IN THE MATTER OF

AMERICAN GREETINGS CORPORATION

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SUBSECS. (d) AND (e) OF AN ACT OF CONGRESS APPROVED OCT. 14, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936; AND OF SEC. 5 OF AN ACT APPROVED SEPT. 26, 1914

Docket 5982. Complaint, May 8, 1952—Decision, Oct. 23, 1952

Where a corporation, which had had an accelerated growth in recent years and which was one of the three or four largest firms in the United States engaged in the interstate sale of greeting cards appropriate for use on many occasions (together with related products such as paper and ribbons for wrapping gifts); sold 10% of all greeting cards there used, and sold to over 40,000 retail customers located in practically all cities in the United States with a population over 5,000 or more; and included 50% of all drug store accounts, both chain and independent, and 50% of the syndicated 5 and 10¢ variety stores, to which it sold a substantial proportion of the total volume of such products purchased by them—

(*a*) Paid or contracted to pay promotional allowances to some customers by way of discounts, allowances, or otherwise in consideration of display and advertising promotional services or facilities supplied by them in connection with the resale of its said products, without making such allowances available on proportionally equal terms to all of its competing customers in that it (1) paid or contracted to pay such allowances to some competing customers without making them available to all other competing customers; (2) made such allowances to such customers in amounts determined by different percentages of dollar volume of purchases without making them thus available in amounts equal to the largest of such percentages; and (3) made such allowances to such customers in amounts not determined by any percentage and not equal to the same percentage of dollar volume of purchases or any other measurable base without making available proportional allowances to all of such customers in amounts equal to and determined by the same percentage of dollar volume of purchases or of any other measurable base:

Held, That such acts and practices, under the circumstances set forth, violated subsec. (d) of Sec. 2 of the Clayton Act, as amended by the Robinson-Patman Act: and

Where said corporation, in furnishing and sometimes selling cabinet fixtures in different sizes, designed for the display of its greeting cards in retail stores and priced at from about $50 to $150 each—

(*b*) Discriminated in favor of some and against other purchasers of its products in that it contracted to furnish or furnished said display cabinets to some purchasers at no charge, without offering to furnish or otherwise according such cabinets without charge to all other competing purchasers, to which it only offered or sold the same at prices above set forth;

(*c*) Contracted to furnish or furnished said display cabinets to purchasers at no charge in amounts (based upon its prices) not determined by any percentage, and not equal to the same percentage, of dollar volume of purchases or of any other measurable base without offering to furnish such cabinets on the same basis to all competing purchasers; and

(*d*) Accorded to some purchasers a "return-for-credit" service consisting of accepting from them the return, for credit of the entire purchase price, of certain seasonable greeting cards which remained unsold after the season for which they were designed, which was of substantial value, without according such service to all other competing purchasers:

Held, That such acts and practices, under the circumstances set forth, violated subsec. (e) of Sec. 2 of the Clayton Act, as amended by the Robinson-Patman Act: and

Where said corporation, with the effect of interfering with the resale at retail of merchandise bearing the trade names or trade-marks of competitors—

(*a*) Offered to buy, and bought and took over, stocks of greeting cards sold and distributed by competitors to retail sellers;

(*b*) Agreed and arranged with retail sellers to junk and destroy stocks of competitors' cards distributed to them; and to remove competitors' stock from normal channels of distribution;

(*c*) Agreed and arranged with retailers to take over and remount competitors' cards, so as to obscure, and make difficult the identification of, competitors' trade-marks and trade names, and to return to such sellers competitors' cards after identification had been thus obscured; and

(*d*) Arranged, and acted to have its representatives make arrangements of, displays of greeting cards in retail stores in such way that competitors' cards were displayed as if they were its own products;

With a dangerous tendency unduly to restrain and eliminate competition between and among it and its competitors in the sale of such cards in commerce:

Held, That such acts, practices, and methods constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. T. Harold Scott and *Mr. Floyd O. Collins* for the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that the corporation named as the respondent in the caption hereof, and hereinafter more particularly designated and described, has violated the provisions of subsection (d) and subsection (e) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, sec. 15), and provisions of the Federal Trade Commission Act (15 U. S. C. A. sec. 45), hereby issues its complaint, stating its charges with respect thereto as follows:

Count I

PARAGRAPH 1. Respondent, American Greetings Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1300 W. 78th Street, Cleveland, Ohio. From 1944, the year of its incorporation, until 1951 respondent's name was American Greeting Publishers, Inc., and from 1951 until February 19, 1952, respondent's name was American Greetings, Inc.

PAR. 2. From 1944 to the present time, which is the period covered by the allegations of this complaint, respondent has been engaged in the business of manufacturing and selling greeting cards appropriate for use on many occasions (Christmas, Easter, birthdays, anniversaries, weddings, funerals, etc.) together with related products such as paper and ribbons for wrapping gifts. It is one of the three or four largest firms engaged in that business in the United States.

Respondent manufactures its products, or most of them, at its plant located in Cleveland, Ohio, and sells such products to over 40,000 retailer customers or purchasers located in the United States and in other places subject to the jurisdiction of the United States for resale within such places to consumers.

Substantially all of such customers or purchasers are either independent single-unit drug stores, chain drug store organizations, or limited price variety stores. Two or more of such customers or purchasers are located in each of a large number of different towns, cities and other trading areas, and such customers or purchasers when so located are in competition with each other in offering for resale and reselling respondent's products.

Respondent now produces and sells approximately 10 percent of all greeting cards used and sold in the United States. It has customers throughout the United States and in practically all cities therein with a population of 5,000 or more. It has grown with acceleration in recent years. During the period of that growth it has acquired and secured such additional customers and accounts so that it now has 50 percent or more in number of all retail drugstore accounts in this country, both chain and independent, and 50 percent or more of the volume of greeting cards sold to such accounts. It also has as customers approximately 50 percent in number of the syndicated five-and-ten cent variety stores engaged in the purchase and sale of greeting cards. To that number of customers it sells a substantial part of the total volume of greeting cards purchased by them.

PAR. 3. In the course and conduct of its business, respondent engaged in commerce, as commerce is defined in the Clayton Act as amended, having shipped its products or caused them to be transported from Ohio to such customers or purchasers located in the same and in the other States of the United States and in other places subject to the jurisdiction of the United States.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for resale or resale of products sold to them by respondent, and such payments were not available from respondent on proportionally equal terms to all other of its customers competing in the distribution of its products.

PAR. 5. Included among and illustrative of the payments alleged in Paragraph 4 were credits and sums of money, by way of discounts, allowances, rebates and otherwise, as compensation or in consideration for general promotional services or facilities in connection with offering for resale and reselling greeting cards, including displays and advertising in various forms. Such payments are hereinafter sometimes referred to as promotional allowances.

Promotional allowances were not available on proportionally equal terms to all of respondent's customers competing in the distribution of its greeting cards, as alleged in Paragraph 4, in that:

(1) Respondent paid or contracted to pay promotional allowances to some competing customers, and respondent did not offer to pay or otherwise make available promotional allowances to all other competing customers.

(2) Respondent paid or contracted to pay promotional allowances to competing customers in amounts equal to and determined by different percentages of dollar volume of purchasers, and respondent did not offer to pay or otherwise make available promotional allowances in amounts equal to the largest of such percentages to all of such competing customers.

(3) Respondent paid or contracted to pay promotional allowances to competing customers in amounts not determined by any percentage, and not equal to the same percentage, of dollar volume of purchases or of any other measurable base; and respondent did not offer to pay or otherwise make available promotional allowances to all of such competing customers in amounts equal to and determined by the same percentage of dollar volume of purchases or of any other measurable base.

PAR. 6. The acts and practices of respondent as alleged above in Count I violates subsection (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. Title 15, sec. 13).

Count II

PARAGRAPH 1. The allegations of this paragraph are the same as the allegations made in Paragraphs 1, 2, and 3 of Count I.

PAR. 2. In the course and conduct of its business in commerce, respondent discriminated in favor of some purchasers against other purchasers of its products bought for resale by contracting to furnish, furnishing, or contributing to the furnishing of services or facilities connected with the handling, resale, or offer for resale of such products so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

PAR. 3. Included among and illustrative of the services or facilities alleged in Paragraph 2 were fixtures especially designed for use in retail stores to display and offer for resale greeting cards purchased from respondent, hereinafter sometimes referred to as display cabinets. Display cabinets are of several sizes and are priced and sometimes sold by respondent at from about $50 to about $150 each, depending upon size.

Display cabinets were not accorded on proportionally equal terms to all of respondent's purchasers competing in the distribution of its greeting cards, as alleged in Paragraph 2, in that:

(1) Respondent contracted to furnish or furnish display cabinets to some competing purchasers without charge, and respondent did not offer to furnish or otherwise accord display cabinets without charge to all other of such competing purchasers but only offered to sell or sold display cabinets to such other competing purchasers at prices ranging from about $50 to about $150 each.

(2) Respondent contracted to furnish or furnished display cabinets to competing purchasers without charge in amounts (based upon respondent's prices) not determined by any percentage, and not equal to the same percentage, of dollar volume of purchases or of any other measurable base; and respondent did not offer to furnish or otherwise accord display cabinets without charge to all of such competing purchasers in amounts (based upon respondent's prices) equal to and determined by the same percentage of volume of purchases or of any other measurable base.

PAR. 4. Also included among and illustrative of the services or facilities alleged in Paragraph 2 was a return-for-credit service. This service consists of accepting from purchasers the return for

credit of the entire purchase price of certain seasonal greeting cards (such as, for example, Christmas cards) which remain unsold after the season for which they are designed to be used. Such return-for-credit service is of substantial value to purchasers in that, among other things, it relieves them of the inconvenience and expense of storing such cards until they are again seasonal and releases their capital for other uses.

The return-for-credit service was not accorded on proportionally equal terms to all of respondent's purchasers competing in the distribution of certain of its seasonal greeting cards in that respondent contracted to furnish or furnished it to some of such competing purchasers and did not offer to furnish or otherwise accord it to all other such competing purchasers.

PAR. 5. The acts and practices of respondent as alleged above in Count II violate subsection (e) of section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. Title 15, sec. 13).

Count III

PARAGRAPH 1. The allegations of Paragraphs 1 and 2 of Count I of this complaint are hereby adopted and incorporated herein by references and made a part of this Count III the same as if they were repeated here verbatim.

PART 2. In the course and conduct of its business, respondent engaged in commerce, as commerce is defined in the Federal Trade Commission Act as amended, having shipped its products or caused them to be transported from Ohio to such customers or purchasers located in the same and in the other States of the United States and in other places subject to the jurisdiction of the United States.

PAR. 3. Except to the extent that competition has been hindered, frustrated and lessened as set forth in this complaint, respondent has been and is in substantial competition with other corporations and individuals, firms and partnerships, engaged in the sale and distribution of greeting cards in commerce as that term is defined in the Federal Trade Commission Act.

PAR. 4. For more than six years last past, and continuing to the present time, in the course and conduct of said business respondent in attempting to sell and in the sale and distribution of said products in interstate commerce has used, engaged in, done and performed, among others, the following acts, practices and methods with the effect of interfering with the resale at retail of merchandise bearing the trade names and trade marks of competitors:

(1) Offered to buy and bought and took over stocks of greeting cards sold and distributed by competitors to retail sellers;

(2) Agreed and arranged with retail sellers to junk and destroy stocks of greeting cards distributed to such retail sellers by competitors;

(3) Agreed and arranged with retail sellers to remove from normal channels of distribution stocks of greeting cards distributed to such retail sellers by competitors;

(4) Agreed and arranged with retail sellers of greeting cards distributed to such retail sellers by competitors to take over and remount, so as to obscure and to make difficult the identification of trade marks and trade names of competitors;

(5) Acted to return, through interstate commerce to retail sellers, greeting cards produced by competitors after identification had been obscured and otherwise made difficult through various ways and means, including those specified in the immediately preceding subparagraph;

(6) Arranged and acted to have its salesmen and its other representatives make arrangements of displays of greeting cards in stores of retail sellers in such way that greeting cards produced by its competitors were displayed as if they were products of said respondent.

PAR. 5. The above alleged acts, practices and methods of the respondent, all and singularly, have a dangerous tendency unduly to restrain, hinder, suppress and eliminate competition between and among respondent and its competitors in the sale and distribution of greeting cards in commerce within the meaning of the Federal Trade Commission Act, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of section 5 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 October 23, 1952, 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.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936, the Federal Trade Commission, on May 8, 1952,

issued and subsequently served its complaint in this proceeding upon American Greetings Corporation, a corporation, charging it with violation of subsections (d) and (e) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, and section 5 of the Federal Trade Commission Act. Said corporation failed to file an answer to the complaint herein. In accordance with due notice, a hearing was held on July 7, 1952, in Washington, D. C., before the above-named hearing examiner, theretofore duly designated by the Commission. At such hearing said corporation failed to appear or to show cause why the order contained in the notice accompanying the complaint should not be issued; and counsel supporting the complaint offered proof of due service thereof and rested his case. Accordingly, pursuant to the provisions of the notice accompanying the complaint, the hearing examiner finds the facts to be as alleged in the complaint, and issues the order contained in such notice.

FINDINGS AS TO THE FACTS

Count I

PARAGRAPH 1. Respondent, American Greetings Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1300 W. 78th Street, Cleveland, Ohio. From 1944, the year of its incorporation, until 1951, respondent's name was American Greeting Publishers, Inc., and from 1951 until February 19, 1952, respondent's name was American Greetings, Inc.

PAR. 2. From 1944 to the present time, which is the period covered by the allegations of the complaint herein, respondent has been engaged in the business of manufacturing and selling greeting cards appropriate for use on many occasions (Christmas, Easter, birthdays, anniversaries, weddings, funerals, etc.) together with related products such as paper and ribbons for wrapping gifts. It is one of the three or four largest firms engaged in that business in the United States.

Respondent manufactures its products, or most of them, at its plant located in Cleveland, Ohio, and sells such products to over 40,000 retailer customers or purchasers located in the United States and in other places subject to the jurisdiction of the United States for resale within such places to consumers.

Substantially all of such customers or purchasers are either independent single-unit drug stores, chain drug store organizations, or limited price variety stores. Two or more of such customers or purchasers are located in each of a large number of different towns,

cities and other trading areas, and such customers or purchasers when so located are in competition with each other in offering for resale and reselling respondent's products.

Respondent now produces and sells approximately 10 percent of all greeting cards used and sold in the United States. It has customers throughout the United States and in practically all cities therein with a population of 5,000 or more. It has grown with acceleration in recent years. During the period of that growth it has acquired and secured such additional customers and accounts so that it now has 50 percent or more in number of all retail drugstore accounts in this country, both chain and independent, and 50 percent or more of the volume of greeting cards sold to such accounts. It also has as customers approximately 50 percent in number of the syndicated five-and-ten-cent variety stores engaged in the purchase and sale of greeting cards. To that number of customers it sells a substantial part of the total volume of greeting cards purchased by them.

PAR. 3. In the course and conduct of its business, respondent engaged in commerce, as "commerce" is defined in the Clayton Act as amended, having shipped its products or caused them to be transported from Ohio to such customers or purchasers located in the same and in other States of the United States and in other places subject to the jurisdiction of the United States.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for resale or resale of products sold to them by respondent, and such payments were not available from respondent on proportionally equal terms to all other of its customers competing in the distribution of its products.

PAR. 5. Included among and illustrative of the payments found in Paragraph Four, *supra*, were credits and sums of money, by way of discounts, allowances, rebates and otherwise, as compensation or in consideration for general promotional services or facilities in connection with offering for resale and reselling greeting cards, including displays and advertising in various forms. Such payments are hereinafter sometimes referred to as promotional allowances.

Promotional allowances were not available on proportionally equal terms to all of respondent's customers competing in the distribution of its greeting cards, in that:

(1) Respondent paid or contracted to pay promotional allowances to some competing customers, and did not offer to pay or otherwise

make available promotional allowances to all other competing customers.

(2) Respondent paid or contracted to pay promotional allowances to competing customers in amounts equal to and determined by different percentages of dollar volume of purchasers, and did not offer to pay or otherwise make available promotional allowances in amounts equal to the largest of such percentages to all of such competing customers.

(3) Respondent paid or contracted to pay promotional allowances to competing customers in amounts not determined by any percentage, and not equal to the same percentage, of dollar volume of purchases or of any other measurable base; and respondent did not offer to pay or otherwise make available promotional allowances to all of such competing customers in amounts equal to and determined by the same percentage of dollar volume of purchases or of any other measurable base.

PAR. 6. The acts and practices of respondent, as found in Count I, *supra*, violate subsection (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. Title 15, sec. 13).

Count II

PARAGRAPH 1. The facts found in this paragraph are the same as those found in Paragraphs One, Two, and Three of Count, I, *supra*.

PAR. 2. In the course and conduct of its business in commerce, respondent discriminated in favor of some purchasers against other purchasers of its products bought for resale by contracting to furnish, furnishing, or contributing to the furnishing of services or facilities connected with the handling, resale, or offer for resale of such products so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

PAR. 3. Included among and illustrative of the services or facilities found in Paragraph Two, *supra*, were fixtures especially designed for use in retail stores to display and offer for resale greeting cards purchased from respondent, hereinafter sometimes referred to as display cabinets. Display cabinets are of several sizes and are priced and sometimes sold by respondent at from about $50 to about $150 each, depending upon size.

Display cabinets were not accorded on proportionally equal terms to all of respondent's purchasers competing in the distribution of its greeting cards, in that:

(1) Respondent contracted to furnish or furnished display cabinets to some competing purchasers without charge, and did not offer

to furnish or otherwise accord display cabinets without charge to all other of such competing purchasers, but only offered to sell or sold display cabinets to such other competing purchasers at prices ranging from about $50 to about $150 each.

(2) Respondent contracted to furnish or furnished display cabinets to competing purchasers without charge in amounts (based upon respondent's prices) not determined by any percentage, and not equal to the same percentage, of dollar volume of purchases or of any other measurable base; and respondent did not offer to furnish or otherwise accord display cabinets without charge to all of such competing purchasers in amounts (based upon respondent's prices) equal to and determined by the same percentage of volume of purchases or of any other measurable base.

PAR. 4. Also included among and illustrative of the services or facilities found in Paragraph Two, supra, was a return-for-credit service. This service consists of accepting from purchasers the return for credit of the entire purchase price of certain seasonal greeting cards (such as, for example, Christmas cards) which remain unsold after the season for which they are designed to be used. Such return-for-credit service is of substantial value to purchasers in that, among other things, it relieves them of the inconvenience and expense of storing such cards until they are again seasonal, and releases their capital for other uses.

The return-for-credit service was not accorded on proportionally equal terms to all of respondent's purchasers competing in the distribution of certain of its seasonal greeting cards in that respondent contracted to furnish or furnished it to some of such competing purchasers and did not offer to furnish or otherwise accord it to all other of such competing purchasers.

PAR. 5. The acts and practices of respondent, as found in Count II, *supra*, violates subsection (e) of section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. Title 15, sec. 13).

Count III

PARAGRAPH 1. The facts found in Paragraphs One and Two of Count I, *supra*, are hereby incorporated herein by reference and made a part of this Count III the same as if they were repeated here verbatim.

PAR. 2. In the course and conduct of its business, respondent engaged in comerce, as "commerce" is defined in the Federal Trade Commission Act as amended, having shipped its products or caused them to be transported from the State of Ohio to such customers or

purchasers located in the same and in other States of the United States and in other places subject to the jurisdiction of the United States.

PAR. 3. Except to the extent that competition has been hindered, frustrated and lessened, as herein found, respondent has been and is in substantial competition with other corporations and individuals, firms and partnerships, engaged in the sale and distribution of greeting cards in commerce as that term is defined in the Federal Trade Commission Act.

PAR. 4. For more than six years last past, and continuing to the present time, in the course and conduct of said business, respondent, in attempting to sell and in the sale and distribution of said products in interstate commerce, has used, engaged in, done and performed, among others, the following acts, practices and methods with the effect of interfering with the resale at retail of merchandise bearing the trade names and trade marks of competitors:

(1) Offered to buy and bought and took over stocks of greeting cards sold and distributed by competitors to retail sellers;

(2) Agreed and arranged with retail sellers to junk and destroy stocks of greeting cards distributed to such retail sellers by competitors;

(3) Agreed and arranged with retail sellers to remove from normal channels of distribution stocks of greeting cards distributed to such retail sellers by competitors;

(4) Agreed and arranged with retail sellers of greeting cards distributed to such retail sellers by competitors to take over and remount, so as to obscure and to make difficult the identification of trade marks and trade names of competitors;

(5) Acted to return, through interstate commerce to retail sellers, greeting cards produced by competitors after identification had been obscured and otherwise made difficult through various ways and means, including those specified in the immediately preceding subparagraph;

(6) Arranged and acted to have its salesmen and its other representatives make arrangements of displays of greeting cards in stores of retail sellers in such way that greeting cards produced by its competitors were displayed as if they were products of respondent.

