment upon products of their own manufacture. Respondent also sells its products for replacement purposes to machinery dealers, service stations, distributors, wholesale hardware distributors, and other dealers. Respondent's total volume of sales of its products for 1950 was approximately $4,550,000.

PAR. 3. In the course and conduct of its business, respondent engaged in commerce as "commerce" is defined in the Clayton Act having sold and shipped its products manufactured by it at its factory located in the State of Connecticut, and caused the same to be transported from said State to purchasers located in other States of the United States and in other places subject to the jurisdiction of the United States and in foreign countries. Respondent also sold a substantial quantity of its products to purchasers located in the State of Connecticut. At least one of the purchases involved in each of the discriminations in price hereinafter found to exist, were in interstate commerce.

PAR. 4. During 1925 respondent inaugurated and put into effect an annual quantity discount and rebate plan applicable to its sales of drill chucks to manufacturers of motor driven, hand or portable tools, and light power driven machinery for use as original and replacement equipment, as hereinbefore described. Under said plan it was usually respondent's practice to send a statement to each of such purchasers at the end of the calendar year showing the total amount of purchases for such period accompanied by a credit memorandum and check for the amount of said discount and rebate earned pursuant to the terms and conditions of said annual quantity discount and rebate plan, which will hereinafter be more particularly described.

PAR. 5. From the time of its inauguration in 1925 to and including 1947 respondent effected various changes in its annual quantity discount and rebate plans both as to the annual volumes of purchases upon which said discounts and rebates were computed, and also as to the percentages of annual volumes of purchases which were allowed and paid.

Respondent's present annual quantity discount and rebate plan, applicable to manufacturers of motor driven, hand or portable tools, and light power driven machinery, has been in effect since 1948, and is illustrated by the table herein set forth which is for the year 1950. This table is substantially correct; but there are some of respondent's said manufacturer-purchasers who received discriminatory discounts and rebates which do not conform to the percentages of volumes appearing in said table:

Purchasers Classified According to Their Respective Volume Brackets 1950

1	2	3	4	5	6	7	8
Volume brackets	Discounts and Rebates			Volume of purchases	Dollar discounts and rebates		
	Multiple percentages given	Single percent equivalent	Number of purchasers		Discounts	Rebates	Total
Less than $25,000	0	0	14	$127,004.08	0	0	0
$25,000 to $50,000	2½	2.5	4	130,780.65	0	$3,269.51	$3,269.51
$50,000 to $100,000	2½ and 2½	4.94	7	492,640.85	0	26,560.91	26,560.91
$100,000 to $200,000	2½ and 2½ and 2½.	7.31	7	993,189.30	$2,915.58	69,726.91	72,642.49
$200,000 and over	2½ and 2½ and 2½ and 2½.	9.63	1	797,733.52	56,888.05	19,943.34	76,831.39
Total			33	2,541,348.40	59,803.63	119,500.67	179,304.30

PAR. 6. Respondent generally computes and pays quantity discounts and rebates under its annual quantity discount and rebate plan, as described in Paragraph 5, upon the basis of respondent's net prices charged its several original equipment manufacturer-purchasers. During 1950 respondent sold its drill chucks and parts to thirty-three of such purchasers for use as original equipment and replacement purposes upon motor driven, hand or portable tools and light power driven machinery of their own manufacture, whose total purchases from respondent amounted to $2,541,348.40. Nineteen of such manufacturer-purchasers, whose purchases amounted to $2,414,344.32 in 1950 received rebate checks under respondent's annual quantity discount and rebate plan on December 30, 1950, amounting to $119,500.67. Some of these nineteen manufacturer-purchasers, including the largest, were allowed discounts amounting to $59,803.63 which were deducted currently by respondent from bills and invoices submitted by respondent to said purchasers for goods bought during 1950. Thus augmented, respondent's total quantity discounts and rebates paid for 1950 based upon the total purchases herein stated are increased from $119,500.67 to $179,304.30. The remaining fourteen manufacturer-purchasers whose individual purchases were less than $25,000 for 1950 received nothing under said plan.

All of said thirty-three purchasers, except two, who were located in the State of Connecticut and who received nothing under respondent's annual quantity discount and rebate plan by reason of insufficient annual volumes of purchases, were located in other States of the United States; and therefore, respondent's sales of its drill chucks and parts to such purchasers were in interstate commerce, as hereinbefore found,

and were sold by respondent for use, consumption, or resale within the United States, in places subject to the jurisdiction of the United States and the District of Columbia.