PAR. 5. The acts, practices and methods of the respondent, as herein found, all and singularly, have a dangerous tendency unduly to restrain, hinder, suppress and eliminate competition between and among respondent and its competitors in the sale and distribution of greeting cards in commerce within the meaning of the Federal Trade Commission Act, and constitute unfair methods of competition and

unfair acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent, American Greetings Corporation, a corporation, its officers, employees, agents, and representatives, directly or through any corporate or other device, in or in connection with the sale of greeting cards, or of any other related products such as paper and ribbons for wrapping gifts, in commerce, as commerce is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from:

I

A. Making or contracting to make any payment to or for the benefit of any customer unless a payment is offered to be made or otherwise made available to each of all other competing customers.

B. Making or contracting to make, to or for the benefit of competing customers, any payments in amounts which are not determined by a percentage of dollar volume of purchases or of some other measurable base.

C. Making or contracting to make, to or for the benefit of any customer, any payment in an amount equal to and determined by any percentage of dollar volume of purchases or of any other measurable base unless such a payment in an amount equal to and determined by the same percentage of dollar volume or of such other measurable base, as the case may be, is offered to be made or otherwise made available to each of all other competing customers.

D. Making or contracting to make, to or for the benefit of any customer, any payment unless such a payment is made available on proportionally equal terms to each of all other competing customers.

As used in Part I of this Order, "payment" means the payment of anything of value as compensation or in consideration for any services or facilities furnished by or through any customer of respondent in connection with his handling, offering for resale, or resale of products sold to him by respondent.

II

A. Discriminating between or among competing purchasers by furnishing any service or facility to any of them unless a service or facility is offered to be furnished or otherwise accorded to each of all of the others.

B. Discriminating between or among competing purchasers by furnishing any service or facility without charge to any of them unless

a service or facility is offered to be furnished or otherwise accorded without charge to each of all of the others.

C. Discriminating between or among competing purchasers by furnishing them any service or facility in amounts which are not determined by a percentage of dollar volume of purchases or of some other measurable base.

D. Discriminating between or among competing purchasers by furnishing any service or facility to any of them in amounts equal to and determined by any percentage of dollar volume of purchases or of any other measurable base unless such service or facility in an amount equal to and determined by the same percentage of dollar volume of purchases or of such other measurable base, as the case may be, is offered to be furnished or otherwise made available to each of all of the others.

E. Discriminating between or among competing purchasers by furnishing any service or facility to them upon terms not accorded to all of them on proportionally equal terms.

As used in Part II of this Order:

1. "Service or facility" means any services or facilities connected with the handling, offering for resale, or resale of respondent's products by purchasers who bought them from respondent for resale.

2. "Furnishing" means furnishing, contracting to furnish, or contributing to furnishing.

III

Provided, That in any proceeding in which respondent is charged with having violated this order nothing herein contained shall prevent respondent from defending against such charges by showing:

A. That at or about the same time respondent offered to furnish to each of its customers who compete in the resale of its products a promotional service, facility, or payment;

B. That the service, facility, or payment which respondent offered to furnish to each customer was, under reasonable terms and conditions, usable by him and suitable to his facilities and business;

C. That respondent did not refuse to offer to furnish to any customer any kind of service, facility, or payment so usable by and suitable to such customer if respondent offered to furnish a service, facility, or payment of that kind to any other customer;

D. That the services, facilities, or payments which respondent offered to furnish were of a cost value equal to a uniform percentage of the sales (or purchases) of respondent's products by each customer during a specified and identical period of time;

E. That respondent promptly informed all competing customers of the kind and amount of the service, facility, or payment which it offered to furnish to each customer and the terms and conditions of the offer;

F. That, if such an offer to any customer was conditioned upon such customer furnishing some reciprocal service, facility, or payment, (1) such offers to all competing customers were also so conditioned, (2) the reciprocal service, facility, or payment required to be furnished by each customer was, under reasonable terms and conditions, available from such customer and suitable to his facilities and business, (3) respondent did not refuse to condition such offer to any customer upon the furnishing of any kind of reciprocal service, facility, or payment so available from and suitable to such customer if such offer by respondent to any other customer was conditioned upon the furnishing of that kind of reciprocal service, facility, or payment, and (4) there was an equality of ratio among all customers as to the measurable cost of the service, facility, or payment offered to be furnished by respondent and the reciprocal service, facility, or payment required to be furnished by the customer; and

G. That, after taking every reasonable precaution to see that each of all competing customers to whom respondent furnished any service, facility, or payment had complied with every requirement of the terms and conditions of respondent's offer, respondent ceased to furnish any service, facility, or payment to any and all of such customers as to whom respondent knew, or had reason to believe, had not so complied.

It is further ordered, That respondent, American Greetings Corporation, a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the sale of greeting cards or of any other related products, such as paper and ribbons for wrapping gifts, in commerce, as "commerce" is defined in the aforesaid Federal Trade Commission Act as amended, do forthwith cease and desist from:

A. Offering to buy or buying and taking over stocks of greeting cards sold and distributed by competitors to retail sellers;

B. Agreeing or arranging with retail sellers to junk and destroy stocks of greeting cards distributed to such retail sellers by competitors;

C. Agreeing or arranging with retail sellers to remove from normal channels of distribution stocks of greeting cards distributed to such retail sellers by competitors;

D. Agreeing or arranging with retail sellers of greeting cards distributed to such retail sellers by competitors to take over and remount

so as to obscure and to make difficult the identification of trade-marks and trade names of competitors;

E. Acting to return, through interstate commerce, to retail sellers, greeting cards produced by competitors after identification has been obscured and otherwise made difficult through various ways and means, including those specified in the immediately preceding subparagraph; and

F. Arranging or acting to have its salesmen and its other representatives make arrangements of displays of greeting cards in stores of retail sellers in such way that greeting cards produced by its competitors are displayed as if they were products of respondent.

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 October 23, 1952].

IN THE MATTER OF

CHESTER BURR RENNER TRADING AS HOME ARTS

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

Docket 5954. · Complaint, Feb. 12, 1952—Decision, Nov. 4, 1952

Where an individual engaged in the sale of colored, convex enlargements of photographs and of frames and glass therefor, mostly to housewives, through sales agents who solicited orders, followed by "proof passers" who, exhibiting the enlargement in black and white, inquired as to the customer's wishes as to colors and, mentioning the matter for the first time, sought to sell the customer the much more costly frame and glass—

(*a*) Falsely represented through his sales agents that he was offering colored enlargements of the customer's photographs or snapshots for a "special" or "reduced" price, or at "cost of production"; and

(*b*) Similarly represented such prices were available to the customer who drew by chance from a number of envelopes containing slips of paper a so-called "lucky envelope";

The facts being the $3.98 charged for the colored enlargement was his regular price; practically all purchasers drew a "lucky envelope" and all might purchase a colored enlargement at the price quoted; and the procedure was merely a scheme to get entry into homes of prospective customers and facilitate sales;

(*c*) In many instances exhibited framed colored pictures as illustrative of his work and stated that any enlargement ordered would be of the same quality as the sample; notwithstanding the fact the enlargements were frequently inferior to the samples thus exhibited;

(*d*) Failed properly to disclose to customers prior to the sale of the product and the collection of a part or all of the price, that the enlargements were of a "convexed" shape, through the word's inclusion on the subsequently given certificates;

With the result that purchasers were led into the erroneous belief that such enlargements were suitable for framing in the conventional type frame and of inducing their orders in such belief; and

(*e*) Represented through said "proof passer" who later called on the customer that because of the picture's convex shape an ordinary frame would not fit, that the picture would not look right or would crack if a frame of the special type sold by him was not ordered, and that the picture was baked, sealed or pressed therein in a special way, with specially constructed non-breakable glass;

The facts being the pictures were placed in the frames in a conventional manner, with ordinary breakable glass; and the entire scheme was a form of bait merchandising which had for its purpose the sale of frames and glasses therefor from which said individual made a substantial profit, rather than

the sale of the enlargements from which he made little if any profit; and was intended to and did mislead the purchaser and force him to buy something which he did not originally intend to do;

With effect of misleading and deceiving the purchasing public as to the nature of the original offer and the quality, value, and usual selling price of the enlargements, and of unfairly placing purchasers in the position where they felt obliged to purchase frames and glasses from him; and of causing a substantial number thereof to purchase substantial quantities of such products.

Held, That such acts and practices, under the circumstances set forth, constituted unfair and deceptive acts and practices in commerce.

As respects certain additional charges in the complaint, namely, that the enlargements were not painted in oil but that the color was applied by an air brush, and that the receipt or certificate which so stated was not delivered or shown to the customer until all or part of the purchase price had been paid; and that the so-called "artist" who approached the prospective customer was only another one of respondent's agents known as a "proof passer": such charges were not sustained in the record by reliable, probative and substantial evidence.

Before *Mr. John Lewis*, hearing examiner.

Mr. Jesse D. Kash for the Commission.

Griswold, Leeper, Miller & Corry, of Cleveland, Ohio 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 Chester Burr Renner, individually and trading as Home Arts, 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 Chester Burr Renner is an individual trading as Home Arts, with his principal office and place of business located at 14123 St. James Avenue, Cleveland, Ohio.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the solicitation for sale and the sale and distribution of colored enlargements of photographs and frames and glasses therefor. Respondent has caused his said products, when sold, to be transported from the State of Ohio to purchasers thereof located in various other States of the United States and has maintained a course of trade in said products, in commerce, between and among the various States of the United States. His volume of business in such commerce is and has been substantial.

PAR. 3. Respondent's products are sold by means of house-to-house solicitation and he has adopted and put into use a sales plan or method as follows:

(a) Respondent and his duly authorized agents, when calling upon prospective purchasers, state that, in conjunction with an advertising campaign which they are conducting in the neighborhood, they are offering oil painted enlargements of photographs for the special or reduced price of $3.98 and inquire if the prospective customer does not have a photograph which he or she wishes to have enlarged and colored. On many occasions respondent and his sales agents have represented that the company, in furtherance of its advertising campaign, is conducting a "lucky draw" and induce the customer to take a chance by drawing from a number of envelopes a so-called "lucky envelope." Respondent and his sales agents represent that the customer who is fortunate enough to draw the "lucky envelope" is to receive an oil painted portrait of any photograph "free," except for the incidental sum of $3.98, which is stated to be the cost of production.

In some instances respondent and his agents have exhibited enlarged colored pictures as illustrative of the type of work done and have stated that if an enlargement is purchased it will be of the same quality as the samples exhibited. If a purchase is made a part or all of the purchase price is collected and a receipt or certificate given. Respondent and his agents state that another agent, referred to as an "artist," will call in a short time with the enlargement to obtain information as to the colors which the customer desires to be used. At the conclusion of a sale, a certificate, in the following form, is presented to the customer:

This Certificate
Entitles Bearer _____
to one 10 x 16 Convexed

NATURAL FINISHED PORTRAIT (Not Oil)
(without frame) for cost of production, $3.98

Groups One Dollar Extra for Each Additional Head

In a few days, the Proof of your Portrait will be shown at your home and the cost of production must then be paid.

YOU ARE NOT OBLIGED TO ORDER FRAME
READ THIS CONTRACT

This Portrait is Made by the Artist
Over A Print With an Air Brush

We only ask that you appreciate this work and be kind enough to display it and recommend it at its true worth and not at the amount you expended for it.

All photographs returned with finished work

(b) Subsequently, respondent or his agents call upon the customers, exhibit the enlargement, collect the balance due, and inquire as to the desire of the customers with respect to colors. At this point and for the first time respondent or his agent mention a frame and glass for the enlargement stating that if the enlargement is not framed it will become discolored, faded, cracked and worthless and call to the attention of the customers for the first time that the enlargement is convex in shape, point out that it will not fit into a regular frame provided with regular flat glass and state that a frame and glass into which it will fit can be purchased only from correspondent as such frames and glasses are not available at stores. At this time respondent and his agents represent further that it is necessary to purchase a frame with a convex glass for the reason that the enlargement is baked into the frame and further represent that the glass is of special construction and unbreakable. Respondents and their agents at this time exhibit sample framed colored enlargements and state that the colored enlargements and frame will be of the same quality as those exhibited.

(c) If a frame is ordered a part or all of the purchase price is collected and afterward the framed colored enlargement is delivered and the balance due, if any, collected.

PAR. 4. The sales plan, as above outlined, used by respondents and the statements and representations made by them and their authorized agents in connection therewith, constitute misleading and deceptive acts and practices in the following particulars: The price of $3.98 charged for the colored enlargement is not the cost of production nor a special or reduced price but is the regular and usual price charged for the merchandise; said so-called "lucky envelope" gives the holder thereof no advantage in price whatsoever, for practically all purchasers draw a "lucky envelope" and all purchasers may purchase said "paintings" or "portraits" at the price quoted by respondent in making the so-called "special introductory and advertising offer." In truth and in fact, said procedure is merely a sales scheme employed to gain entry into the home of the prospective customers and to secure from the customer a photograph or snapshot, and thus more easily facilitate the sale thereafter of a picture and frame; the enlargements are not painted in oil but the color is applied by an air brush and while the receipt of certificate so states, it is not delivered or shown to the customer until all or a part of the purchase price has been paid; the so-called "artist" who approaches the customer on the second visit is merely another of respondent's agents known as a "proof passer"; frequently the enlargements are greatly inferior in quality to those exhibited as samples.

Respondents, by failing to disclose that the enlargements are of a convex shape, prior to the sale thereof and collection of a part of all the purchase price, lead purchasers into the erroneous belief that such enlargements are the usual and conventional type of enlarged photographs, that is, having a flat surface and suitable for framing in an ordinary frame, and the failure to disclose such fact constitutes an unfair and deceptive act and practice. The enlargements are not baked into the frame but are merely placed in the frame in the conventional manner. The glass provided with the frames is not of special construction but is common glass in a convex shape and may be broken.

In truth and in fact, while the public is led to believe through the statements and representations made by respondent and his agents that respondent is engaged in selling colored enlargements, the entire selling scheme and plan is designed and put into operation for the sole purpose of selling frames and glasses therefor, in which transactions respondent makes a handsome profit, rather than the sale of enlargements which sales result in an actual financial loss to respondents.

PAR. 5. The use by the respondent of the plan, acts, practices, methods, and representations in connection with the offering for sale and sale of his said products in commerce, as aforesaid, including the failure to reveal essential and important facts in connection therewith, has had and now has the tendency and capacity to and does mislead and deceive the purchasing public concerning the actual character and purpose of the original offer, including the identity of the actual product respondent proposes to sell and concerning the quality, value, and usual selling price of said enlargements and unfairly place purchasers in the position where they are required to purchase frames and glasses from respondents in case they wish to have the enlargements framed, which is usually the case. The aforesaid acts and practices lead purchasers erroneously to believe that the representations so made and used by the respondent and the implications arising therefrom are true and cause a substantial number of the purchasing public to purchase substantial quantities of said products.

PAR. 6. 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 November 4, 1952, 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 February 12, 1952, issued and subsequently served its complaint in this proceeding upon respondent, Chester Burr Renner, an individual trading as Home Arts, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondent's answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said 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, the proceeding regularly came on for final consideration by said hearing examiner upon the complaint, the answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel, oral argument not having been requested; 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, Chester Burr Renner, is an individual trading as Home Arts, with his principal office and place of business located at 14123 St. James Avenue, Cleveland, Ohio.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the solicitation for sale and the sale and distribution of colored enlargements of photographs, and frames and glasses therefor. Respondent has caused his said products, when sold, to be transported from the State of Ohio to purchasers thereof located in various other States of the United States and has maintained a course of trade in said products, in commerce, between and among various States of the United States. His volume of business in such commerce is and has been substantial.

PAR. 3. Respondent's products are sold mainly through house-to-house solicitation by sales agents employed by respondent for such purpose. Most of the prospective customers are housewives. The sales

agents are supplied with order blanks, receipts and framed colored photographs purporting to be samples of work done by respondent. In the sale of his said products, respondent's duly authorized representatives use the following sales plan or method and make the following representations:

(a) Respondent's representatives when calling upon a prospective customer ask whether the customer has a photograph or snapshot which she wishes enlarged and colored, stating on a number of occasions that respondent is offering colored enlargements for a "special" or "reduced" price, or at "cost of production." Respondent's representatives have also made such representations in connection with the use of a "draw" in the operation of which the customer is asked to take a chance by drawing from a number of envelopes containing slips of paper a so-called "lucky envelope." It is represented that the customer who draws the so-called "lucky envelope" will receive a colored photographic enlargement of any photograph she wishes, at a "special" or "reduced" price, or at a "discount," or at "cost of production." The price at which such enlargement is offered is $3.98 for an enlargement of a picture of a single individual, plus $1.00 for each additional person appearing on the enlargement.

In many instances respondent's representatives exhibit to the prospective customer framed colored pictures, some in enlarged form and some in miniature, as illustrative of the type of work done by respondent and state that if the customer orders an enlargement it will be of the same type, quality, and workmanship as the sample picture. If a purchase is made, the customer has the option of paying the entire purchase price or giving the representative a deposit on account. At the conclusion of the sale the customer usually receives a receipt or certificate in the following form:

This Certificate
Entitles Bearer _____
to one 10 x 16 Convexed
NATURAL FINISHED PORTRAIT (Not Oil)
(without frame) for cost of production, $3.98
Group One Dollar Extra for Each Additional Head

In a few days, the Proof of your Portrait will be shown at your home and the cost of production must then be paid.

YOU ARE NOT OBLIGATED TO ORDER FRAME
READ THIS CONTRACT
This Portrait is Made by the Artist
Over A Print With an Air Brush

We only ask that you appreciate this work and be kind enough to display it and recommend it at its true worth and not at the amount you expended for it.

All photographs returned with finished work.

(b) Subsequently, another representative of respondent, known as a "proof passer" calls at the home of the customer, exhibiting the enlargement in black and white form and inquiring as to the wishes of the customer with respect to colors for the enlargement. At this point, and for the first time, the representative mentions a frame or glass for the enlargement. Customers are told that because of the convex or curved shape of the picture a special type frame is needed and that the ordinary frame containing flat glass will not fit it; that the picture will not look right or will crack if a frame of the type sold by respondent is not ordered; that the picture is baked, sealed, or pressed into the frame in a special way; that the glass in the frame is of a special construction and is nonbreakable. Many of the customers, having already paid for all or part of the enlargement, feel obliged to order a frame so as to protect the investment already made. The said frames are priced at from $12.50 to $22.00. Respondent's representatives exhibit sample framed colored enlargements and state that the colored enlargement and frame, when ordered, will be of the same type as the sample. If a frame is ordered, all or part of the purchase price thereof is collected. At a subsequent date a frame colored enlargement is delivered by a delivery man who collects any balance which may be due.

PAR. 4. The sales plan used by respondent's sales agents and representatives, and the statements and representations made by them, as above found, were and are false, misleading and deceptive in the following respects: The price of $3.98 charged for the colored enlargement is not a "special," "reduced," or "discounted" price but is the regular and usual price charged for enlargements by respondent; the so-called "lucky envelope" or "draw" gives the holder thereof no advantage in price whatsoever since practically all purchasers draw a "lucky envelope" and all purchasers may purchase a colored enlargement at the price quoted by respondent, said procedure merely being a sales scheme to gain entry into the home of prospective customers and to facilitate the sale of colored enlargments; and frequently the colored enlargements of the photographs are different from and inferior in quality, workmanship, and appearance to the samples exhibited to the customers by respondent's representatives.

Respondent, by failing to properly disclose that the enlargements are of a convex or curved shape prior to the sale of the enlargement and collection of part or all of the purchase price, have unfairly and deceptively led purchasers into the erroneous belief that such enlargements are suitable for framing in the conventional type frame and have caused them to order colored enlargements based on said erroneous belief. Although the certificate given to the customer refers to the fact that the picture is "convexed," this is not given to the customer until after the sale is made, is frequently overlooked by the customer, and

many customers do not understand the meaning of the term. The statements made by respondent's representatives that the glass used in the frame is a special, nonbreakable glass, and that the enlargement is pressed or baked into the frame in a special way are false, misleading, and deceptive in that the said glass is ordinary glass and may be broken, and the pictures are placed in the frame in the conventional manner.

While the public is led to believe, through the statements and representations of respondent's sales agents, that respondent is engaged primarily in selling colored enlargements and thus are induced to purchase such enlargements by reason of the relatively small cost thereof, the entire selling scheme and plan has for its prime purpose the selling of frames and glass therefor from which respondent makes a substantial profit, rather than the sale of enlargements from which respondent makes little, if any, profit. The entire scheme is a form of bait merchandising which is primarily for the purpose of, and has the effect of, misleading and forcing the purchaser to buy something which he did not originally intend.

PAR. 5. The use by the respondent of the plan, acts, practices, methods, and representations in connection with the offering for sale and sale of his said products in commerce, as aforesaid, including the failure to reveal essential and important facts in connection therewith, has had and now has the tendency and capacity to and does mislead and deceive the purchasing public concerning the actual character and purpose of the original offer, including the identity of the actual product respondent proposes to sell and concerning the quality, value, and usual selling price of said enlargements and unfairly places purchasers in the position where they feel obliged to purchase frames and glasses from respondents in case they wish to have the enlargements framed, which is usually the case. The aforesaid acts and practices lead purchasers erroneously to believe that the representations so made and used by the respondent and the implications arising therefrom are true and cause a substantial number of the purchasing public to purchase substantial quantities of said products.

PAR. 6. While the complaint contains certain additional charges, not mentioned above, these are not sustained in the record by reliable, probative and substantial evidence.

CONCLUSION

The aforesaid 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, Chester Burr Renner, individually, and trading as Home Arts, or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce," is defined in the Federal Trade Commission Act, of respondent's photographic enlargements or reproductions and of frames and glasses therefor, do forthwith cease and desist from:

1. Representing, directly or by implication, that the price at which any of respondent's products is offered for sale represents a special, reduced or discounted price, when such price is in fact the customary price at which said product is regularly sold.

2. Representing, by any means or in any manner, that the respondent is conducting a drawing, lottery, plan, or scheme whereby a prospective customer is given a chance to obtain any of respondent's products at a special, reduced or discounted price; or that a prospective customer, by participating in any drawing, lottery, plan, or scheme, may be entitled to receive any of respondent's products at a special, reduced or discounted price.

3. Exhibiting to a prospective customer, as a sample, any photograph or picture which is not in fact representative of the pictures sold by respondent; or representing, directly or by implication, that a picture to be made and delivered will be equal in type, quality, and workmanship to the sample displayed to the customer, unless the picture thereafter delivered is in fact of the same type, quality, and workmanship as such sample.

4. Concealing from, or failing to disclose to, customers at the time pictures are ordered that the finished picture will be so shaped and designed that it can ordinarily be used only in an odd-style frame which is sold by respondent.

5. Representing that the glass in the picture frames which respondent sells is special or unbreakable or that the picture is baked or pressed into the frame in a special way, if such is not the fact.

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 November 4, 1952].

IN THE MATTER OF

GEORGE ALTSTADTER TRADING AS ARGENTUM LABORATORIES

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

Docket 5909. Complaint, July 23, 1951—Decision, Nov. 6, 1952

There is a preference on the part of a substantial portion of the purchasing public for perfumes and toilet waters compounded in France over those compounded in the United States.

A representation that a perfume contains pure gold has an appeal to the purchasing public because of the prestige and the intrinsic value of gold; and a representation that a specific perfume contains "Pure 24 Carat Gold" when samples analyzed by the Bureau of Standards show a content of less than 2 thousandths of a microgram of gold per milliliter, which is less than the lowest concentration of gold found in sea water, is false and deceptive.

Where an individual engaged in the compounding of perfumes and toilet waters and the competitive interstate sale and distribution thereof—

(*a*) Represented that said products were compounded in or imported from France through prominently displaying in newspapers and other advertisements the words "Greetings from Paris", together with a picture of the Eiffel Tower, and through use of such brand or trade names as "Parfum de Soir", "Danse Apache", "Bois de Rose", "Jasmin Fleurage", "Feuille de Violette", and "The Old French Glory";

The facts being that all of his said products were compounded in the United States; while certain oils used therein were imported from France, all other materials were obtained in this country, and even those perfumes which contained French oils contained domestic oils also;

(*b*) Falsely represented in his advertising that the price at which certain of his products were offered was a special price for a limited time only; when in fact it was his usual and customary price;

(*c*) Falsely represented as aforesaid that his perfumes contained a substantial amount of gold which caused the fragrance to last longer; notwithstanding the fact that the gold content was infinitesimal and much smaller than that found in ordinary sea water, and was incapable of exerting any substantial or appreciable effect upon said perfumes; and

(*d*) Falsely represented that a bottle of perfume was given free to purchasers of his "Treasure Chest" assortment of perfumes and that the purported gold contained in his said products was also given free to purchasers; the facts being that in order to obtain the so-called "free" perfumes it was necessary to purchase others, the price of which included a charge for the "free" product; and the price of any gold contained in the perfume was included in the charge therefor;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true, and thereby induce purchase of substantial quantities of its perfumes and toilet waters; and with result that substantial trade was diverted unfairly from his competitors:

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

As respects respondent's appeal from the initial decision of the hearing examiner on the ground that it prohibited him from stating that his perfume contained gold unless it contained a substantial amount, when he contended that it did in fact contain gold, that the gold was a vital part of his formula and the fact that it was present in small quantities was immaterial; it appearing that his advertisements clearly implied that his perfumes contained a substantial quantity, that the evidence indicated an infinitesimal concentration thereof, and that there was no evidence that such a concentration had any effect as a fixative or otherwise in perfume:

The Commission was of the opinion that said appeal was without merit, and that the hearing examiner's initial decision was appropriate in all respects to dispose of the proceeding, and accordingly denied the appeal and adopted said decision as its own.

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

Mr. B. G. Wilson for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that George Altstadter, an individual trading as Argentum Laboratories, 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, and stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, George Altstadter is an individual trading as Argentum Laboratories with his office and principal place of business located at 1742 Samson Street, Philadelphia, Pennsylvania.

PAR. 2. Respondent is now, and for some years last past has been, engaged in the compounding, bottling, sale and distribution of perfumes and toilet water. Respondent causes his said products when sold to be transported from his place of business in the State of Pennsylvania to purchasers thereof located in the various States of the United States and maintains, and at all times mentioned herein has

maintained, a course of trade in said products in commerce between and among the various States of the United States.

PAR. 3. Respondent, in the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his products, has made certain statements and representations, with reference to said products and the manner of conducting his said business, in newspapers, circulars, form letters, on order blanks and on the labels of said products. Typical of, but not all inclusive of such statements and representations are the following:

Courtesy—Coupon

Greetings from Paris (Picture of Eiffel Tower)

One large 8 grs. bottle of high class French style perfume absolutely free. This coupon entitles you to our Treasure Chest containing three different, large 8 grs. bottles of your choice of high class French style perfume "Or de France" with 24 Kt. Gold for the publicity price of $1.00. * * * Valid 10 days!

Said advertisement contains a coupon which reads as follows:

Coupon—mark your choice of three

1. Parfume du Soir
2. My First Kiss
3. Danse Apache
4. Bois de Rose
5. Gardenia
6. Jasmin Fleurage
7. Feuille de Violette
8. Carnation
9. Lily of the Valley

* * *

The aforesaid names also appear on the labels of respondent's perfumes.

On order forms sent to prospective customers in response to inquiries, respondent lists his toilet water as "Eau D'Or" and uses as names therefor the following "Glorie de France," "Baiser Defendu," "Danse Apache," "Bois de Rose," "Cyclamen des Alpes," "Jasmin Fleurage," "Feuille de Violette," "Oeillet" and "Muguet de Mai." The aforesaid names also appear on the labels of respondent's toilet water.

24 KARAT GOLD GIVEN AWAY FREE

Every bottle of "The Old French Glory" our latest creation of French Style perfume contains pure 24 Karat Gold. This unique feature—no other perfume in the world has it—makes its lovely fragrance last on and on * * * at the pre-introductory price of $1.00 we honestly believe this is the greatest bargain ever offered * * *.

PAR. 4. Through the use of the various French words above set forth and the name "The Old French Glory" in his advertising, on

order blanks and on the labels of his products and the words "Greetings from Paris" and the picture of the Eiffel Tower, in his advertising, respondent represented that his perfumes and toilet water were compounded in France and imported into the United States; by means of the aforesaid advertisements respondent further represented that the offer for sale for a certain price was limited in time; that a bottle of perfume was given absolutely free to the purchasers of his "Treasure Chest"; that his perfumes contained a substantial amount of 24 Kt. Gold which makes its fragrance last longer than perfumes that do not contain gold and that the gold in said perfume was given away free.

PAR. 5. The aforesaid representations were false, misleading and deceptive. In truth and in fact, respondent's perfumes and toilet water were compounded in the United States, using domestic ingredients. There was no actual limitation on the time within which respondent's offer has to be accepted. Perfume was not given free since it was necessary to purchase other perfume, the price of which included the price of the so-called "free" perfume. The amount of gold in respondent's perfumes is so infinitesimal that any reference to gold is misleading. Gold is not known to have any effect upon the lasting qualities of the fragrance of perfumes. Such gold as may have been contained in respondent's perfume was not given free as the amount charged for the perfume included the price of the gold.

PAR. 6. There is a preference on the part of substantial numbers of the purchasing public for perfumes and toilet water compounded in France over those compounded in the United States.

PAR. 7. Respondent at all times mentioned herein has been and is now in substantial competition in commerce with firms and individuals selling perfumes and toilet water compounded in the United States and with firms and individuals selling such products which are compounded in France and imported into the United States.

PAR. 8. The use by respondent of the foregoing false, misleading and deceptive statements and representations had the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such representations and statements were true and to cause substantial numbers of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's products. As a result trade has been diverted to respondent from his competitors and substantial injury has been done and is now being done to competition in commerce.

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

ORDERS AND DECISION OF THE COMMISSION

Order denying respondent's appeal from initial decision of hearing examiner and decision of the Commission and order to file report of compliance, Docket 5909, November 6, 1952, follows:

This matter came on to be heard by the Commission upon the respondent's appeal from the hearing examiner's initial decision herein and brief in opposition thereto filed by counsel in support of the complaint (oral argument not having been requested).

Respondent in his appeal specifically objects only to that portion of the order contained in the initial decision which prohibits him from stating that his perfume contains gold unless it contains a substantial amount of gold. Respondent contends that the perfume so represented does, in fact, contain gold, that it is a vital part of his formula and that the fact it is present in small quantities is immaterial. The record shows that respondent considers the gold to act as a fixative in his perfume.

A consideration of respondent's advertisements in the record shows that they clearly imply that his perfume contains a substantial quantity of gold. Three members of the public, who had received certain of respondent's advertisements through the mail, testified that in their opinion a substantial gold content was implied by his advertisements.

An analysis of samples of perfume represented by respondent as containing gold was made by a chemist of the National Bureau of Standards who testified that they contained less than two thousandths of a microgram of gold per milliliter, an extremely small amount. This amount is less than the lowest concentration of gold found in sea water. There is no evidence of record indicating that such an infinitesimal concentration of gold has any effect as a fixative or otherwise in perfume. Also, in addition to respondent's claims as to the utility value of gold in his perfume, the representation that the perfume contains pure gold in itself has an appeal to the purchasing public because of the prestige and intrinsic value of gold. Respondent's representation that perfume contains "Pure 24-Karat Gold" which, in fact, contains gold in such microscopic quantities, is false and deceptive.

The Commission, therefore, being of the opinion that the respondent's appeal is without merit and that the hearing examiner's initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That the respondent's appeal from the hearing examiner's initial decision be, and it hereby is, denied.

It is further ordered, That the initial decision of the hearing examiner shall on the 6th day of November, 1952, become the decision of the Commission.

It is further ordered, That the respondent George Altstadter, an individual trading as Argentum Laboratories, 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 contained in said initial decision, a copy of which is attached hereto.

Said initial decision, thus adopted by the Commission as its decision, follows:

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 23, 1951, issued and subsequently served its complaint in this proceeding upon the respondent, George Altstadter, an individual trading as Argentum Laboratories, charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing by respondent of his 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 were introduced before the above-named hearing examiner, theretofore duly designated by the Commission, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final consideration by the hearing examiner on the complaint, answer, and testimony and other evidence (the filing of proposed findings and conclusions having been waived and oral argument not having been requested), and the hearing examiner, having duly considered the matter, 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. The respondent, George Altstadter, is an individual trading as Argentum Laboratories, with his office and principal place of business located at 1742 Sansom Street, Philadelphia, Pennsylvania. Respondent is engaged in the compounding, sale and distribution of perfumes and toilet waters.

PAR. 2. Respondent causes his products, when sold, to be transported from his place of business in the State of Pennsylvania to purchasers

located in various other States of the United States. Respondent maintains and has maintained a course of trade in his products in commerce between and among the various States of the United States.

PAR. 3. In the sale and distribution of his products, respondent is and has been in substantial competition with other individuals and with firms engaged in the sale and distribution of similar products in commerce among and between the various States of the United States.

PAR. 4. Respondent advertises his products by means of circular letters and postal cards which are mailed to prospective purchasers and also by means of advertisements inserted in newspapers. In a number of the advertisements there have been prominently displayed the words "Greetings from Paris," together with a picture of the Eiffel Tower. Such advertisements were captioned "Courtesy—Coupon" and read as follows:

One large 8 grs. bottle
of high class French style perfume
absolutely **FREE**

This Coupon entitles **YOU** to our TREASURE CHEST containing three different, large 8 grs bottles of your choice of high class French style perfume "OR de FRANCE" with 24 Kt. GOLD, for the publicity price of $1.00. Simply fill out **COUPON** Enclose ONE DOLLAR in bill. M. O., check or stamps to help cover Advertising, Handling, Tax etc. and we will mail promptly post-paid our TREASURE CHEST, if not thrilled with what you get, or if you can get a similar value for **LESS THAN** $10.00, keep one of the three bottles; return the rest, and **YOUR DOLLAR WILL BE IMMEDIATELY REFUNDED!** * * *
VALID 10 DAYS!

The coupon included in the advertisement read as follows:

COUPON

Mark your choice of three:
1—Parfum de Soir
2—My First Kiss
3—Danse Apache
4—Bois de Rose
5—Gardenia
6—Jasmin Fleurage
7—Feuille de Violette
8—Carnation
9—Lily of the Valley
Name: _____
Address: _____

These names also appear on the labels affixed to the bottles in which the perfumes are packaged and sold to the public. A typical label reads as follows:

LES PARFUMS
OR de FRANCE
with
24 Kt. GOLD
No. 1
Parfum du Soir

Another advertisement read as follows:

24 KARAT GOLD GIVEN AWAY FREE

Every bottle of "The Old French Glory" our latest creation of French Style perfume contains pure 24 Karat Gold. This unique feature—no other perfume in the world has it—makes its lovely fragrance last on and on * * * at the pre-introductory price of $1.00 we honestly believe this is the greatest bargain ever offered * * * Number of introductory price bottles limited, if exhausted, your Dollar will be returned.

French words are also used by respondent as names or brands for his toilet waters. Among those used are the following: "Eau D'Or," "Gloire de France," "Baiser Defendu," "Danse Apache," "Bois de Rose," "Cyclamen des Alpes," "Jasmin Fleurage," "Feuille de Violette," "Oeillet," and "Muguet de Mai."

PAR. 5. In the manner and through the means set forth above, respondent has represented, directly or by implication, that his perfumes and toilet waters were compounded in France and imported into the United States; that the price at which certain of his products were offered for sale was a special price applicable for a limited time only; that his perfumes contained a substantial amount of gold which caused the fragrance of the perfumes to last longer than would otherwise be the case; that a bottle of perfume was given free to purchasers of respondent's "Treasure Chest" assortment of perfumes; and that the purported gold content in respondent's perfumes was also given free to purchasers of such perfumes.

PAR. 6. The record establishes that these representations were erroneous and misleading. Actually, none of respondent's products is compounded in or imported from France, all of them being compounded in the United States. While certain oils used in some of the perfumes are imported from France, all other materials are obtained in the United States. Even those perfumes which contain French oils contain domestic oils as well. The purported special price on certain of the products was not in fact limited as to time but was the usual price at which such products were customarily and regularly sold by respondent in the normal course of business. None of respondent's perfumes was given to the public free, because in order to obtain the so-called free perfumes it was necessary that the recipient

purchase other perfumes, the price of which included a charge for the "free" perfumes.

With respect to the gold content in respondent's perfumes, an analysis made by the National Bureau of Standards of representative samples of the perfumes establishes that they contain no more than a faint trace of gold, the amount being so small as to be infinitesimal. In fact, the record indicates that the amount is much smaller than that found in ordinary sea water. While respondent insists that the presence of gold in perfume, even though it be only a very small amount, prolongs the fragrance of the perfume and has other beneficial effects, no scientific basis for the opinion is shown. Whatever may be the correct answer to the abstract question of the effect of gold in perfume, it is concluded, in view of the fact that here the gold content is infinitesimal, that such content is incapable of exerting any substantial or appreciable effect upon the perfumes here under consideration. Nor is any gold which may be in the perfume given free, as the amount charged for the perfume includes the price of the gold.

PAR. 7. There is a preference on the part of a substantial portion of the purchasing public for perfumes and toilet waters compounded in France over those compounded in the United States.

PAR. 8. The record indicates that much of the advertising referred to above has already been discontinued by respondent.

PAR. 9. The use by respondent of the erroneous and misleading representations set forth above has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's products, and the tendency and capacity to cause such portion of the public to purchase such products as a result of the erroneous and mistaken belief so engendered. In consequence, substantial trade has been diverted unfairly to respondent from his competitors.

CONCLUSION

The acts and practices of respondent as herein found are all to the prejudice of the public and of respondent's 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.

ORDER

It is ordered, That the respondent, George Altstadter, individually and trading as Argentum Laboratories or trading under any other name, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering

for sale, sale and distribution of perfumes and toilet waters in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Greetings from Paris," or a picture of the Eiffel Tower or any picturization indicative of France, in advertising products not compounded in France; or otherwise representing, directly or by implication, that such products are compounded in or imported from France.

2. Using the words "Parfum du Soir," "Danse Apache," "Bois de Rose," "Jasmin Fleurage," "Feuille de Violette," "Eau D'Or," "Baiser Defendu," "Cyclamen des Alpes," "Oeillet," "Muguet de Mai" or "The Old French Glory," or any other words indicating French origin, as brand or trade names for perfumes or toilet waters compounded in the United States, without clearly and conspicuously stating, in immediate connection and conjunction therewith, that such products are compounded in the United States.

3. Representing that any offer of products at a stated price must be accepted within a certain time, unless such offer is in fact so limited.

4. Using the word "free" or any other word of similar import to designate, describe or refer to any product or to any ingredient contained therein which is not in fact a gift or gratuity, or the receipt of which is conditioned on the purchase of other products.

5. Representing that products contain gold, unless substantial amounts of gold are in fact contained therein.

6. Representing that the gold content in respondent's products prolongs the fragrance thereof.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That the respondent George Altstadter, an individual trading as Argentum Laboratories, 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 contained in said initial decision * * * [as required by aforesaid order and decision of the Commission].

IN THE MATTER OF

BENRUS WATCH COMPANY, INC.

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

Docket 5969. Complaint, Mar. 17, 1952—Decision, Nov. 6, 1952

In the resale at retail of brand-name watches, competitive brands, and other merchandise by competing purchasers, any appreciable difference between the prices they pay gives a material competitive advantage to purchasers paying the lower prices and, conversely, imposes a material competitive disadvantage upon purchasers paying the higher prices, and may result in substantial injury to the state of competition between and among such purchasers.

When such lower prices are lower by amounts determined by volume of purchase over a period of time, they tend substantially to divert business to the seller so granting them and away from his competitors, for purchasers have a substantial tendency to purchase only from such seller in order to make all of their purchases at the lowest possible prices and thus increase their competitive advantage.

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of its men's and women's watches in substantial volume to a substantial number of purchasers, most of them engaged in the competitive resale of such watches and competitive brands at retail, and including single unit and chain jewelry stores and mail order houses;

In selling its said watches pursuant to a plan under which it (1) classified annual purchases into groups which began with those under $2,000, and included six other progressively larger groups ranging from $2,000 to $4,000, $4,000 to $8,000, etc. and granted rebates from its list prices ranging from 1% for those whose purchases fell within the second group, to 8% for those whose purchases exceeded the $50,000 to $75,000 group; and (2) accorded to its largest volume purchaser a rebate of 14½% below its regular list prices—

Discriminated in price substantially through the granting of such annual rebates both as between the purchasers in each volume bracket and the purchasers in each other volume bracket, many of whom were in competition with each other in the resale of its products, and as between the purchasers in the volume brackets and the purchaser sold at special list prices, who in some instances also competed in resale;

Effects of which discriminations might be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which it and its said purchasers, respectively, were engaged, or to injure, destroy, and prevent competition with it, with the purchasers who received the benefits of such discriminations, and with the customers of both:

Held, That such discriminations in price constituted a violation of the provisions of subsection 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act.

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

Mr. William H. Smith and *Mr. Peter J. Dias* for the Commission.

Weisman, Quinn, Allan & Spett, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of sub-section (a) of section 2 of the Clayton Act (U. S. C. title 15, section 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 Benrus Watch Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 200 Hudson Street, New York, New York.

PAR. 2. From 1946 to the present time, which is the period covered by this complaint, respondent has been engaged continuously in the business of manufacturing and selling men's and women's watches of like grade and quality which will sometime hereinafter be referred to as Benrus watches.

Respondent manufactured watches and parts thereof in several factories which it directly or indirectly owns, one of which is located at New York, New York.

Each year respondent sold a substantial volume of Benrus watches to a substantial number of purchasers with places of business located in the State of New York, in other States of the United States, and in other places subject to the jurisdiction of the United States for resale within such places. In 1948, for example, respondent sold Benrus watches valued at more than $11,000,000 to more than 3,000 purchasers. Since that time there has been a substantial increase in both number of purchasers and volume of sales.

Most of such purchasers were engaged in the business of reselling Benrus watches, competitive brands of watches, and other merchandise at retail. Included among such retail purchasers were single unit and chain jewelry stores and mail order houses.