PAR. 7. Respondent in the allowance and payment of discounts and rebates by means of its annual quantity discount and rebate plan, as hereinbefore described, has been discriminating in price between its said different manufacturer-purchasers, in commerce, of commodities of like grade and quality by charging some of said purchasers higher prices than respondent charges to others.

PAR. 8. Respondent is the largest manufacturer of industrial chucks in the United States. For approximately fifty years respondent has been the leading manufacturer of industrial chucks used in the portable machine tool industry. It produces and sells approximately 95% of all industrial chucks sold in the United States for use in connection with portable machine tools. There are other manufacturers of industrial chucks in the United States who are in competition with respondent in the sale of such chucks and parts to original equipment manufacturers; but by reason of respondent's predominant position in the chuck manufacturing industry which has existed for many years, such competition is necessarily limited. One of respondent's original equipment manufacturer customers, which is its largest, and which purchases all, or substantially all of its chuck requirements from respondent, occupies a dominant position in the production and sale of portable drills in the United States.

PAR. 9. Respondent manufactures and sells a wide variety of industrial chucks suitable to the requirements of the original equipment manufacturers and in sufficient quantities to supply their needs. Respondent's annual quantity discount and rebate plan, as hereinbefore described, tends to cause such original equipment manufacturer-purchasers to concentrate all their purchases of chucks and parts upon respondent's products to the exclusion of respondent's competitors and to their injury. Respondent's annual quantity discount and rebate plan also tends to discourage and prevent prospective competition with respondent by reason of the inducements offered thereby to respondent's original equipment manfucturer-purchasers to concentrate all purchases of their chuck requirements with respondent in order to receive the discounts and rebates provided by said plan. As an illustration, of respondent's original equipment manufacturer-purchasers for 1950, one purchased $25,327.12 of respondent's chucks and received a quantity discount and rebate of $633.18. Thus the small additional purchases made by such purchaser to bring it within the 2½ per cent discount bracket not only resulted in the equivalent of free goods to

that extent, but also to the extent of the difference between the necessary additional goods bought and the total amount of the quantity discount and rebate received. Another purchaser bought $51,270.47 of respondent's chucks and received a quantity discount and rebate of $2,531.48, thereby increasing its maximum quantity discount and rebate of 2½ per cent on all purchases less than $50,000 to 4.94 per cent on all purchases up to and including $50,000.00, as well as on those above that amount. Another of respondent's purchasers bought $101,365.06 of respondent's chucks and received a quantity discount and rebate of $7,413.90, and thereby increased its maximum quantity discount and rebate of 4.94 percent on all purchases less than $100,000 to 7.31 percent on all purchases up to and including $100,000.00, as well as on those above that amount. Respondent's largest purchaser, with purchases of respondent's chucks and parts amounting to $797,733.52, and the only one in the $200,000 bracket, in addition to receiving $19,943.34 from respondent as a quantity rebate at the end of the year, currently received as discounts from invoices of respondent's goods, additional quantity discounts amounting to $56,888.05 which constituted an immediate and distinct incentive to such purchaser, to concentrate its purchases in respondent's products. Similar incentives were given to other of respondent's purchasers as stated in Paragraph 6.

PAR. 10. Respondent's discriminations in price in commerce, as hereinbefore found are substantial. The effect of such discriminations may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which respondent is engaged, or to injure, or to destroy competition with respondent and its competitors, or to prevent competition with respondent by its competitors.

CONCLUSION

The discriminations in price as hereinabove found to exist are in violation of the provisions of subsection (a) of Section 2 of the 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).

ORDER TO CEASE AND DESIST

It is ordered, That the respondent Jacobs Manufacturing Company, a corporation, engaged in commerce, as "commerce" is defined in the aforesaid Clayton Act, its officers, representatives, agents and em-

ployees, directly or through any corporate or other device, in the sale of industrial chucks, parts, and accessories therefor of like grade and quality, do forthwith cease and desist from directly or indirectly discriminating in price between purchasers, who are manufacturers of motor driven, hand or portable tools, or light power driven machinery within the United States, and places subject to the jurisdiction of the United States where either or any of the purchases involved in such discrimination are in said commerce, by selling said products to any of said purchasers at prices which are higher than the prices at which said products are sold by respondent to any other of said purchasers, and where any such sale is made in competition with one or more sellers of said products.

It is further ordered, That the respondent shall, within sixty (60) days after the 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.

JACOBS MANUFACTURING COMPANY,
a corporation
By [S] LOUIS B. STONER
President
[S] FRANK CHAPMAN
Counsel for Respondent.

Date:

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and entered of record on this the 24th day of June, 1953.