Prior to 1946, the year in which respondent was incorporated, Benrus watches had been similarly manufactured and sold for many years by the Benrus Watch Company, a co-partnership.

PAR. 3. In the course and conduct of its business, respondent engaged in commerce, as commerce is defined in the Clayton Act, having shipped Benrus watches and caused them to be transported from its factory located in the State of New York to such purchasers with places of business located in other States of the United States and in other places subject to the jurisdiction of the United States. At least one of the purchases involved in each of the discriminations in price hereinafter alleged was in such commerce.

PAR. 4. In each of the discriminations in price hereinafter alleged, respondent in the sale of Benrus watches to the purchasers paying the lower prices was in competition with persons, firms, and other corporations offering for sale and selling competitive brands of men's and women's watches, and the purchasers paying the higher prices or their customers were in competition with purchasers paying the lower prices or with their customers in the resale of Benrus watches, competitive brands of watches, and other merchandise.

PAR. 5. In the resale of Benrus watches, competitive brands of watches, and other merchandise by such competing purchasers, the rate of stock turnover is very low, and because of that and other factors affecting costs the net profit margin is very narrow. Under these circumstances, any appreciable difference between the prices they pay for such merchandise is substantial, giving a material competitive advantage to purchasers paying the lower prices and, conversely, imposing a material competitive disadvantage upon purchasers paying the higher prices.

It is reasonably probable that purchasers receiving the benefit of the lower prices will increase their volume of sales and their profits by reselling some or all of such merchandise at lower prices or by making expenditures for more and better advertising, fixtures, displays, and other services and facilities which also promote sales, or by doing both. On the other hand it is reasonably probable that purchasers paying the higher prices will be able to do neither but will suffer such a corresponding decrease in their volumes of sales and profits that many of them will not continue to have sufficient incentive to engage in vigorous competition.

When such lower prices are lower by amounts which are directly or indirectly determined or measured by volume of purchases over a period of time, there is also a reasonable probability that they will tend substantially to divert business to the seller so granting them and away from his competitors, for it is reasonably probable that purchasers will have a substantial tendency to purchase only from such seller in order to make all of their purchases at the lowest possible prices and thus increase their competitive advantage.

PAR. 6. In making sales of Benrus watches to such purchasers in the course and conduct of its business in commerce as above alleged, respondent as a practice and policy directly or indirectly discriminated in price by selling such watches to some of such purchasers at substantially higher prices than it sold them to other of such purchasers. Respondent used several methods or devices to effect such discriminations in price, some of which are hereinafter more particularly alleged.

Such discriminations being substantial, it appears to be the fact and, therefore, it is alleged that the effects thereof may be substantially to lessen competition and tend to create a monopoly in the lines of commerce in which respondent and such purchasers, respectively, are engaged, and to injure, destroy, and prevent competition with respondent, with the purchasers who receive the benefit of such discriminations, and with the customers of both of them.

PAR. 7. One of the methods used by respondent to effect some of the discriminations in price alleged in Paragraph Six was the sale of Benrus watches to different retail purchasers at prices which were different by amounts directly or indirectly determined or measured by volume of purchases over a period of time.

Under this method, respondent annually classified purchasers by size, from smallest to largest, into several groups on the basis of their respective volumes, volumes referring to the dollar amount of annual purchases of Benrus watches. Each of such groups consisted of purchasers having volumes within the range of volumes, or volume bracket, specified for it; and the several volume brackets, respectively, covered ranges of progressively larger volumes. The next to the last or second largest volume bracket, although stated so as to include all purchasers with volumes over a stated amount, in fact excluded the purchaser with the largest volume who alone was in the last or largest volume bracket.

Respondent sold Benrus watches at regular list prices to purchasers in all of the volume brackets except the purchaser in the last or largest to whom respondent sold Benrus watches at special list prices.

To purchasers who bought at regular list prices, except purchasers in the first or smallest volume bracket, respondent annually granted from regular list prices rebates in the form of credits which, as between and among purchasers in the same volume bracket, amounted to the same percentage of their respective volumes, but which, as between and among purchasers in different volume brackets, amounted to different percentages of such volumes for the reason that the larger the volume bracket the greater the percentage of volume which was granted as a rebate.

To the purchaser in the last or largest volume bracket, respondent sold Benrus watches, as aforesaid, at special list prices which were lower than regular list prices by an amount equal to a greater percentage of the regular list prices than was the amount of the rebate granted by respondent from regular list prices to purchasers in the next to the last or second largest volume bracket. (The amount by which special list prices were lower than regular list prices will be stated hereinafter in terms of a rebate from regular list prices.)

By the use of this method, respondent discriminated in price between the purchasers in each volume bracket and the purchasers in each of the other volume brackets.

PAR. 8. The result of the use by respondent of the method of discrimination in price alleged in Paragraph Seven is illustrated by its application to purchasers of Benrus watches in the year 1948 which is shown with substantial accuracy in the following table.

Such table sets forth (Column 1) the volume brackets, (Column 2) the percentage amount of the rebate granted to purchasers in each volume bracket, (Column 3) the number of purchasers in each volume bracket and the total of those purchasers, (Column 4) the volumes of all purchasers in each volume bracket and the total of those volumes, and (Column 5) the dollar amount of the rebates granted to all purchasers in each volume bracket and the total of those rebates.

(1) Volume brackets	(2) Percent rebate	(3) Number of purchasers	(4) Volume of purchases	(5) Dollar rebates
Under $2,000	0	2, 280 plus	$4, 876, 682	$0
$2,000–$4,000	1	375	1, 004, 975	10, 050
$4,000–$8,000	2	171	887, 016	17, 740
$8,000–$12,000	3	66	631, 212	18, 936
$12,000–$20,000	4	41	576, 899	23, 076
$20,000–$30,000	5	26	646, 235	32, 312
$30,000–$50,000	6	11	397, 234	23, 834
$50,000–$75,000	7	13	786, 329	54, 973
Over $75,000	8	16	1, 425, 686	114, 055
Special List Prices	14½	1	384, 686	55, 779
Totals		3, 000 plus	11, 617, 954	350, 775

From this result, it is inferred and therefore alleged that it is not only reasonably probable but almost inevitable that the discriminations in price under the method alleged in Paragraph Seven will have the effects alleged in Paragraph Six.

PAR. 9. 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 March 17, 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.

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 to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, is 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, and other than the jurisdictional findings, specifically refrains from admitting or denying any of the other said findings as to the facts.

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,

[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 November 6, 1952, 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 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 Benrus Watch Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 200 Hudson Street, New York, New York.

PAR. 2. From 1946 to the present time respondent has been engaged continuously in the business of manufacturing and selling men's and women's watches of like grade and quality which will sometime hereinafter be referred to as Benrus watches.

Respondent manufactured Benrus watches and parts thereof in several factories which it directly or indirectly owns, one of which is located at New York, New York.

Each year respondent sold a substantial volume of Benrus watches to a substantial number of purchasers with places of business located in the State of New York, in other States of the United States, and in other places subject to the jurisdiction of the United States for resale within such places. In 1948 respondent sold Benrus watches valued at more than $11,000,000 to more than 3,000 purchasers. Since that time there has been a substantial increase in both number of purchasers and volume of sales.

Most of such purchasers were engaged in the business of reselling Benrus watches, competitive brands of watches, and other merchandise at retail. Included among such retail purchasers were single unit and chain jewelry stores and mail order houses.

Prior to 1946, the year in which respondent was incorporated, Benrus watches had been similarly manufactured and sold for many years by the Benrus Watch Company, a co-partnership.

PAR. 3. In the course and conduct of its business, respondent engaged in commerce, as commerce is defined in the Clayton Act, having shipped Benrus watches and caused them to be transported from its factory located in the State of New York to such purchasers with places of business located in other States of the United States and in other places subject to the jurisdiction of the United States. At least one of the purchases involved in each of the discriminations in price hereinafter found to have existed was in such commerce.

PAR. 4. In each of the discriminations in price hereinafter found to have existed, respondent in the sale of Benrus watches to the purchasers paying the lower prices was in competition with persons, firms,

and other corporations offering for sale and selling competitive brands of men's and women's watches, and many of the purchasers paying the higher prices or their customers were in competition with other purchasers paying the lower prices or with their customers in the resale of Benrus watches, competitive brands of watches, and other merchandise.

PAR. 5. In the resale of Benrus watches, competitive brands of watches, and other merchandise by such competing purchasers, the facts, circumstances and conditions are such that any appreciable difference between the prices they pay for such merchandise gives a material competitive advantage to purchasers paying the lower prices and, conversely, imposes a material competitive disadvantage upon purchasers paying the higher prices and may result in substantial injury to the State of competition between and among such purchasers.

When such lower prices were lower by amounts which were directly or indirectly determined or measured by volume of purchases over a period of time, they would tend substantially to divert business to the seller so granting them and away from his competitors, for purchasers would have a substantial tendency to purchase only from such seller in order to make all of their purchases at the lowest possible prices and thus increase their competitive advantage.

PAR. 6. In making sales of Benrus watches to such purchasers in the course and conduct of its business in commerce, respondent as a practice and policy directly or indirectly discriminated in price by selling such watches to some of such purchasers at substantially higher prices than it sold them to other of such purchasers. Hereinafter specifically set forth is a statement of methods used by the respondent to effect such discriminations.

Such discriminations are found to have been substantial; and it is further found that the effects thereof may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and such purchasers, respectively, are engaged, or to injure, destroy, and prevent competition with respondent, with the purchasers who received the benefit of such discriminations, and with the customers of both of them.

PAR. 7. One of the methods used by respondent to effect some of the discriminations in price found to exist in Paragraph Six was the sale of Benrus watches to different retail purchasers at prices which were different by amounts directly or indirectly determined or measured by volume of purchases over a period of time; and another method was the sale of Benrus watches to at least one purchaser at special list prices which were lower than the regular list prices at which sales to competing purchasers were made.

Under the first method, respondent annually classified purchases by size, from smallest to largest, into several groups on the basis of their respective volumes, volumes referring to the dollar amount of annual purchases of Benrus watches. Each of such groups consisted of purchasers having volumes within the range of volumes, or volume bracket, specified for it; and the several volume brackets, respectively, covered ranges of progressively larger volumes. The largest volume bracket, although stated so as to include all purchasers with volumes over a stated amount, in fact excluded the purchaser with the largest volume of purchases which did not receive any volume discounts; but instead, under the second method stated, was sold Benrus watches by respondent at special list prices which were 14½% below respondent's regular list prices at which respondent's watches are sold to its other customers those purchases come within the volume brackets hereinafter set forth.

To purchasers who bought at regular list prices, except purchasers in the first or smallest volume bracket, respondent annually granted from regular list prices rebates in the form of credits which, as between and among purchasers in the same volume bracket, amounted to the same percentage of their respective volumes, but which, as between and among purchasers in different volume brackets, amounted to different percentages of such volumes for the reason that the larger the volume bracket the greater the percentage of volume which was granted as a rebate.

To the purchaser having the largest volume, respondent sold Benrus watches, as aforesaid, at special list prices which were lower than regular list prices by an amount equal to a greater percentage of the regular list prices than was the amount of the rebate granted by respondent from regular list prices to purchasers in the last or largest volume bracket. (The amount by which special list prices were lower than regular list prices will be stated hereinafter in terms of a rebate from regular list prices in the line immediately following the highest volume bracket appearing in the table shown in Paragraph Eight.)

By the use of these methods, respondent discriminated in price as between the purchasers in each volume bracket, and the purchasers in each of the other volume brackets, many of whom were in competition with each other, in the resale of Benrus watches, and as between the purchasers in the volume brackets and the purchaser sold at special list prices, who, in some instances, also competed in the resale of said watches.

PAR. 8. The result of the use by respondent of the methods of discrimination in price found in Paragraph Seven is illustrated by its

application to purchasers of Benrus watches in the year 1948 which is shown with substantial accuracy in the following table.

Such table sets forth (Column 1) the volume brackets, (Column 2) the percentage amount of the rebate granted to purchasers in each volume bracket, (Column 3) the number of purchasers in each volume bracket and the total of those purchasers, (Column 4) the volumes of all purchasers in each volume bracket and the total of those volumes, and (Column 5) the dollar amount of the rebates granted to all purchasers in each volume bracket and the total of those rebates. Comparable figures respecting the purchaser sold at special list prices are shown in the last line of the table.

(1) Volume brackets	(2) Percent rebate	(3) Number of purchasers	(4) Volume of purchases	(5) Dollar rebates
Under $2,000	0	2,280 plus	$4,878,682	$0
$2,000–$4,000	1	375	1,004,975	10,050
$4,000–$8,000	2	171	887,016	17,740
$8,000–$12,000	3	66	631,212	18,936
$12,000–$20,000	4	41	576,899	23,076
$20,000–$30,000	5	26	646,235	32,312
$30,000–$50,000	6	11	397,234	23,834
$50,000–$75,000	7	13	786,329	54,973
Over $75,000	8	16	1,425,686	114,055
Special List Prices	14½	1	384,686	55,779
Totals		3,000 plus	11,618,954	350,755

From this result it is found that the discriminations in price under the methods stated in Paragraph Seven may have the effects stated in Paragraph Six.

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 Benrus Watch Company, Inc., a corporation engaged in commerce, as "commerce" is defined in the aforesaid Clayton Act, its officers, representatives, agents, and employees, directly or through any corporate or other device, in the sale of men's and women's watches or other jewelry products of like grade and quality to purchasers for resale within the United States and places subject to the jurisdiction of the United States, do forthwith

cease and desist from directly or indirectly discriminating in price between said purchasers, where either or any of the purchases involved therein 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 (a) where respondent in the sale of said products to any purchaser charged such lower prices is in competition with any other seller and where such lower prices to said purchaser are lower by any amount which is determined or measured by said purchaser's volume or purchases of said products over a period of time, or (b) where any purchaser charged such lower prices is in competition in the resale of said products with any purchaser charged such higher prices.

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.

BENRUS WATCH CO., INC.,
By (S) S. RALPH LAZARUS, *Treas.*
(S) WEISMANN, QUINN, ALLAN & SPETT,
Counsel for Respondent.

Date: _____.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and entered of record on this the 6th day of November 1952.

Syllabus

IN THE MATTER OF

THE AMERICAN ASSOCIATION OF ORTHODONTISTS ET AL.

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

Docket 6016. Complaint, July 22, 1952—Decision, Nov. 6, 1952

The words "orthodontic" and "orthodontia" refer to the regulation of the teeth through the use in the oral cavity of certain supplies, devices and appliances.

Much of the orthodontic work in the United States is done by dentists who do not specialize in orthodontia, and those who do not have their own laboratories, of whom there are many, must obtain such equipment from third parties who manufacture it or from orthodontists who have laboratories.

The practice of orthodontia includes—in addition to diagnosis, prescription, treatment and application of services to the patient—the manufacture, construction and sale of devices, equipment and material, in the form of braces, etc., which are constructed by orthodontists in their own laboratories, or are purchased by them from orthodontic laboratories or from one another across state lines, and orthodontists participate in the stream of commerce comprised of the purchase, sale, sending and receiving of raw materials going into such equipment, the manufacture of such raw materials into such equipment, and the sale thereof with services to patients or their dentists or to other orthodontists across state lines.

Where an association of orthodontists; a dentist who specialized in the practice of orthodontia and was highly influential in bringing about the things herein involved; and various members engaged in the treatment of patients and sale to them, to their dentists, or other orthodontists, of devices, equipment and material which they made in their own laboratories or purchased, in competition with one another and with others, including various laboratories which advertised their facilities in magazines and trade periodicals—

Acted together cooperatively to restrain and eliminate competition in the manufacture, sale and distribution of dental and orthodontic equipment, supplies, and devices, and attempted to monopolize and control trade therein; and pursuant to said combination—

(1) Acted to prevent those engaged in the manufacture and sale of orthodontic supplies, devices and appliances from having access to advertising media serving the dental profession;

(2) Acted to prevent dentists from having the benefit of advertising by those engaged in the manufacture and sale of such supplies;

(3) Acted to coerce and compel, by threats of boycott, acts of intimidation and other means, publishers and editors of trade publications in the dental field, or others, from soliciting or publishing advertisements from those engaged in the manufacture and sale of orthodontic supplies, devices and appliances; and

(4) Used their association as an instrumentality or medium for carrying on and making effective their aforesaid combination:

Held, That such acts, practices and methods had a dangerous tendency unduly to hinder competition and to create in respondents a monopoly in the manufacture and sale of such equipment, supplies and devices.

Before *Mr. Frank Hier*, hearing examiner.

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

Dargusch, Caren, Greek & King, of Columbus, Ohio, for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that The American Association of Orthodontists, its officers, directors and members, and T. Wallace Sorrels, all hereby made respondents herein and hereinafter referred to as respondents, have been and are using unfair methods of competition and unfair acts and practices in interstate commerce, in violation of the provisions of an Act of Congress approved September 26, 1914, as amended, and titled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect as follows.

PARAGRAPH 1. Respondent The American Association of Orthodontists, hereinafter referred to as respondent Association, a membership corporation, was organized in February, 1917, under and by virtue of the laws of the State of Pennsylvania as The American Society of Orthodontists. To the best of the Commission's information the principal office of respondent Association is located with one or another of the officers of the Association, usually the Secretary-Treasurer, and is at present located at 919 Oakland Avenue, Ann Arbor, Michigan. Respondent Association, according to its Constitution and By-Laws, exists to advance the science and art of orthodontia.

Respondent T. Wallace Sorrels is a dentist specializing in the practice of orthodontia. His professional offices and place of business are located at 1003 Medical Arts Building, Oklahoma City, Oklahoma. Through his personal efforts he has been highly influential in bringing about the things hereinabove and hereafter set forth.

There are approximately 1,195 members of respondent Association. Said members constitute a class so numerous as to make it impractical to name them all herein. The following respondents, who were officers or directors, as well as members, as of April, 1951, are fairly representative of the whole membership:

Joseph E. Johnson, President, 752 Starks Building, Louisville, Kentucky.

Barnard G. DeVries, President-Elect, Medical Arts Building, Minneapolis, Minnesota.

Homer B. Robinson, Vice President, Rorabaugh-Wiley Building, Hutchinson, Kansas.

George R. Moore, Secretary-Treasurer, 919 Oakland Avenue, Ann Arbor, Michigan.

Glenn F. Young, 745 Fifth Avenue, New York, New York.

Joseph D. Eby, 121 East 60th Street, New York, New York.

Frederick R. Aldrich, 327 East State Street, Columbus, Ohio.

Allan G. Brodie, 30 North Michigan Avenue, Chicago, Illinois.

E. C. Lunsford, 2642 Biscayne Boulevard, Miami, Florida.

M. Duke Edwards, 812 First National Bank Bldg., Montgomery, Alabama.

Philip E. Adams, 106 Marlborough Street, Boston, Massachusetts.

Leo M. Shanley, 7800 Maryland Avenue, St. Louis, Missouri.

J. A. Salzmann, 654 Madison Avenue, New York, New York.

George A. Dinham, Medical Arts Building, Duluth, Minnesota.

Richard E. Barnes, 638 Keith Building, Cleveland, Ohio.

Clifford G. Glaser, 675 Delaware Avenue, Buffalo, New York.

Ralph Waldron, 549 High Street, Newark, New Jersey.

Frederick T. West, 870 Market Street, San Francisco, California.

William R. Humphrey, 1232 Republic Building, Denver, Colorado.

A. C. Broussard, 1116 Maison Blanche Building, New Orleans, Louisiana.

Edgar D. Baker, 334 Professional Building, Raleigh, North Carolina.

William R. Alstadt, 610 Boyle Building, Little Rock, Arkansas.

Frederick W. Black, 835 Doctors Building, Cincinnati, Ohio.

Brooks Bell, Medical Arts Building, Dallas, Texas.

PAR. 2. There are in the United States 80,000 or more licensed dentists.

Orthodontia is a profession relating to dentistry. It is defined in Webster's Dictionary as that division of dentistry dealing with irregularity of the teeth. Certain equipment is required in connection with the practice of orthodontia. Many orthodontists have their own laboratories. Many dentists do not. Much of the orthodontic work performed each year in the United States is done by dentists who do not specialize in orthodontia. Dentists who do not have their own laboratories for the production of orthodontic equipment must obtain that equipment from third parties who are engaged in the manufacture and production of orthodontic material and equipment

or from orthodontists who have laboratories. A number of laboratories in various parts of the United States engage in the business of supplying the needs of dentists and orthodontists with orthodontic material and equipment. It has been the practice of these laboratories in the past to make their facilities known to the dental trade by means of advertisements in magazines and periodicals serving the dental trade.

PAR. 3. Most of the respondents are engaged in interstate commerce. The practice of orthodontia includes in addition to diagnosis, prescription, treatment and application of services to the patient; the manufacture, construction and sale of devices, equipment and material, in the form of braces, etc. Such devices and materials as are used in the practice of orthodontia are constructed from various other materials by respondent orthodontists in their own laboratories or are purchased by them for resale from orthodontic laboratories, or from one another across State lines. Orthodontists participate in the stream of commerce that is comprised of the purchase, sale, sending and receiving of raw materials going into such equipment, the manufacture of these raw materials into such equipment, and the sale of that equipment together with services to patients, or to the patients' dentists or to other orthodonists across State lines. Materials and equipment used in the manufacture of orthodontic devices and equipment are purchased by respondent orthodontists in States other than the State of location of the purchaser, and sales are made of services, devices and equipment to parties in said purchaser's State and other States in the regular course of the practice of the profession. Many orthodontists manufacture and sell equipment in accordance with prescriptions to other orthodontists in States other than the State of the manufacturer orthodontists.

PAR. 4. Respondent orthodontists are in substantial competition with one another and with other manufacturers and processors of dental and orthodontic material, equipment, supplies and devices in the sale and distribution of the aforesaid products, except insofar as the competition has been hindered, lessened, restricted and eliminated by the unfair methods and unfair acts and practices hereinafter set forth. The manufacturers and processors with whom respondent orthodontists are in competition, as aforesaid, are engaged in the sale and distribution of orthodontic equipment, supplies and devices in interstate commerce.

PAR. 5. For more than ten years last past and continuing to the present time, respondents have acted together cooperatively, in combination, to limit, restrain, suppress and eliminate competition in the manufacture, sale and distribution of dental and orthodontic

equipment, supplies and devices, and have attempted to monopolize and control trade in commerce in said equipment, supplies and devices, and as a part of, pursuant to and in furtherance of the aforesaid cooperative action and combination respondents have engaged in, done and performed the following acts, practices, methods and things:

1. Acted to prevent competitors from having free access to media of advertising serving the dental profession.

2. Acted to prevent sellers of supplies and equipment used by dentists and dental laboratories, from having access to media of advertising serving the dental profession.

3. Acted to coerce and compel, by various means, publishers and editors of trade publications in the dental and orthodontic field from soliciting or publishing advertisements from non-members of said respondent Association.

4. Used respondent Association as an instrumentality or medium for carrying on and making effective their aforesaid combination.

PAR. 6. The acts, practices and methods of respondents herein alleged have a dangerous tendency unduly to hinder competition and create in respondents a monopoly in the manufacture and sale of orthodontic equipment, supplies and devices.

CONSENT SETTLEMENT [1]

Pursuant to the provisions of the Federal Trade Commission Act (52 Stat. 111; 15 U. S. C. A., Sec. 45), the Federal Trade Commission on July 22, 1952, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair methods of competition in violation of the provisions of said Federal Trade Commission Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided for 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 the answers to said complaint heretofore filed, and which upon acceptance by the

[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 November 6, 1952 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.

Commission of this settlement, are to be withdrawn from the record, 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 are unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondents consent may be entered herein, in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent The American Association of Orthodontists, a membership corporation, was organized in February, 1917, under and by virtue of the laws of the State of Pennsylvania as The American Society of Orthodontists. To the best of the Commission's information the principal office of respondent Association is located with one or another of the officers of the Association, usually the secretary-treasurer, and is at present located at the Medical Center, White Plains, New York, care of Franklin A. Squires. Respondent Association, according to its Constitution and By-Laws, exists to advance the science and art of orthodontia.

Respondent T. Wallace Sorrels is a dentist specializing in the practice of orthodontia. His professional offices and place of business are located at 1003 Medical Arts Building, Oklahoma City, Oklahoma. Through his personal efforts he has been highly influential in bringing about the things hereinabove and hereafter set forth.

There are approximately 1195 members of respondent Association. Said members constitute a class so numerous as to make it impractical to name them all herein. The following respondents, who were officers or directors, as well as members, as of April, 1951, were named as being fairly representative of the whole membership:

Joseph E. Johnson, President, 752 Starks Building, Louisville, Kentucky.

Barnard G. deFries, President-Elect, Medical Arts Building, Minneapolis, Minnesota.

Homer B. Robinson, Vice President, Rorabaugh-Wiley Building, Hutchinson, Kansas.

George R. Moore, Secretary-Treasurer, 919 Oakland Avenue, Ann Arbor, Michigan.

Glenn F. Young, 745 Fifth Avenue, New York, New York.

Joseph D. Eby, 121 East 60th Street, New York, New York.

Frederick R. Aldrich, 327 East State Street, Columbus, Ohio.

Allen G. Brodie, 30 North Michigan Avenue, Chicago, Illinois.

E. C. Lunsford, 2642 Biscayne Boulevard, Miami, Florida.

M. Duke Edwards, 812 First National Bank Bldg., Montgomery, Alabama.

Philip E. Adams, 106 Marlborough Street, Boston, Massachusetts.

Leo M. Shanley, 7800 Maryland Avenue, St. Louis, Missouri.

J. A. Salzmann, 654 Madison Avenue, New York, New York.

George A. Dinham, Medical Arts Building, Duluth, Minnesota.

Richard E. Barnes, 638 Keith Building, Cleveland, Ohio.

Clifford G. Glaser, 675 Delaware Avenue, Buffalo, New York.

Ralph Waldron, 549 High Street, Newark, New Jersey.

Frederick T. West, 870 Market Street, San Francisco, California.

William R. Humphrey, 1232 Republic Building, Denver, Colorado.

A. C. Broussard, 1116 Maison Blanche Building, New Orleans, Louisiana.

Edgar D. Baker, 334 Professional Building, Raleigh, North Carolina.

William R. Alstadt, 610 Boyle Building, Little Rock, Arkansas.

Frederick W. Black, 835 Doctors Building, Cincinnati, Ohio.

Brooks Bell, Medical Arts Building, Dallas, Texas.

PAR. 2. There are in the United States 80,000 or more licensed dentists.

Orthodontia is a profession relating to dentistry. It is generally recognized that the words "orthodontic" and "orthodontia" refer to the regulation of the teeth through the use in the oral cavity of certain supplies, devices and appliances. Many orthodontists have their own laboratories. Many dentists do not. Much of the orthodontic work performed each year in the United States is done by dentists who do not specialize in orthodontia. Dentists who do not have their own laboratories for the production of orthodontic equipment must obtain that equipment from third parties who are engaged in the manufacture and production of orthodontic material and equipment, or from

orthodontists who do have laboratories. A number of laboratories in various parts of the United States engage in the business of supplying the needs of dentists and orthodontists with orthodontic material and equipment. It has been the practice of these laboratories in the past to make their facilities known to the dental trade by means of advertisements in magazines and periodicals serving the dental trade.

PAR. 3. Most of the respondents are engaged in interstate commerce. The practice of orthodontia includes in addition to diagnosis, prescription, treatment and application of services to the patient, the manufacture, construction and sale of devices, equipment and material, in the form of braces, etc. Such devices and materials as are used in the practice of orthodontia are constructed from various other materials by respondent orthodontists in their own laboratories or are purchased by them for resale from orthodontic laboratories, or from one another across state lines. Orthodontists participate in the stream of commerce that is comprised of the purchase, sale, sending and receiving of raw materials going into such equipment, the manufacture of these raw materials into such equipment, and the sale of that equipment together with services to patients, or to the patients' dentists, or to other orthodontists across state lines. Materials and equipment used in the manufacture of orthodontic devices and equipment are purchased by respondent orthodontists in states other than the state of location of the purchaser, and sales are made of services, devices and equipment to parties in said purchaser's state and other states in the regular course of the practice of the profession. Many orthodontists manufacture and sell equipment in accordance with prescriptions to other orthodontists in states other than the state of the manufacturer orthodontists.

PAR. 4. Respondent orthodontists are in substantial competition with one another and with other manufacturers and processors of dental and orthodontic material, equipment, supplies and devices in the sale and distribution of the aforesaid products, except insofar as the competition has been hindered, lessened, restricted and eliminated by the unfair methods and unfair acts and practices hereinafter set forth. The manufacturers and processors with whom respondent orthodontists are in competition, as aforesaid, are engaged in the sale and distribution of orthodontic equipment, supplies and devices in interstate commerce.

PAR. 5. For more than ten years last past and continuing to the present time, respondents have acted together cooperatively, in combination, to limit, restrain, suppress and eliminate competition in the manufacture, sale and distribution of dental and orthodontic equipment, supplies and devices, and have attempted to monopolize and

control trade in commerce in said equipment, supplies and devices, and as a part of, pursuant to and in furtherance of the aforesaid cooperative action and combination respondents have engaged in, done and performed the following acts, practices, methods and things:

1. Acted to prevent those engaged in the manufacture and sale of supplies, devices and appliances used by dentists in the practice of orthodontia from having access to media of advertising serving the dental profession.

2. Acted to prevent dentists from having the benefit of advertising by those engaged in the manufacture and sale of supplies, devices and appliances needed by dentists in the practice of orthodontia.

3. Acted to coerce and compel by threats of boycott, acts of intimidation and other means, publishers and editors of trade publications in the dental field, or others, from soliciting or publishing advertisements from those engaged in the manufacture and sale of supplies, devices and appliances used by dentists in the practice of orthodontia.

4. Used respondent Association as an instrumentality or medium for carrying on and making effective their aforesaid combination.

CONCLUSION

PAR. 6. The acts, practices and methods of respondents herein alleged have a dangerous tendency unduly to hinder competition and create in respondents a monopoly in the manufacture and sale of orthodontic equipment, supplies and devices.

CEASE AND DESIST ORDER

It is ordered, That respondents, The American Association of Orthodontists, a corporation, its officers, directors and members, and T. Wallace Sorrels, directly or indirectly, in or in connection with the offering for sale, sale or distribution in commerce, between and among the several states of the United States, and in the District of Columbia, of supplies, devices and appliances used by dentists in the practice of orthodontia,* do forthwith cease and desist from entering into, cooperating in, carrying out or continuing any combination, agreement, understanding or planned common course of action between any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or things:

*It is generally recognized that the words "orthodontic" and "orthodontia" refer to the regulation of the teeth through the use in the oral cavity of certain supplies, devices and appliances.

(a) Attempting to prevent or preventing those engaged in the manufacture and sale of supplies, devices and appliances, used by dentists and orthodontists in the practice of orthodontia* from having access to media of advertising serving the dental profession.

(b) Attempting to prevent or preventing dentists from having the benefit of advertising by those engaged in the manufacture and sale of supplies, devices and appliances needed by dentists in the practice of orthodontia.*

(c) Attempting to coerce or coercing and compelling by threats of boycott, acts of intimidation and other means, publishers and editors of trade publications in the dental field, or others, from soliciting or publishing advertisements from those engaged in the manufacture and sale of supplies, devices and appliances used by dentists in the practice of orthodontia.*

(d) Using The American Association of Orthodontists or any successor association, or group, as an instrumentality or medium for carrying on and making effective any of the aforesaid acts and practices.

It is further ordered, That each of the respondent members of respondent The American Association of Orthodontists and T. Wallace Sorrels do forthwith cease and desist from knowingly contributing to the accomplishment of any of the acts, practices, or things prohibited in paragraphs (a) to (d), inclusive, of this order.

It is further ordered, That respondents 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.

Date: ----------.

THE AMERICAN ASSOCIATION OF ORTHODONTISTS,
ITS OFFICERS, DIRECTORS AND ITS MEMBERS.

By its attorney:

DARGUSCH, CAREN, GREEK AND KING,
By (Signed) John G. McCune.
JOHN G. McCUNE,

T. WALLACE SORRELS.

By his attorney:

DARGUSCH, CAREN, GREEK AND KING,
By (Signed) JOHN G. McCUNE.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 6th day of November 1952.

*See page 495.

Syllabus

IN THE MATTER OF

LEONARDS AND LEE SURPLUS SALES COMPANY AND NAT M. REZNICK ET AL. TRADING AS NORMSCOPE SURPLUS SALES

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

Docket 6030. Complaint, Aug. 15, 1952—Decision, Nov. 6, 1952

Karl Zeiss was instrumental in perfecting tools for the making of high grade optical goods, and binoculars made on Karl Zeiss tools are well and favorably known and preferred by a substantial portion of the purchasing public.

There is among the members of the purchasing public a substantial number who have a decided preference for surplus merchandise manufactured for or meeting the specifications of the United States Government or some branch thereof.

Where a corporation and its three officers, who were also partners in a similar business, engaged in the competitive interstate sale and distribution at wholesale and retail of general merchandise, in advertising their products through postal cards, pamphlets, catalogs and other advertising matter—

(*a*) Falsely represented that their sunglasses were surplus regulation or standard United States Air Force goods which met all U. S. Air Force specifications and were purchased directly or indirectly from the U. S. Government or some branch thereof;

(*b*) Falsely represented that said sunglasses met the specifications and requirements of the National Bureau of Standards and that the retail price thereof was over $5; when in fact they met no such specifications and said sum was wholly fictitious;

(*c*) Falsely represented that their binoculars were surplus standard or regulation Allied Powers merchandise, met all Allied Powers specifications and were purchased directly or indirectly through the Supreme Commander of the Allied Powers;

(*d*) Falsely represented that said binoculars were manufactured on genuine Karl Zeiss tools, were the official choice of the Army, Navy and Marine Corps, and that the retail price thereof was $198.50;

(*e*) Falsely represented that certain Tee shirts were regulation or standard U. S. Army or Navy merchandise and met their specifications, and were purchased directly from the U. S. Government or some branch thereof, and that the retail price was over $1; and

(*f*) Confusingly and misleadingly made use of the term "lifetime guarantee" in connection with the offer of the aforesaid binoculars and the word "guaranteed" with the Tee shirts through failing to disclose the terms and conditions of said guarantees and the manner and form in which they would perform thereunder:

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true and to induce the purchase of substantial quantities of their merchandise as a result; and with the effect of placing in the hands of retailers and others a means for deceiving ultimate purchasers; 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 respondents' competitors, and constituted unfair and deceptive acts and practices and unfair methods of competition in commerce.

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

Mr. Michael J. Vitale for the Commission.

Frank E. & Arthur Gettleman, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Leonards and Lee Surplus Sales Company, a corporation, and Nat M. Reznick, Sheldon Leibowitz and Marvin Leibowitz, co-partners doing business as Normscope Surplus Sales, 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 Leonards and Lee Surplus Sales Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 3600–02–04 W. Fullerton Avenue, Chicago, Illinois. Respondents Nat M. Reznick, Sheldon Leibowitz and Marvin Leibowitz are the principal officers of said corporate respondent and acting as such officers, formulate, direct and control the policies, acts and practices of said corporation. The address of these individual respondents is the same as that of the corporate respondent.

Respondents Nat M. Reznick, Sheldon Leibowitz and Marvin Leibowitz are also co-partners doing business under the name of Normscope Surplus Sales with their office and principal place of business located at 3600–02–04 W. Fullerton Avenue, Chicago, Illinois.

All of the aforesaid respondents cooperate and act together in performing the acts and engaging in the practices hereinafter set forth.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the wholesale and retail sale and distribution of general merchandise, including sun glasses, binoculars, and tee shirts to various business concerns. In the course and conduct of their businesses, respondents cause their said merchandise, when sold, to be transported from their place of businesses in the State of Illinois to the purchasers thereof located in various other 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. In the course and conduct of their businesses and for the purpose of promoting the sale of their merchandise in commerce, respondents have made, and are now making, certain statements and representations by means of postal cards, pamphlets, catalogs and other advertising matter which is distributed generally to the various prospective purchasers. Among and typical, but not all inclusive, of the statements and representations concerning sun glasses are the following:

We have just received a shipment of brand new Army Air Force *Sun Glasses*. * * *. They are made to specifications GS–79–40 prescribed by the Optical Instrument Section of the National Bureau of Standards * * * when available they retail at over $5.00.

ARMY AIR FORCES SUN GLASSES High Quality * * *.

* * * Just arrived shipment of brand new AAF style sun glasses.

WAC AAF SUN GLASSES. * * *

Made to meet rigid specifications of Bureau of Standards * * *.

All our sun glasses are guaranteed to meet the strict requirements of the Bureau of Standards, Washington, D. C. * * *.

* * *

* * * precision tested Aviator *Sun Glasses*. AAF type specifications GS–79–40 as prescribed by the Optical Instrument Section of the National Bureau of Standards * * * *.

PAR. 4. By and through the use of the aforesaid statements and representations, and others of similar import and meaning, not set out herein, respondents represented that their sun glasses were surplus, regulation or standard United States Air Force goods which met all United States Air Force specifications and were purchased directly or indirectly from the United States Government or some branch thereof. Respondents further represented that their sun glasses met the specifications and requirements of the National Bureau of Standards, Washington, D. C.; and that the retail price of said sun glasses was over $5.00.

The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact, said sun glasses were not surplus regulation or standard United States Air Force goods; did not meet the United States Air Force specifications; and were not purchased, directly or indirectly, from the United States Government or any branch thereof. Furthermore, said sun glasses did not meet any specifications or requirements of the National Bureau of Standards, Washington, D. C. The sum of $5.00 was greatly in excess of the customary retail price of said sun glasses and was a wholly fictitious price.

PAR. 5. Among and typical, but not all inclusive, of the statements and representations contained in said advertisements concerning binoculars are the following:

We have just received a quantity of *7 x 50 Binoculars*, brand new, obtained through the Supreme Commander of Allied Powers. These were manufactured in Japan on genuine Karl Zeiss tools * * * Because the 7 x 50 glasses give the highest performance obtainable, they are now the official choice of the Army, Navy and Marine Corps * * * when available, retail at $198.50 * * * We can offer these with a lifetime guarantee to you * * *.

7 x 50 BINOCULARS

(picturization of binoculars and case)

Brand new, obtained through the supreme commander of allied powers. These were manufactured in Japan on genuine Karl Zeiss tools * * *. * * * when available retail at $198.50. * * * valued at $198.50. We can offer these with a life-time guarantee.

PAR. 6. By and through the use of the aforesaid statements and representations and others of similar import and meaning, not set out herein, respondents represented that their said binoculars were surplus standard or regulation Allied Powers merchandise, met all Allied Powers specifications, and were purchased, directly or indirectly, through the Supreme Commander of the Allied Powers. Respondents further represented that the said binoculars were manufactured on genuine Karl Zeiss tools, were the official choice of the Army, Navy and Marine Corps and that the retail price of said binoculars was $198.50.

The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact, said binoculars were not surplus standard or regulation Allied Powers merchandise, did not meet the Allied Powers specifications and were not purchased, directly or indirectly, through the Supreme Commander of the Allied Powers. Furthermore, said binoculars were not manufactured on genuine Karl Zeiss tools, were not the official choice of the Army, Navy or Marine Corps, or any other branch of the United States Government. The

sum of $198.50 was greatly in excess of the customary retail price charged for said binoculars and was a wholly fictitious price. The use of the term "lifetime guarantee" in said advertisement without disclosing the terms and conditions of the guarantee and the manner and form in which respondents will perform thereunder is confusing and misleading and constitutes an unfair and deceptive practice.

Karl Zeiss was instrumental in perfecting tools for the making of high grade optical goods. Binoculars made on Karl Zeiss tools are well and favorably known and preferred by a substantial portion of the purchasing public.

PAR. 7. Among and typical but not all inclusive of the statements and representations contained in said advertisements concerning Tee Shirts are the following:

We have just received a shipment of *Navy Type Tee Shirts.* * * * guaranteed first class condition * * * when available retail at over $1.00 each.

NAVY TEE SHIRTS

Another shipment of the high quality Navy Tee Shirts has arrived * * * made to Government specifications * * * retail at over $1.00 each.

* * * our Tee Shirts are sewed, stitched and sized according to Army and Navy specifications * * *.

* * * our Tee Shirts are according to Government specifications.

PAR. 8. By and through the use of the aforesaid statements and representations, respondents represented that the said Tee Shirts were regulation or standard United States Army or Navy merchandise, met all of the Army or Navy specifications, were purchased directly or indirectly from the United States Government or some branch thereof, and that the retail price of said Tee Shirts was over $1.00.

The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact, the said Tee Shirts were not standard regulation United States Army or Navy merchandise, did not meet all the Army or Navy specifications and were not purchased, directly or indirectly, from the United States Government or any branch thereof. Furthermore, the sum of $1.00 was greatly in excess of the customary retail price of said Tee Shirts and was a wholly fictitious price. The use of the term "Guarantee" in said advertisement without explaining the terms and conditions of the guarantee and the manner and form in which respondents will perform thereunder is confusing and misleading and constitutes an unfair and deceptive practice.

PAR. 9. There is among the members of the purchasing public a substantial number who have a decided preference for surplus merchandise manufactured for or meeting the specifications of the United States Government, or some branch thereof.

PAR. 10. Respondents in the course and conduct of their businesses have been, and are, in substantial competition in commerce with the sellers of the same and similar merchandise.

PAR. 11. 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 such statements and representations were and are true and to induce the purchase of substantial quantities of respondents' merchandise as a result of this erroneous and mistaken belief. Furthermore, respondents' said practices place in the hands of retailers and others a means and instrumentality for deceiving the ultimate purchasers of said merchandise.

In consequence 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. 12. 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 August 15, 1952, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in violation of the provisions of said 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 purpose 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 the answer to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, is to be withdrawn from the record, hereby:

---

[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 November 6, 1952, 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.

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 the respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Leonards and Lee Surplus Sales Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 3600–02–04 W. Fullerton Avenue, Chicago, Illinois. Respondents Nat M. Reznick, Sheldon Leibowitz and Marvin Leibowitz are the principal officers of said corporate respondent and acting as such officers, formulate, direct and control the policies, acts and practices of said corporation. The address of these individual respondents is the same as that of the corporate respondent.

Respondents Nat M. Reznick, Sheldon Leibowitz and Marvin Leibowitz are also co-partners doing business under the name of Normscope Surplus Sales with their office and principal place of business located at 3600–02–04 W. Fullerton Avenue, Chicago, Illinois.

All of the aforesaid respondents cooperate and act together in performing the acts and engaging in the practices hereinafter set forth.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the wholesale and retail sale and distribution of general merchandise, including sun glasses, binoculars, and tee shirts to various business concerns. In the course and conduct of their businesses, respondents cause their said merchandise, when sold, to be transported from their place of businesses in the State of Illinois to the purchasers thereof located in various other 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. In the course and conduct of their businesses and for the purpose of promoting the sale of their merchandise in commerce, respondents have made, and are now making, certain statements and representations by means of postal cards, pamphlets, catalogs and other advertising matter which is distributed generally to the various prospective purchasers. Among and typical, but not all inclusive, of the statements and representations concerning sun glasses are the following:

We have just received a shipment of brand new Army Air Force *Sun Glasses*. * * *. They are made to specifications GS-79-40 prescribed by the Optical Instrument Section of the National Bureau of Standards * * * when available they retail at over $5.00.

ARMY AIR FORCES SUN GLASSES High Quality * * *.

* * * Just arrived shipment of brand new AAF style sun glasses.

WAC AAF SUN GLASSES. * * *

Made to meet rigid specifications of Bureau of Standards * * *.

All our sun glasses are guaranteed to meet the strict requirements of the Bureau of Standards, Washington, D. C. * * *.

* * *

* * * precision tested Aviator *Sun Glasses*. AAF type specifications GS-79-40 as prescribed by the Optical Instrument Section of the National Bureau of Standards * * *.

PAR. 4. By and through the use of the aforesaid statements and representations, and others of similar import and meaning, not set out herein, respondents represented that their sun glasses were surplus, regulation or standard United States Air Force goods which met all United States Air Force specifications and were purchased directly or indirectly from the United States Government or some branch thereof. Respondents further represented that their sun glasses met the specifications and requirements of the National Bureau of Standards, Washington, D. C.; and that the retail price of said sun glasses was over $5.00.

The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact, said sun glasses were not surplus regulation or standard United States Air Force goods; did not meet the United States Air Force specifications; and were not purchased, directly or indirectly, from the United States Government or any branch thereof. Furthermore, said sun glasses did not meet any specifications or requirements of the National Bureau of Standards, Washington, D. C. The sum of $5.00 was greatly in excess of the customary retail price of said sun glasses and was a wholly fictitious price.

PAR. 5. Among and typical, but not all inclusive, of the statements and representations contained in said advertisements concerning binoculars are the following:

We have just received a quantity of *7 x 50 Binoculars*, brand new, obtained through the Supreme Commander of Allied Powers. These were manufactured in Japan on genuine Karl Zeiss tools * * * Because the 7 x 50 glasses give the highest performance obtainable, they are now the official choice of the Army, Navy and Marine Corps * * * when available, retail at $198.50 * * * We can offer these with a lifetime guarantee to you * * *

7 x 50 BINOCULARS

(picturization of binoculars and case)

Brand new, obtained through the supreme commander of allied powers. These were manufactured in Japan on genuine Karl Zeiss tools * * *. * * * when available retail at $198.50. * * * valued at $198.50. We can offer these with a life-time guarantee.

PAR. 6. By and through the use of the aforesaid statements and representations and others of similar import and meaning, not set out herein, respondents represented that their said binoculars were surplus standard or regulation Allied Powers merchandise, met all Allied Powers specifications, and were purchased, directly or indirectly, through the Supreme Commander of the Allied Powers. Respondents further represented that the said binoculars were manufactured on genuine Karl Zeiss tools, were the official choice of the Army, Navy and Marine Corps and that the retail price of said binoculars was $198.50.

The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact, said binoculars were not surplus standard or regulation Allied Powers merchandise, did not meet the Allied Powers specifications and were not purchased, directly or indirectly, through the Supreme Commander of the Allied Powers. Furthermore, said binoculars were not manufactured on genuine Karl Zeiss tools, were not the official choice of the Army, Navy or Marine Corps, or any other branch of the United States Government. The sum of $198.50 was greatly in excess of the customary retail price charged for said binoculars and was a wholly fictitious price. The use of the term "lifetime guarantee" in said advertisement without disclosing the terms and conditions of the guarantee and the manner and form in which respondents will perform thereunder is confusing and misleading and constitutes an unfair and deceptive practice.

Karl Zeiss was instrumental in perfecting tools for the making of high grade optical goods. Binoculars made on Karl Zeiss tools are well and favorably known and preferred by a substantial portion of the purchasing public.

PAR. 7. Among and typical but not all inclusive of the statements and representations contained in said advertisements concerning Tee Shirts are the following:

We have just received a shipment of *Navy Type Tee Shirts.* * * * guaranteed first class condition * * * when available retail at over $1.00 each.

NAVY TEE SHIRTS

Another shipment of the high quality Navy Tee Shirts has arrived * * * made to Government specifications * * * retail at over $1.00 each.

* * * our Tee Shirts are sewed, stitched and sized according to Army and Navy specifications * * *.

* * * our Tee Shirts are according to Government specifications.

PAR. 8. By and through the use of the aforesaid statements and representations, respondents represented that the said Tee Shirts were regulation or standard United States Army or Navy merchandise, met all of the Army or Navy specifications, were purchased directly or indirectly from the United States Government or some branch thereof, and that the retail price of said Tee Shirts was over $1.00.

The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact, the said Tee Shirts were not standard regulation United States Army or Navy merchandise, did not meet all the Army or Navy specifications and were not purchased, directly or indirectly, from the United States Government or any branch thereof. Furthermore, the sum of $1.00 was greatly in excess of the customary retail price of said Tee Shirts and was a wholly fictitious price. The use of the term "Guarantee" in said advertisement without explaining the terms and conditions of the guarantee and the manner and form in which respondents will perform thereunder is confusing and misleading and constitutes an unfair and deceptive practice.

PAR. 9. There is among the members of the purchasing public a substantial number who have a decided preference for surplus merchandise manufactured for or meeting the specifications of the United States Government, or some branch thereof.

PAR. 10. Respondents in the course and conduct of their businesses have been, and are, in substantial competition in commerce with the sellers of the same and similar merchandise.

PAR. 11. 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 such statements and representations were and are true and to induce the purchase of substantial quantities of respondents' merchandise as a result of this erroneous and mistaken belief. Further-

more, respondents' said practices place in the hands of retailers and others a means and instrumentality for deceiving the ultimate purchasers of said merchandise.

In consequence 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 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.

ORDER TO CEASE AND DESIST

It is ordered, That the respondents, Leonards and Lee Surplus Sales Company, a corporation, and its officers, and Nat M. Reznick, Sheldon Leibowitz and Marvin Leibowitz, individually and as officers of said corporation, and as copartners doing business as Normscope Surplus Sales, or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication:

1. That articles of merchandise are surplus goods of any of the armed services of the United States, or of the Allied Powers, or of any other nation or group of nations, unless such is the fact;

2. That any article or articles of merchandise were purchased, or otherwise acquired, directly or indirectly, from the United States Government, or any branch thereof, or from the Allied Powers, or from any other nation or group of nations, unless such merchandise was in fact so acquired;

3. That any article of merchandise is standard or regulation merchandise of, or meets the specifications or requirements of, any of the armed services of the United States, or of the National Bureau of Standards or any other branch of the United States Government, or of the Allied Powers, or of any other nation or group of nations, unless such is the fact;

4. That any merchandise offered for sale or sold has a retail price in excess of the price at which such merchandise is usually and customarily sold;

5. That any merchandise is guaranteed unless the nature and extent of the guarantee and the manner and form in which the guarantor will perform thereunder are clearly and conspicuously disclosed;

6. That binoculars offered for sale were manufactured on Karl Zeiss tools, or on any other well known brand of tools, or are the choice of any of the armed services of the United States, unless such is the fact.

It is further ordered, That respondents 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.

LEONARDS AND LEE SURPLUS SALES COMPANY, A CORPORATION,

By (S) NAT M. REZNICK,

President.

(S) Nat M. Reznick,
NAT M. REZNICK,
Individually and as Officer of Leonards and Lee Surplus Sales Company, a Corporation.

(S) Sheldon Leibowitz,
SHELDON LEIBOWITZ,
Individually and as Officer of Leonards and Lee Surplus Sales Company, a Corporation.

(S) Marvin Leibowitz,
MARVIN LEIBOWITZ,
Individually and as Officer of Leonards and Lee Surplus Sales Company, a Corporation.

(S) Nat M. Reznick,
NAT M. REZNICK,
Copartner, doing business as Normscope Surplus Sales.

(S) Sheldon Leibowitz,
SHELDON LEIBOWITZ,
Copartner, doing business as Normscope Surplus Sales.

(S) Marvin Leibowitz,
MARVIN LEIBOWITZ,
Copartner, doing business as Normscope Surplus Sales.

Date: October 16, 1952.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 6th day of November, 1952.

Syllabus

IN THE MATTER OF

BENJAMIN B. COLE, 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 5813. Complaint, Sept. 20, 1950—Decision, Nov. 10, 1952

Where a corporation and its president, engaged in conducting a collection agency and in collecting accounts upon a contingent basis from debtors and for creditors, located both within and without the state;

In attempting to ascertain current addresses of delinquent debtors, the names and addresses of their employers, and other information through various "skip tracing" schemes, including the use of double post cards and form letters with provisions for supplying the desired information—

(*a*) Falsely represented through the use of the name "Dispatch Forwarding System" and through their "Dispatch Forwarding System" cards that they were connected with the transportation of merchandise, that the persons concerning whom information was sought were consignees of packages sent by others which had come into respondents' hands in the usual course of business, and that the information requested was sought in order to effect delivery;

(*b*) Falsely represented through the use of the name "Federal Deposit System" and their "Federal Deposit System" form letters that funds deposited with them were being held for the person concerning whom information was sought, that such funds were more than a trivial amount, that the information was sought for the purpose of identifying the recipient and that the requests for information came from an agency or branch of the United States Government;

The facts being the information was obtained solely for use in the collection of allegedly delinquent accounts for their clients; and the names "Dispatch Forwarding System" and "Federal Deposit System" were subterfuges to disguise the true nature of their business; and the "small" sum referred to in the latter case was 10¢, which they paid by a check drawn on a bank; and

(*c*) Falsely represented through the use of a form letter with an accompanying reply post card, which purported to come from one "Thomas Webster", that the name of the recipient had been given them by a friend, that they were sponsoring a radio show in which gift prizes were distributed, and that the addressee had been awarded such prize by the sponsor;

The facts being they had no such connection and sponsored no such prizes; "Thomas Webster" was a person in Chicago to whom they sent in bulk their skip-tracing letters for mailing to delinquent debtors and who returned to them the replies received; and the "free souvenir gift" offer was used as a subterfuge to disguise the nature of their business;

With effect of deceiving many persons to whom said letters and post cards were sent into the erroneous belief that such representations were true

and that said trade names indicated the true nature of their business, and with capacity and tendency so to do, and to induce the recipients to give information to respondents which otherwise they would not have supplied:

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

Before *Mr. Everett F. Haycraft* and *Mr. William L. Pack*, hearing examiners.

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

Lenske, Spiegel & Spiegel, of Portland, Oreg., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Benjamin B. Cole, Inc., a corporation trading and doing business as Federal Deposit System and Dispatch Forwarding System and under other trade names, and Herman N. Cole, individually and as President of Benjamin B. Cole, Inc., and Hannah H. Cole, individually and as Secretary of Benjamin B. Cole, 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 this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Benjamin B. Cole, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at 212 Davis Building, 420 S. W. 3d Avenue, in the City of Portland, Oregon. Respondent Herman N. Cole is President, and respondent Hannah H. Cole is Secretary of respondent corporation, Benjamin B. Cole, Inc., and said corporation is owned, dominated, controlled and directed by the individual respondents, Herman N. Cole and Hannah H. Cole. All the said respondents have cooperated and acted together in the performance of the acts and practices hereinafter alleged.

PAR. 2. Respondents are now, and for more than two years last past, have been engaged in conducting a collection agency and in collecting accounts owed to others upon a commission basis contingent upon collection. Clients for whom respondents undertake the collection of accounts are located both within and without the State of Oregon, as also are those from whom respondents endeavor to collect. The course and conduct of respondents' business involves commercial intercourse and communication between respondents and others located in the various States of the United States other than Oregon.

PAR. 3. In the course and conduct of their business, respondents frequently desire to ascertain the current addresses of persons from whom they are endeavoring to collect monies due to their clients, the names and addresses of the employers of such persons and other information about such persons. For the purpose of obtaining this information they have employed various schemes and methods which included the use of various forms, typical of which are the following:

Post cards of the type commonly referred to as double post cards, which are addressed and mailed to the debtor or other person from whom information is sought. Said cards contain the following message:

We are unable to reach the party whose name appears on the attached card due to removal, or error of address. By returning the attached reply card promptly, with the information requested, you will confer a favor upon both the party we are endeavoring to reach and the D. F. S. If you are unable to furnish the desired information, please advise us accordingly, so that prompt return may be made. Thank you. Yours very truly, D. F. S.

The reply part of the post card which is addressed to Dispatch Forwarding System, P. O. Box 8764, Portland 7, Oregon, and is intended to be filled out and mailed by the debtor or other person from whom information is sought, is the following form:

Date	Checked By
Reference No.	Charges

Name and Address on Undelivered Matter

Please fill in space below accurately

New Address of Above Party

FOR IDENTIFICATION

Present Employer _____

of above party

Address _____

Name and Address of Friend or Relative of above Party

_____

_____

_____

_____

Remarks _____

Has Telephone No.

Undelivered matter will be forwarded to person to whom addressed, to their correct address and not in care of anyone else.

Letters in the following form:

THE FEDERAL DEPOSIT SYSTEM
Disbursement Office

514 McKay Building
Portland, Oregon, U. S. A.

CONFIDENTIAL

Regarding Name of:

NOTICE

Regarding the name listed above, you are notified that this name is among those to whom we have been instructed to pay a small sum of money now on deposit. However, under the provisions of the deposit, we are compelled to obtain actual positive identification that such person named is the proper one to receive the small sum of money, before payment can be made.

For this reason, we require that the form below must be filled in completely and returned to us immediately, as the deposit will be cancelled within 15 days; after which we are instructed to make other disposition of the sum involved. Upon receipt and verification of this information, if correct and applicable to the person concerned, remittance of the small sum of money will follow in approximately 20 days after identification is verified.

* * *

FOR THE PURPOSE OF ESTABLISHING IDENTITY OF THE NAMED INDIVIDUAL WITH YOUR OFFICE, I SUBMIT THE FOLLOWING IDENTIFICATION INFORMATION:

Full Name is_____
First Name Initial Last Name

Home Address is_____
Street City State

Is Employed by_____
Employer's Name Occupation

Employer's Address_____
Street City State

Banks at_____
Name of Bank Branch City State

Automobile Registration, License No_____ State_____

Personal Reference_____
Name Street Address City State

Deposit No_____

(Signed) _____

Another of respondents' schemes and methods includes mailing to the delinquent debtor a letter as follows:

F R E E !	From the desk of	Los Angeles
SOUVENIR GIFTS	Thomas Webster	Chicago
S U R P R I S E !	Producer of	Washington, D. C.
	"S U R P R I S E"	
	The New Radio Show	

Dear Friend:

Congratulations! Your name was given to me by a mutual friend and you've been awarded a Gift from the big group of Cash and Merchandise Awards offered by the sponsors of my new Radio show. It's FREE!

Just fill out the enclosed card—giving me your correct address and your FREE GIFT of Merchandise will be sent to you at once.

Please be sure to do this quickly.

Cordially,
(S) Tom Webster

SOUVENIR GIFT
F R E E

HOLLYWOOD	Fill out
PREMIERE	and mail
Radio Station	YOUR
KLAC	GIFT
Hollywood	CARD
	NOW!
MUSIC plus	
Hundreds of free	No
GIFT AWARDS!	Postage
	Needed

The return post card enclosed with the above letter is addressed to Thomas Webster, 510 North Dearborn Street, Chicago 10, Illinois. The post card states:

Please mail me "Free Post Paid"
Gift Reg. No.

Name_____
Print or Type Name in Full

Address_____
Print or Type

City or Post Office and State_____

Employed by_____
Give Complete Name of Employer

Dept._____

Location_____
City and Street Number

Married ☐ Single ☐

PLEASE GIVE ME THE NAME OF A
FRIEND FOR MY "SURPRISE" LIST

Name_____
Print or Type Name in Full

Address _____
Print or Type

City or Post Office and State_____

Respondents have mailed said post cards and form letters to persons located in various States of the United States other than Oregon, and have received the reply portion of said cards and letters from persons located in States other than Oregon.

PAR. 4. Through the use of the "Dispatch Forwarding System" cards respondents have represented, directly and by implication, to the persons to whom they were sent that the persons concerning whom information was sought are the consignees of packages, sent by persons other than respondents, and in their hands in Portland, Oregon, in the usual course of their business; that "charges" were involved in connection therewith; that delivery could not be effected by reason of removal or change of address by the addressee of such package; that upon receipt of the reply card properly filled out, the package would be delivered to the addressee, otherwise returned to the consignor; that the information is sought in order to effect delivery.

PAR. 5. Through the use of the name "Dispatch Forwarding System" respondents have represented, directly and by implication, to the recipients of said cards that they are, in some capacity, connected with the transportation and movement of goods.

PAR. 6. The said representations are false and misleading. In truth and in fact, respondents' business has nothing to do with the transportation or movement of goods or their delivery to the proper consignees. The information is not sought in order that delivery may be effected. The persons concerning whom information is sought are not consignees of packages in the hands of respondents in the usual course of their business. Respondents did not have in their possession any package addressed to the person concerning whom information was sought which had been addressed to such person by anyone other than respondents, nor were any "charges" involved in connection with any package.

PAR. 7. Through the use of the "Federal Deposit System" letter respondents have represented, directly and by implication, that funds deposited by others with respondents are being held for the person concerning whom information is sought; that the funds are more than

a trivial amount; that the desired information is sought for the purpose of identifying the person in question as the proper recipient thereof.

PAR. 8. Through the use of the name "Federal Deposit System" respondents have represented, directly and by implication, that the request for information comes from an agency or branch of the United States Government.

PAR. 9. The said representations are false and misleading. In truth and in fact respondents have no connection whatever with any branch or agency of the United States Government. The information was not sought for the purpose of identifying the person in question as the proper recipient of a sum of money. No funds for any such person had been deposited with respondents by another. The amount of the "small" sum referred to in the said letter was ten cents.

PAR. 10. The information acquired by respondents from the use of the said card and letter was obtained by them solely for the purpose of being used in collecting allegedly delinquent accounts for their clients. The names "Federal Deposit System" and "Dispatch Forwarding System" were merely disguises for the true nature of respondents' business.

PAR. 11. Through the use of the letter and return post card promising "free gifts" respondents represent that the recipient's name was given them by a friend and that respondents are running or sponsoring a radio show in which gifts or prizes are distributed and that the recipient has been awarded a prize by the sponsors of their radio show. In truth and in fact respondents have no connection with any radio show nor do they have sponsors who furnish prizes to be given to persons to whom respondents send the letters and cards.

PAR. 12. The use hereinabove set forth of the foregoing false and misleading statements, representations, and designations has and has had the capacity and tendency to mislead and deceive and has misled and deceived many persons to whom the said cards and letters were sent into the erroneous and mistaken belief that the said statements and representations were true, and that the trade names used by respondents indicated the true nature of respondents' business; and have induced the recipients thereof to give information to respondents, which otherwise they would not have supplied.

PAR. 13. 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 AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 20, 1950, issued and subsequently served its complaint in this proceeding upon respondents Benjamin B. Cole, Inc., a corporation, Herbert M. Cole (erroneously named in the complaint as Herman N. Cole), and Hannah F. Cole (erroneously named in the complaint as Hannah H. Cole), charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in support of the complaint were introduced before a hearing examiner theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. No testimony or other evidence was offered in opposition to the allegations of the complaint. On December 28, 1950, the said hearing examiner filed his initial decision.

Respondents filed an appeal with the Commission from said initial decision, and counsel supporting the complaint filed a motion to reopen and remand the case to the hearing examiner for the taking of additional testimony. The Commission, on September 6, 1951, entered its order granting in part and denying in part respondents' said appeal and remanding the case to the hearing examiner for the purpose of taking additional testimony concerning one of the issues in the case. Additional testimony and other evidence in support of the complaint were introduced before a substitute hearing examiner of the Commission theretofore duly designated by it, counsel having agreed to a substitution of hearing examiners for the purpose of taking and receiving such additional testimony and other evidence, and such additional testimony and other evidence were also duly recorded and filed in the office of the Commission. The original hearing examiner, on February 14, 1952, filed a certification of record to the Commission for final determination.

Thereafter, this matter came on for final consideration by the Commission upon the complaint, answer thereto, testimony and other evidence in support of the complaint, initial decision of the hearing examiner and respondents' appeal therefrom, and the hearing examiner's certification of the record to the Commission for final determination; and the Commission, having duly considered the matter and having heretofore entered its order granting in part and denying in part respondents' appeal from the initial decision of the hearing ex-

aminer, 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 said initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Benjamin B. Cole, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at 212 Davis Building, 420 S. W. 3rd Avenue, Portland, Oregon. Respondent Herbert M. Cole (erroneously named in the complaint as Herman N. Cole) is president of and owns, dominates, controls, and directs said corporation. Although Hannah F. Cole (erroneously named in the complaint as Hannah H. Cole) is secretary of respondent corporation, it appears that she does not participate in the control, direction, or management of the business of said corporation, and the Commission has, therefore, determined that she should not be included as a party respondent in this proceeding. As hereinafter used, the term "respondents" does not include Hannah F. Cole.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in conducting a collection agency and in collecting accounts owed to creditor clients of said respondents upon a commission basis contingent upon collection. Said clients are located both within and without the State of Oregon, as also are the debtors, those from whom the respondents endeavor to collect such delinquent accounts. Said respondents, in the course and conduct of their business, are engaged in commercial intercourse and communication between themselves and their clients and debtors located in the various States of the United States other than the State of Oregon.

PAR. 3. In the course and conduct of their said business, said respondents frequently attempt to ascertain current addresses of delinquent debtors, persons from whom they are endeavoring to collect moneys due to their clients, the names and addresses of the employers of such persons, and other information about such persons. For the purpose of obtaining such information, said respondents have employed and now employ various "skip tracing" schemes and methods, including the use of various forms, typical of which are those described hereinafter.

(1) One of the forms used by the respondents is of the type commonly referred to as "double post cards," which is addressed and mailed to the debtor or other person from whom information is sought. Said form contains the following:

We are unable to reach the party whose name appears on the attached card due to removal, or error of address.

By returning the attached reply card promptly, with the information requested, you will confer a favor upon both the party we are endeavoring to reach and the D. F. S.

If you are unable to furnish the desired information, please advise us accordingly, so that prompt return may be made.

Thank you.

Yours very truly,

D. F. S.

The reply part of the post card, which is addressed to Dispatch Forwarding System, P. O. Box 8764, Portland 7, Oregon, and is intended to be filled out and mailed by the debtor or other person from whom information is sought, is in the following form:

DATE	Checked by
Reference No.	Charges

NAME and ADDRESS ON UNDELIVERED MATTER

PLEASE FILL IN SPACE BELOW ACCURATELY

New Address
of Above Party_____

_____

FOR IDENTIFICATION

Present
Employer_____

of Above Party
Address _____

Name and Address of Friend or Relative of Above Party

_____

Remarks: _____

Has Telephone No_____

Undelivered matter will be forwarded to person to whom addressed, to their correct address, and not in care of anyone else.

(2) One of the forms of skip tracing letters which the respondents send to delinquent debtors reads as follows:

THE FEDERAL DEPOSIT SYSTEM
Disbursement Office

514 McKay Building
Portland, Oregon, U. S. A.

CONFIDENTIAL

Regarding Name of:

NOTICE

Regarding the name listed above, you are notified that this name is among those to whom we have been instructed to pay a small sum of money now on deposit. However, under the provisions of the deposit, we are compelled to obtain actual positive identification that such person named is the proper one to receive the small sum of money, before payment can be made.

For this reason, we require that the form below must be filled in completely and returned to us immediately, as the deposit will be cancelled within 15 days; after which we are instructed to make other disposition of the sum involved. Upon receipt and verification of this information, if correct and applicable to the person concerned, remittance of the small sum of money will follow in approximately 20 days after identification is verified.

* * *

FOR THE PURPOSE OF ESTABLISHING IDENTITY OF THE NAMED INDIVIDUAL WITH YOUR OFFICE, I SUBMIT THE FOLLOWING IDENTIFICATION INFORMATION:

Full Name is_____
First Name Initial Last Name

Home Address is_____
Street City State

Is Employed by_____
Employer's Name Occupation

Employer's Address_____
Street City State

Banks at_____
Name of Bank Branch City State

Automobile Registration, License No_____ State_____

Personal Reference_____
Name Street Address City State

Deposit No_____

(Signed) _____

(3) Another of respondents' skip tracing schemes and methods includes the practice of mailing to the delinquent debtor a form letter as follows:

FREE!
SOUVENIR GIFTS
SURPRISE

From the desk of
Thomas Webster
Producer of
"SURPRISE"
The New Radio Show

Los Angeles
Chicago
Washington, D. C.

Dear Friend:

Congratulations! Your name was given to me by a mutual friend and you've been awarded a Gift from the big group of Cash and Merchandise Awards offered by the sponsors of my new Radio show. It's FREE!

Just fill out the enclosed card—giving me your correct address and your FREE GIFT of Merchandise) will be sent to you at once.

Please be sure to do this quickly.

Cordially,
(S) Tom Webster

SOUVENIR GIFT
FREE

HOLLYWOOD
PREMIERE
Radio Station
KLAC
Hollywood

Fill out
and mail
YOUR
GIFT
CARD
NOW!

MUSIC plus
Hundreds of free
GIFT AWARDS!

No
Postage
Needed

The return post card enclosed with the above letter is addressed to Thomas Webster, 510 North Dearborn Street, Chicago 10, Illinois. The post card states:

Please mail me "Free Post Paid"
Gift Reg. No.

Name_____
Print or Type Name in Full

Address_____
Print or Type

City or Post Office and State_____

Employed by_____
Give Complete Name of Employer

Dept. _____

Location_____
City and Street Number

Married ☐ Single ☐

PLEASE GIVE ME THE NAME OF A
FRIEND FOR MY "SURPRISE" LIST

Name_____
Print or Type Name in Full

Address_____
Print or Type

City or Post Office and State_____

Said respondents have mailed or caused to be mailed said post cards and form letters to persons located in various states of the United States other than Oregon and have received, directly or indirectly, the reply post cards and letters from persons located in places other than the state of Oregon.

PAR. 4. Through the use of said "Dispatch Forwarding System" cards, respondents have represented, directly and by implication, to the persons to whom they are sent that the persons concerning whom information is sought were consignees of packages which were sent by persons other than respondents and which had come into respondents' hands in Portland, Oregon, in the usual course of their business; that "charges" were involved in connection therewith; that delivery could not be effected by reason of removal or change of address by the addressees of such packages; that upon receipt of the "reply" card properly filled out, the packages would be delivered to the address of the addressees, or returned to the consignors; and that the information on said cards was sought in order to effect delivery of the packages. Through the use of the name "Dispatch Forwarding System" respondents have represented that they were, in some capacity, connected with the transportation or movement of goods or merchandise.

PAR. 5. The said representations hereinbefore described and set forth in Paragraph Four are false and misleading. In truth and in fact, the persons concerning whom said information is sought are not consignees of packages in the hands of respondents in the usual course of their business. Respondents have not had and do not now have in their possession any packages containing goods or merchandise addressed to the persons concerning whom said information was sought, nor were any "charges" involved in connection with the delivery of any such packages. The information acquired by the respondents as a result of the use of said post cards was obtained solely for the purpose of being used in collecting allegedly delinquent accounts for their clients. The respondents' business has nothing to do with the transportation of goods or merchandise or their delivery to the proper consignees. The name "Dispatch Forwarding System" was merely a subterfuge to disguise the true nature of respondents' business, and

respondents' use of such name in connection with their business is misleading and deceptive.

PAR. 6. Through the use of said "Federal Deposit System" letter, respondents have represented, directly and by implication, that funds deposited by others with respondents are being held for the person concerning whom information is sought; that the funds are more than a trivial amount; and that the desired information is sought for the purpose of identifying the person in question as the proper recipient thereof. Through the use of the name "Federal Deposit System" respondents have represented that their requests for information come from an agency or branch of the United States Government.

PAR. 7. The said representations contained in Paragraph Six hereof are false and misleading. The information was not sought for the purpose of identifying the person in question as the proper recipient of a sum of money. No funds for any such person have been deposited with the respondents. The amount of the "small" sum referred to in the said letter was ten cents, which was paid by Federal Deposit System by check drawn on a Portland, Oregon, bank. The information acquired by the respondents as a result of the use of the said letter was obtained by them solely for the purpose of assisting them in collecting delinquent accounts for their clients. Respondents' business is in no way connected with any agency or branch of the United States Government. The name "Federal Deposit System" was merely a subterfuge to disguise the true nature of respondents' business, and respondents' use of such name in connection with their business was misleading and deceptive. Respondents discontinued using said "Federal Deposit System" letter in August 1949.

PAR. 8. Through the use of the said letter and return post card promising "free souvenir gifts" represented to be offered by sponsors of a radio show produced by one Thomas Webster, respondents represent that the name of the recipient was given them by a friend and that respondents are sponsoring a radio show in which gifts or prizes are distributed, and that the recipient had been awarded such prize by the sponsors thereof. In truth and in fact, respondents have no connection with any radio show nor do they have sponsors to furnish prizes to be given to persons to whom respondents send the said "skip tracing" letters and post cards, which are sent by respondents in bulk to one Thomas Webster from whom the forms were purchased and by whom they are distributed through the mail to the addressees, delinquent debtors, whose names are furnished by the respondents. The replies to these printed forms are in turn received by said Thomas Webster in Chicago, Illinois, and thereupon mailed back to the respondents in Portland, Oregon. The "free souvenir gift" offer was

used as a subterfuge to disguise the true nature of respondents' business.

PAR. 9. The use, as hereinabove set forth, of the false and misleading statements, representations, and designations and the misleading and deceptive trade names has had and now has the capacity and tendency to mislead and deceive, and has misled and deceived, many persons to whom said letters and post cards are sent into the erroneous and mistaken belief that the said statements and representations are true and that the trade names indicate the true nature of respondents' business, and to induce the recipients of such letters and postcards to give information to respondents which otherwise they would not have supplied.

CONCLUSION

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

ORDER

It is ordered, That respondent Benjamin B. Cole, Inc., a corporation, its officers other than Hannah F. Cole, and Herbert M. Cole, individually and as president of respondent corporation, and their representatives, agents, and employees, directly or through any corporate or other device, in connection with the use in commerce, as "commerce" is defined in the Federal Trade Commission Act, of so-called "skip tracer" form letters, double reply post cards, or any other printed matter of a substantially similar nature, do forthwith cease and desist from:

1. Using the name "Dispatch Forwarding System" or any other word or words of similar import, to designate, describe, or refer to respondents' business; or otherwise representing, directly or by implication, that respondents are connected with or in the business of transporting or delivering goods or mail to the proper recipients thereof, or that they maintain an unclaimed-package department.

2. Representing, directly or by implication, that persons concerning whom information is sought through respondents' post cards, form letters, or other material are, or may be, consignees of goods, or packages, or mail, prepaid or otherwise, in the hands of respondents, or that the information sought through such means is for the purpose of enabling respondents to make delivery of goods or packages or mail to such persons.

3. Using the name "Federal Deposit System" or any other word or phrase of similar import to designate, describe or refer to respondents' business; or otherwise representing, directly or by implication, that their request for information concerning delinquent debtors are from the United States Government or any agency or branch thereof, or that their business is in any way connected with the United States Government.

4. Representing, directly or by implication, that any money has been deposited with them for persons from whom or about whom information is sought.

5. Representing, directly or by implication, that they sponsor, or have any connection with, any radio program or show unless such is a fact.

6. Representing through the use of the said Thomas Webster form letters, or otherwise, that any person from whom or about whom information is sought has been awarded a gift or prize, or that such person will receive a gift or prize by furnishing the information requested.

7. Representing, directly or by implication, that respondents' business is other than that of operating a collection agency.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to Hannah F. Cole.

It is further ordered, That respondents Benjamin B. Cole, Inc., and Herbert M. Cole 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 in which they have complied with this order.

Syllabus

IN THE MATTER OF

THE JUVENILE SHOE CORPORATION OF AMERICA

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

Docket 5976. Complaint, Apr. 2, 1952—Decision, Nov. 13, 1952

Voluntary abandonment or discontinuance of challenged advertising matter, where it appeared that the respondent became aware that related advertising representations were under investigation by the Commission and declined to desist the same through the informal stipulation procedure, or to enter into a consent settlement under the provisions of the Commission's Rule V, is not a guarantee that such advertising will not be resumed, and such discontinuance does not constitute a bar to an order to cease and desist where a question may arise as to the resumption of unfair practices.

In order to effect competent treatment to cure any specific malcondition of the feet, according to the uncontradicted testimony of experts, proper diagnosis followed by appropriate measures thereby indicated is necessary, treatment for both feet is not necessarily the same, and treatment for any abnormal condition should be particularly adapted to the exigencies of the specific case since haphazard, unscientific methods might well aggravate the condition.

In said further connection massage is an effective and accepted procedure in the treatment of certain pathological conditions of various parts of the anatomy including the feet, and is used principally following an accident or any injury where there is decreased efficiency of circulation and where it is desired to stimulate circulation to reduce swelling to promote recovery, but normal feet do not require it, and in the absence of the foregoing or analogous exigencies, it is not indicated or deemed necessary.

A healthy foot may be described as one which will enable one to stand, walk or run without adverse symptoms of pain or tiring, and almost all shoes will keep feet healthy in the sense that they afford a measure of protection against environmental hazards, such as protection from bruises, etc., and, all things being equal, any properly fitted shoe will serve such purposes.

Where a corporation engaged in the manufacture, in substantial volume, of its "Lazy Bones" shoes, and in the interstate sale and distribution thereof; through statements on labels and display cards, advertisements in magazines of general circulation, in folders and circulars, and through radio broadcasts—

(*a*) Represented that through the wearing of its said shoes, the feet, including the muscles and arches, would be massaged in the process of walking and would thereby benefit;

(*b*) Represented that such shoes would exercise and stimulate the arches; and

(*c*) Represented that they would help children's feet to develop healthily and keep them healthy;

The facts being that said shoes were stock shoes, and while they contained features not found in some other stock shoes, wearing them would not accomplish the aforesaid results;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true and thereby induce it to purchase substantial quantities of said shoes; and with effect of placing in the hands of dealers therein means whereby they might deceive and mislead the purchasing public in the aforesaid respects:

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

As respects respondent's contention that the proof failed to sustain that portion of the complaint which charged it with the use of "unfair and deceptive acts and practices": cross-examination developed that walking in respondent's shoes would have no beneficial massaging effect by reason of design or otherwise; that almost all shoes would keep feet healthy as respects the measure of protection provided against environmental hazards; and that respondent's shoes in such respects were no different from or superior to those made by others.

In the aforesaid connection the attempted defense that respondent had never represented its shoes as possessing therapeutic, remedial or curative properties and that hence no infraction of law might be charged: reading of the complaint disclosed that no such charges had been made, but merely that the actual statements used by respondent as to the qualities of its said shoes and the results produced were false, misleading and deceptive; and the further defense that any rubbing, no matter how slight, insignificant or non-beneficial, fell within the literal definition of the word "massage", was rejected as chimerical and unreal.

With further respect to respondent's contention that the complaint should be dismissed because of non-use by it in its advertisements of the word "therapeutic": the query was made as to what then was meant by such expressions as "massages the muscles", "stimulates the feet", "exercises and stimulates the arches", "helps feet to develop healthily", and "helps feet stay healthy".

As further respects the fact that respondent in August, 1951, withdrew from the hands of its customers all mats containing the challenged representations, as a result of being advised, according to it, through the press or otherwise that the Commission had under investigation the advertising of many shoe manufacturers, and its insistence that because of such abandonment, no order predicated on such advertisements should issue: the Commission took official notice of its own records which, while not in evidence, disclosed a chain of correspondence between the Commission and the respondent extending over several years, during the course of which respondent's various advertising representations were criticized and discussed in detail by it with the respondent, and the latter was given ample opportunity to enter into a stipulation to cease and desist in lieu of formal action which it declined, as it did also opportunity to enter into a consent settlement under the provisions of the Commission's Rule V.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. B. G. Wilson and *Mr. J. M. Doukas* for the Commission.

Lewis, Rice, Tucker, Allen & Chubb, of St. Louis, Mo., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that The Juvenile Shoe Corporation of America, a corporation, hereinafter referred to as the 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, The Juvenile Shoe Corporation of America, is a corporation organized and existing under and by virtue of the laws of the State of Missouri with its office and principal place of business located at 1221 Locust Street, St. Louis 3, Missouri.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the manufacture, sale and distribution in commerce of shoes designated as "Lazy Bones" shoes.

PAR. 3. Respondent causes and has caused said shoes when sold to be transported from its place of business in the State of Missouri to purchasers thereof located in various other States of the United States and in the District of Columbia and maintains, and at all times mentioned herein has maintained a course of trade in its said shoes in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in the sale of said shoes in commerce is and has been substantial.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of its said shoes, respondent has made certain statements and representations concerning the nature and usefulness of said shoes by means of labels on its shoes; display cards, advertisements inserted in magazines of general circulation and in folders and circulars; also, by radio continuities broadcast from various radio stations. Among and typical of such statements and representations are the following:

* * * Massage the muscles of your feet every time they touch the ground * * *.

* * * the shoes actually massage and stimulate the feet with every step * * *.

* * * they actually massage the muscles of your children's feet with every step taken.

Their built-in features massage your arch with every step.

* * * exercise and stimulate the arches * * *.

* * * helps young children's feet to develop healthily * * *.
* * * help children's feet stay healthy * * *.

PAR. 5. Through the use of the statements and representations appearing in the aforesaid advertisements, respondent represented that by wearing its "Lazy Bones" shoes the feet, including the muscles and arches, will be massaged in the process of walking and will thereby benefit the feet; that they exercise and stimulate the arches; will help children's feet to develop healthily and helps to keep them healthy.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact, said shoes are stock shoes and while they contain features not found in some other stock shoes, the wearing of said shoes will not in the process of walking or otherwise, massage the feet or the arches and muscles thereof in any sense that might be regarded as beneficial. The wearing of said shoes will not stimulate or exercise the muscles or arches of the feet. Said shoes will not help children's feet to develop healthily or keep them healthy.

PAR. 7. The use by respondent of the foregoing false, deceptive and misleading statements and representations with respect to its shoes has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the representations are true and to induce them, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's shoes and has placed in the hands of dealers of said shoes means and instrumentalities whereby they may deceive and mislead the purchasing public in the respects stated therein.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of section 5 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 November 13, 1952, the initial decision in the instant matter of hearing examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 2, 1952, issued and subse-

quently served its complaint in this proceeding upon respondent, The Juvenile Shoe Corporation of America, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. On April 21, 1952, the corporate respondent filed its answer and, after seasonable notice, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named Hearing Examiner theretofore duly designated by the Commission. Said testimony and other evidence were reduced to writing, duly filed and recorded in the office of the Commission.

Thereafter the proceeding regularly came on for final consideration by said Hearing Examiner on the complaint, the answer thereto, testimony and other evidence, as also proposed findings as to the facts and conclusions presented by counsel in support of the complaint and counsel for the respondent, oral argument thereon not having been requested.

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 therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Juvenile Shoe Corporation of America, is a corporation organized and existing under and by virtue of the laws of the State of Missouri with its office and principal place of business located at No. 1221 Locust Street, St. Louis 3, Missouri.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the manufacture, sale and distribution in commerce of shoes designated as "Lazy Bones" shoes.

PAR. 3. Respondent causes said shoes when sold to be transported from its place of business in the State of Missouri to purchasers thereof located in various other States of the United States and in the District of Columbia and maintains a course of trade in its said shoes in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in the sale of said shoes in commerce is and has been substantial, amounting to approximately $500,000.00 in sales of its "Lazy Bones" shoes for the years 1950 and 1951.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of its said shoes, respondent has made certain statements and representations concerning the nature and usefulness of said shoes by means of labels on its shoes; display cards,

advertisements inserted in magazines of general circulation and in folders and circulars; also, by radio continuities broadcast from various radio stations. Among and typical of such statements and representations are the following:

1. * * * Massage the muscles of your feet every time they touch the ground * * *.
2. * * * the shoes actually massage and stimulate the feet with every step * * *.
3. * * * they actually massage the muscles of your children's feet with every step taken.
4. Their built-in features massage your arch with every step.
5. * * * exercise and stimulate the arches * * *.
6. * * * helps young children's feet to develop healthily * * *.
7. * * * help children's feet stay healthy * * *.

PAR. 5. Through the use of the statements and representations appearing in the aforesaid advertisements, respondent represented that by wearing its "Lazy Bones" shoes the feet, including the muscles and arches, will be massaged in the process of walking and will thereby benefit the feet; that they exercise and stimulate the arches; will help children's feet to develop healthily and helps to keep them healthy.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact, said shoes are stock shoes and while they contain features not found in some other stock shoes, the wearing of said shoes will not in the process of walking or otherwise, massage the feet or the arches and muscles thereof in any sense that might be regarded as beneficial. The wearing of said shoes will not stimulate or exercise the muscles or arches of the feet. Said shoes will not help children's feet to develop healthily or keep them healthy.

As aforesaid, the complaint herein was issued on April 2, 1952, and respondent by its answer, supplemented by testimony of record, admitted the use and dissemination of the various advertisements containing the statements and representations set forth in Paragraph Four above, and which are for convenience hereinafter, numbered from One to Seven inclusive. Respecting representations denoted 1, 2, 3 and 4 (having to do with claimed beneficial massaging of the feet), and representations denoted 5, 6 and 7 (having to do with exercise and stimulation of the arches and assistance in developing and preserving foot health) respondent abandoned such on August 17, 1951, at which time, all of respondent's outstanding advertising mats containing these representations were withdrawn from the hands of respondent's customers and new mats substituted from which were deleted all of the objectionable matters and misrepresentations forming the basis of the complaint. This action was taken by respondent as a result of being advised, according to the respondent, through the

press or otherwise, that the Commission had under investigation the advertising representations of many shoe manufacturers. Respondent urges that because of such abandonment, no order predicated on such advertisements should issue.

The records of the Commission, of which, while not in evidence the Examiner takes official notice, disclose a chain of correspondence between the Commission and the respondent from April 22, 1948, to February 6, 1952, during the course of which the various advertising representations of respondent respecting its shoes were criticised by the Commission and discussed in detail by the Commission and the respondent; such correspondence also discloses the respondent was given ample opportunity to enter into a stipulation to cease and desist in lieu of formal action, which it declined, and the testimony herein discloses that respondent was tendered an opportunity to enter into a Consent Settlement under provisions of Rule V of the Commission's Rules of Practice, which was likewise declined.

EXPERT TESTIMONY

The Commission, to maintain the issue on its part joined, introduced the testimony of two experts, one qualified as an orthopedic surgeon who had practiced his profession for eighteen years, and the other a practitioner of physical medicine, which has to do with the use of physical aids to the correction of morbid, abnormal and diseased conditions, such aids consisting of the use of heat, massage, exercise, mechanical supports, braces and prophylactic devices, etc. This witness has been teaching his subject since 1945 and is now so engaged in the George Washington Medical School of Washington, D. C. The professional qualifications of the experts were never questioned.

Both witnesses agreed that to effect competent treatment to cure any specific malcondition of the feet, proper diagnosis is first necessary and that appropriate measures should then be taken in light of the result of the diagnosis; that the treatment for both feet is not necessarily the same; that normal feet do not need treatment and that any treatment for an abnormal condition should be particularly adapted to the exigencies of the specific case—in other words, no standard or universal device or treatment would be appropriate in all cases and haphazard, unscientific methods might well aggravate the condition; that massage is an effective and accepted procedure in the treatment of certain pathological conditions of various parts of the anatomy including the feet, and use of the words: "helps your children's feet to develop healthily" and "help children's feet stay healthy" is a direct and unqualified representation that foot "health" will

ensue, continue and remain as a result of use of respondent's shoes. Respondent challenges seriously that portion of the complaint charging it with the use of "unfair and deceptive acts and practices" in this particular whereas, in order to sustain an order in the premises, such must be proved and found to exist, which is hereby done. Cross-examination developed that walking in respondent's shoes would have no beneficial massaging effect or result and there is nothing in the design of the shoe which would be at all conducive to this effect; that almost all shoes will keep feet healthy in the sense that they afford a measure of protection against environmental hazards, i. e., protection from bruises, nails, foreign objects, the exclusion of excessive heat and cold as the case may be, and, all things being equal, any properly fitted shoe will serve these purposes, and respondent's shoes, in this connotation, are no different or superior to shoes manufactured by others.

A healthy foot may be described as one which will allow one to stand, walk and run without adverse symptoms of pain or tiring.

Witnesses noted no features in respondent's shoes different from other shoes customarily found on the market.

Webster's International Dictionary defines massage as:

> A method of treating the superficial parts of the body for remedial or hygienic purposes, consisting in rubbing, stroking, kneading, tapping, etc., with the hand or with an instrument.

One of the physicians defined massage as a rubbing or kneading of the skin and underlying muscles in a particular manner to induce or arrive at a desired result, and is used primarily following an accident or any injury where there is present decreased efficiency of blood circulation and where it is desired to stimulate the circulation by rubbing or massaging to reduce swelling to promote recovery. Normal feet do not require massage and in the absence of the foregoing or analogous exigencies massage is not indicated or deemed necessary. Respondent's shoes will not exercise or massage the feet nor the arches thereof, nor stimulate the muscles of the feet so as to effect any beneficial result but will massage the foot in the limited sense that any shoe will rub or massage the foot in the normal process of flexing same when in motion.

The respondent adduced no expert testimony to maintain the issues on its part joined.

At this juncture consideration is given to the emphasis stressed by respondent that it has never represented its shoes as possessing therapeutic, remedial or curative properties, ergo, no infraction of law may be charged. However, a reading of the complaint will disclose that no such charges, *eo nomine*, have been made but, on the contrary,

Paragraphs Five and Six of the complaint merely charge the actual statements used by respondent to be false, misleading and deceptive and that respondent's shoes will not do the various things, nor produce the various results, attributed to their use. Further, respondent, in its defense, laid emphasis on the literal meaning of the word "massage," contending that any rubbing, no matter how slight, insignificant or non-beneficial such may be, yet falls within the literal definition of the word "massage," hence there has been no misrepresentation. This attempted defense is merely a semantic fantasy, chimerical and unreal, as is also the contention that the complaint should be dismissed because of non-user by respondent in its advertisements of the word "therapeutic" when in fact no such charge was made, although it might be pertinent to inquire, *arguendo*, that if respondent did not desire and attempt to import to the public, by inference, innuendo or oblique hint, some such quality inherent in the use of its shoes, then what, in fact, was meant by such expressions as: "massages the muscles," "stimulates the feet," "exercises and stimulates the arches," "helps feet to develop healthily" and "helps feet stay healthy?"

PAR. 7. The use by respondent of the foregoing false, deceptive and misleading statements and representations with respect to its shoes has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the representations are true and to induce them, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's shoes and has placed in the hands of dealers of said shoes means and instrumentalities whereby they may deceive and mislead the purchasing public in the respects stated therein.

CONCLUSIONS

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

2. Voluntary abandonment or discontinuance of the advertising matter prior to issuance of the complaint as herein stated is not a guarantee that such will not be resumed (*F. T. C.* v. *Wallace*, 75 F. (2d) 733, 738); nor does discontinuance render the controversy moot, (*F. T. C.* v. *Goodyear*, 304 U. S., 257, 260); nor is such discontinuance a bar to an order to cease and desist where a question may arise as to the resumption of unfair practices. (*Deere* v. *F. T. C.*, 152 F. (2d) 65). Also see *Corn Products Refining Co.* v. *F. T. C.*, 144 F. (2d) 211; *Fairyfoot Products* v. *F. T. C.*, 82 F. (2d) 684.

ORDER

It is ordered, That the respondent, The Juvenile Shoe Corporation of America, a corporation, and its officers, 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 respondent's shoes designated "Lazy Bones" or any other shoe of similar construction, irrespective of the designation applied thereto, do forthwith cease and desist from representing, directly or by implication:

(1) That the wearing of said shoes will massage the feet, or the arches or muscles thereof;

(2) That the wearing of said shoes will stimulate or exercise the muscles or arches of the feet;

(3) That the wearing of said shoes will help children's feet to develop healthily or will help to keep them healthy.

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 November 13, 1952].

Syllabus

IN THE MATTER OF

PAUL T. LYNCH TRADING AS LYNCH'S DIATHERMY COMPANY

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

Docket 5999. Complaint, June 16, 1952—Decision, Nov. 18, 1952

The use of a diathermy device in applying high frequency electrical current to produce heat in body tissues for therapeutic purposes is a form of treatment powerful enough to do serious injury to the user if improperly applied. Application of such treatment by an unskilled person in cases where there are advanced blood vessel changes of the legs, usually characterized by severe pains in the extremities, may, in excess dosage, not only cause serious burns but may lead to gangrene and necessitate amputation of the leg; and application of heat produced thereby in any area of the body where appreciation of heat has been impaired or lost may result in serious burns and destruction of tissue.

Pains commonly believed to be associated with neuritis are frequently symptomatic of some underlying cause or disease, such as tumor, tuberculosis, syphilis, cancer and diabetes, and an attempt to relieve the pain resulting from such conditions by the use of a diathermy device such as respondent's without securing proper diagnosis may result in fatal delay in the treatment of the underlying cause.

Where an individual engaged in the interstate sale and distribution of his "Lynch's Short Wave Diathermy" to members of the purchasing public for use in treatment of self-diagnosed diseases by self-application in the home; in advertising through newspapers, booklets and circulars, and otherwise—

Represented that said device, used by members of the general public in the treatment of self-diagnosed diseases, would relieve the pains of chronic arthritis, neuritis, sciatica, sinus, and rheumatism, and might be safely used by them in their homes, without revealing that the safe use of such a device by the public required diagnosis by a competent physician, determination of whether or not diathermy was indicated and, if so, the frequency and rate of application, thorough and adequate instruction by a trained technician in the use thereof, including proper placement of the electrodes, control and regulation of the amount of heat applied, and preventive measures against burns and tissue destruction;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said device was entirely safe and its use free from ill effects, and with effect of inducing such public, because of its mistaken belief, to purchase the device:

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

Before *Mr. J. Earl Cox*, hearing examiner.
Mr. Jesse D. Kash for the Commission.
Mr. Paul L. Lynch, of Philadelphia, Pa., 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 Paul T. Lynch, an individual trading as Lynch's Diathermy Company, 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 Paul T. Lynch is an individual trading as Lynch's Diathermy Company with his office and principal place of business located at 1539 72nd Avenue, Philadelphia, Pennsylvania.

PAR. 2. The respondent is now, and for more than one year last past has been engaged in the sale and distribution of a certain device, as "device" is defined in the Federal Trade Commission Act, designated "Lynch's Short Wave Diathermy."

In the course and conduct of his said business, the respondent causes said device, when sold, to be transported from his place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States.

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

PAR. 3. Respondent's device is essentially a portable cabinet housing a transformer, a short wave generator, radio tubes and coils, designed for the generation of electrical short waves and the application thereof to parts of the human body by means of insulated electrodes. The electrical energy necessary for the operation of this device is secured by attaching it to the domestic electrical current in the user's home. When the electrodes are applied to the user's body and the device is put into operation, the passage of the electrical short waves between the electrodes creates heat within the body tissue of the user because of their resistance to the passage of such electrical currents. Respondent's device is offered for sale and sold to members of the purchasing public for use in the treatment of self-diagnosed diseases by self-application in the home.

PAR. 4. In the course and conduct of his aforesaid business respondent has disseminated and is now disseminating, and has caused and

is now causing the dissemination of, advertisements concerning his said device by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers and in booklets and circulars for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said device; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning his said device by various means including, but not limited to, the advertisements referred to above for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of 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, by advertisements inserted in newspapers and in other advertising literature are the following:

CHRONIC PAINS of
RHEUMATISM
ARTHRITIS
NEURITIS
SCIATICA
and SINUS

ALLEVIATED
by SHORT WAVE
DIATHERMY

If you suffer the excruciating pains of chronic muscular and rheumatic ailments * * * take hope! Yes, if your recurring aches and pains prevent you from working efficiently * * * deprive you of the happiness that is rightfully yours * * * take hope! In many cases SHORT WAVE DIATHERMY has brought blessed relief where all other methods have failed. This pamphlet has been prepared to acquaint you with SHORT WAVE DIATHERMY * * * to tell you what it may do to bring new joy and happiness into your life!

THE FIRST STEP IS UP TO YOU!

Today—call or write for a FREE demonstration in your own home. You may be suffering needlessly * * * you owe it to yourself, and your family to investigate Short Wave Diathermy.

ARTHRITIS

FREE BOOKLET

* * * tells all about proven method for alleviating pains of chronic Arthritis, Neuritis, Sciatica, Sinus, Rheumatism! Just send your name and address (or phone) for your free copy! It describes in full the modern method prescribed by doctors and used in hospitals and homes throughout America! You must read the exciting information this Free Booklet contains * * * for you may be

suffering needlessly. Learn how after medical examination and complete instruction, you can have his modern method in your home for possible alleviation of excruciating chronic muscular and rheumatic pains. Send your name and address * * * or phone * * * today! No obligation, of course!

PAR. 5. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent represented that his device, use by members of the general public in the treatment of self-diagnosed diseases, will relieve the pains of chronic arthritis, neuritis, sciatica, sinus and rheumatism, and may be safely used by members of the public in their homes.

PAR. 6. The aforesaid advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act for the reason that they fail to reveal facts material in the light of the representations made and facts material with respect to the consequences which may result from the use of said device under the conditions prescribed or under such conditions as are customary and usual.

The use of respondent's device in applying high frequency electrical currents to produce heat in body tissues for therapeutic purposes is a form of treatment powerful enough to do serious injury to the user if improperly applied. When used unskillfully, said device may burn or otherwise seriously injure the person to whom it is applied. The application of such treatment by an unskilled person in cases where there are advanced blood vessel changes of the legs, which are usually characterized by severe pains in the extremities, may, in excess dosage, not only cause serious burns but may lead directly to gangrene and necessitate amputation of the leg. Pains commonly believed to be associated with neuritis are frequently symptomatic of some underlying cause or disease, such as tumor, tuberculosis, syphilis, cancer and diabetes and an attempt to relieve the pain resulting from such conditions by the use of a diathermy device such as respondent's without securing proper diagnosis as to the cause of such pain may result in fatal delay in the treatment of the underlying cause of such symptoms. The application of heat produced by respondent's device in any area of the body where appreciation of heat has been impaired or lost may result in serious burns and destruction of tissue.

The safe use of a diathermy device such as respondent's, by members of the general public in their homes, requires that there first be a competent diagnosis by a competent physician, a determination of whether or not diathermy is indicated, and, if so, the frequency and rate of application, thorough and adequate instruction by a trained technician in the use of the device including, among other things, the proper

placement of the electrodes, control and regulation of the amount of heat to be applied and preventive measures against burns and tissue destruction.

PAR. 7. The use by the respondent of the statements and representations set out herein with respect to respondent's device, without revealing facts material in the light of the representations made, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's device is entirely safe and its use free from ill effects and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said device.

PAR. 8. The aforesaid acts and practices of the respondent 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 November 18, 1952, the initial decision in the instant matter of hearing examiner J. Earl Cox, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 16, 1952, issued and subsequently served its complaint in this proceeding upon the respondent Paul L. Lynch, designated and referred to in the complaint as Paul T. Lynch, an individual trading as Lynch's Diathermy Company, charging him with unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After respondent filed his answer in this proceeding and at the initial hearing, a stipulation was entered into by and between Jesse D. Kash, counsel in support of the complaint, and said respondent that a statement of facts dictated into and made a part of the record in this proceeding may be taken as the facts in this proceeding and in lieu of evidence in support of and in opposition to the charges stated in the complaint and that the said statement of facts may serve as the basis for findings as to the facts and conclusion based thereon and order disposing of the proceeding, without presentation of proposed findings and conclusions or oral argument. The said stipulation as to the facts expressly provides

that upon appeal to or review by the Commission said stipulation may be set aside by the Commission and this matter remanded for further proceedings under the complaint. Thereafter, this proceeding regularly came on for final consideration by said hearing examiner upon the complaint, answer and stipulation, said stipulation having been approved 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 Paul L. Lynch, designated and referred to in the complaint as Paul T. Lynch, is an individual trading as Lynch's Diathermy Company with his office and principal place of business located at 1539 72nd Avenue, Philadelphia, Pennsylvania.

PAR. 2. The respondent is now, and for more than one year last past has been, engaged in the sale and distribution of a certain device, as "decisive" is defined in the Federal Trade Commission Act, designated "Lynch's Short Wave Diathermy."

In the course and conduct of his said business, the respondent causes said device, when sold, to be transported from his place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States.

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

PAR. 3. Respondent's device is essentially a portable cabinet housing a transformer, a short wave generator, radio tubes and coils, designed for the generation of electrical short waves and the application thereof to parts of the human body by means of insulated electrodes. The electrical energy necessary for the operation of this device is secured by attaching it to the domestic electrical current in the user's home. When the electrodes are applied to the user's body and the device is put into operation, the passage of the electrical short waves between the electrodes creates heat within the body tissues of the user because of their resistance to the passage of such electrical currents. Respondent's device is offered for sale and sold to members of the purchasing public for use in the treatment of self-diagnosed diseases by self-application in the home.

PAR. 4. In the course and conduct of his aforesaid business respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning his

said device by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers and in booklets and circulars for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said device; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning his said device by various means including, but not limited to, the advertisements referred to above 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, by advertisements inserted in newspapers and in other advertising literature are the following:

CHRONIC PAINS of
RHEUMATISM
ARTHRITIS
NEURITIS
SCIATICA
and SINUS

ALLEVIATED
by SHORT WAVE
DIATHERMY

If you suffer the excruciating pains of chronic muscular and rheumatic ailments * * * take hope! Yes, if your recurring aches and pains prevent you from working efficiently * * * deprive you of the happiness that is rightfully yours * * * take hope! In many cases SHORT WAVE DIATHERMY has brought blessed relief where all other methods have failed. This pamphlet has been prepared to acquaint you with SHORT WAVE DIATHERMY * * * to tell you what it may do to bring new joy and happiness into your life!

THE FIRST STEP IS UP TO YOU!

Today—call or write for a FREE demonstration in your own home. You may be suffering needlessly * * * you owe it to yourself, and your family to investigate Short Wave Diathermy.

ARTHRITIS

FREE BOOKLET

* * * tells all about proven method for alleviating pains of chronic Arthritis, Neuritis, Sciatica, Sinus, Rheumatism! Just send your name and address (or phone) for your free copy! It describes in full the modern method prescribed by doctors and used in hospitals and homes throughout America! You must read the exciting information this Free Booklet contains * * * for you may be suffering needlessly. Learn how after medical examination and complete instruction, you can have this modern method in your home for possible alleviation

of excruciating chronic muscular and rheumatic pains. Send your name and address * * * or phone * * * today! No obligation, of course!

PAR. 5. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent represented that his device, used by members of the general public in the treatment of self-diagnosed diseases, will relieve the pains of chronic arthritis, neuritis, sciatica, sinus and rheumatism, and may be safely used by members of the public in their homes.

PAR. 6. The aforesaid advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act for the reason that they fail to reveal facts material in the light of the representations made and facts material with respect to the consequences which may result from the use of said device under the conditions prescribed or under such conditions as are customary and usual.

The use of respondent's device in applying high frequency electrical currents to produce heat in body tissues for therapeutic purposes is a form of treatment powerful enough to do serious injury to the user if improperly applied. When used unskillfully, said device may burn or otherwise seriously injure the person to whom it is applied. The application of such treatment by an unskilled person in cases where there are advanced blood vessel changes of the legs, which are usually characterized by severe pains in the extremities, may, in excess dosage, not only cause serious burns but may lead directly to gangrene and necessitate amputation of the leg. Pains commonly believed to be associated with neuritis are frequently symptomatic of some underlying cause or disease, such as tumor, tuberculosis, syphilis, cancer and diabetes and an attempt to relieve the pain resulting from such conditions by the use of a diathermy device such as respondent's without securing proper diagnosis as to the cause of such pain may result in fatal delay in the treatment of the underlying cause of such symptoms. The application of heat produced by respondent's device in any area of the body where appreciation of heat has been impaired or lost may result in serious burns and destruction of tissue.

The safe use of a diathermy device such as respondent's, by members of the general public in their homes, requires that there first be a competent diagnosis by a competent physician, a determination of whether or not diathermy is indicated, and, if so, the frequency and rate of application, thorough and adequate instruction by a trained technician in the use of the device including, among other things, the proper placement of the electrodes, control and regulation of the amount of

heat to be applied and preventive measures against burns and tissue destruction.

PAR. 7. The use by the respondent of the statements and representations set out herein with respect to respondent's device, without revealing facts material in the light of the representations made, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's device is entirely safe and its use free from ill effects and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said device.

CONCLUSION

The aforesaid acts and practices of the respondent 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 Paul L. Lynch, designated and referred to in the complaint as Paul T. Lynch, an individual trading as Lynch's Diathermy Company, or under any other name, his agents, representatives and employees, directly or through any corporate or other device, in connection with the sale, offering for sale or distribution of a device designated as "Lynch's Short Wave Diathermy" or any other device of substantially similar character, 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, 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 for the purpose of inducing or which is likely to induce, directly or indirectly the purchase of respondent's device, which advertisement fails to clearly and conspicuously reveal that said device is not safe for use in the home for any self-diagnosed condition unless and until a competent medical authority has determined, as a result of diagnosis, that the use of diathermy is indicated and has prescribed the frequency and rate of application of the treatments and the user has been adequately instructed by a trained technician in the use of such device;

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is

defined in the Federal Trade Commission Act, of respondent's device, which advertisement fails to comply with the requirements set forth 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 him 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 November 18, 1952].