

terminating any such contract subject to such reasonable restrictions concerning their re-entry into business as may be lawful within the jurisdiction in which any such purchaser is located;

8. Policing, enforcing or continuing in operation or effect any condition, agreement, understanding, act or practice from which respondents are ordered to cease and desist by the foregoing sections hereof;

9. Performing any act of intimidation or coercion through statements, oral or written, made by representatives of respondents, either at the time when a purchaser agrees to purchase any such products from respondents or during the course of any calls made upon such purchasers at their places of business or at any other place, or using any other plan, practice, system or method of doing business, for the purpose or with the effect of intimidating, coercing, or requiring purchasers of any such products from respondents to do anything which respondents are ordered to cease and desist from requiring such purchasers to do by any of the foregoing paragraphs hereof.

Provided, however, That nothing herein contained shall be construed to limit or otherwise affect any resale price maintenance contracts which respondents may enter into in conformity with Section 5 of the Federal Trade Commission Act as amended by the McGuire Act (15 U.S.C. Sec. 45).

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 9th day of July 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

KADIAK FISHERIES COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(c) OF THE CLAYTON ACT

Docket 7562. Complaint, Aug. 6, 1959—Decision, July 13, 1960

Consent order requiring Seattle packers of canned salmon and other sea food products to cease violating Sec. 2(c) of the Clayton Act by such practices

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as giving reductions in price to certain buyers or their agents which were offset in whole or in part by reduction of either the primary or field broker's commission earned on such sales.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have been, and are now, violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents Kadiak Fisheries Company and Chignik Fisheries Company, hereinafter sometimes referred to as corporate respondents, are corporations organized, existing and doing business under and by virtue of the laws of the State of Washington, with their principal offices and places of business located at 1826 Exchange Building, Seattle, Wash.

Respondent Leo T. Krielsheimer, hereinafter sometimes referred to as individual respondent, is an individual and is president and sales manager of both of the corporate respondents. He directs and controls their business practices and policies, including their sales and distribution policies. His principal office and place of business is the same as that of the corporate respondents.

PAR. 2. All of the said respondents, both corporate and individual, have been for the past several years and are now engaged in the business of packing, selling and distributing canned salmon and other seafood products, all of which are hereinafter referred to as seafood products, to various buyers located in the several States of the United States. They sell and distribute their products through primary brokers, generally located in Seattle, Wash., and through field brokers located in various market areas throughout the United States.

When selling through primary brokers said respondents pay these brokers a commission or brokerage fee for their services, usually at the rate of 5% of the net selling price of the merchandise sold. When selling through field brokers respondents do not utilize a primary broker; instead, they pay a commission or brokerage fee usually at the rate of 2½% of the net selling price of the merchandise sold.

Respondents' annual volume of business during the past several years has been substantial.

PAR. 3. In the course and conduct of their business respondents, both corporate and individual, for the past several years have sold and distributed and are now selling and distributing seafood prod-

ucts in commerce, as "commerce" is defined in the aforesaid Clayton Act, to buyers located in the several States of the United States other than the State of Washington in which respondents are located. Respondents, and each of them, transport or cause such seafood products, when sold, to be transported from their place of business in the State of Washington to such buyers, or to the buyers' customers, located in various other States of the United States. There has been at all times mentioned herein a continuous course of trade in commerce in said seafood products across state lines between respondents and the respective buyers of said products.

PAR. 4. In connection with the sale and distribution of their seafood products in commerce, the corporate respondents, under the control and direction of the individual respondent, have made grants or allowances in substantial amounts in lieu of brokerage, or have made price concessions which reflect brokerage to certain buyers of said seafood products. One method used by respondents in making such grants or allowances, but not necessarily limited to this one method, was to give reduction in prices to certain buyers, or agents of buyers, which reductions were coupled with or were offset in whole or in part by a reduction of either the primary or field broker's commission or brokerage fee earned on said sales.

PAR. 5. The acts and practices of respondents, both corporate and individual, as alleged and described herein, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

Mr. Cecil G. Miles, Mr. Charles D. Gerlinger and Mr. Franklin A. Snyder for the Commission.

Bogle, Bogle & Gates, of Seattle, Wash., by *Mr. Robert W. Graham* for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding, issued August 6, 1959, charges violation of Section 2(c) of the Clayton Act, as amended, in connection with the packing, selling, and distributing of canned salmon and other seafood products by respondents Kadiak Fisheries Company and Chignik Fisheries Company, Washington corporations, with their principal offices and places of business located at 1826 Exchange Building, Seattle, Wash., and individual respondent Leo T. Kreielsheimer, named in the complaint as Leo T. Krielsheimer, President and Sales Manager of both of said corporations and located at the same address as the corporate respondents.

After the issuance of the complaint, respondents entered into an agreement containing consent order to cease and desist with counsel

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in support of the complaint, disposing of all the issues as to all parties in this proceedings, which agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By said agreement, the parties expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondents further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and, in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and issues the following order:

ORDER

It is ordered, That Kadiak Fisheries Company, a corporation, and its officers, Chignik Fisheries Company, a corporation, and its officers, and Leo T. Krielsheimer, named in the complaint as Leo T. Krielsheimer, individually and as an officer of said respondent corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the sale

of seafood products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying, granting, or allowing, directly or indirectly, to any buyer, or to anyone acting for or in behalf of, or who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of seafood products to such buyer for his own account.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 13th day of July 1960, become the decision of the Commission; and, accordingly:

It is ordered, That Kadiak Fisheries Company, a corporation, and Chignik Fisheries Company, a corporation, and Leo T. Krielsheimer, named in the complaint as Leo T. Krielsheimer, individually and as an officer of said corporations, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

RALPH NEWBURGER DOING BUSINESS AS CHICAGO
GOLD SMELTING & REFINING COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 7750. Complaint, Jan. 18, 1960—Decision, July 15, 1960

Consent order requiring an individual in Chicago to cease representing falsely in advertising in newspapers, magazines, and other matter that he was the largest and oldest direct mail purchaser of precious metals and diamonds, and that he paid \$35 an ounce for gold; that he was a smelter or refiner, through use of "Smelting", "Refining", or similar words in his trade name and otherwise; and that he employed a staff of experts to assay and evaluate precious metals and diamonds from would-be sellers.

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 Ralph Newburger, doing business as Chicago Gold Smelting & Refining Company, hereinafter referred to as respondent, has violated the provisions of said

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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 Ralph Newburger is an individual trading and doing business as Chicago Gold Smelting & Refining Company, with his office and principal place of business located at Room 1306, 6 East Monroe Street, Chicago 3, Ill.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the purchasing of gold, silver and other precious metals and diamonds, by mail, in commerce, and at all times mentioned herein has maintained a course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of his business, and for the purpose of inducing the sale of gold, silver and other precious metals, and diamonds, by the public to him, respondent made certain statements and representations in newspapers of interstate circulation, trade papers, journals and magazines having national circulation, and in form letters, circulars, or other advertising material circulated by said respondent. Among and typical, but not all inclusive, of the statements and representations so made are the following:

It is a pleasure to let you know that we are the largest Direct-By-Mail gold purchasing agents in the United States.

When you deal with the Chicago Gold Smelting & Refining Company, you are taking no risk, because you are dealing with the largest and oldest Direct-By-Mail gold and diamond buying institution in the United States, * * *

Highest cash prices paid for Old and New Gold, * * *

\$35.00 per ounce is the standard price for the pure gold content.

Your articles will be carefully examined and weighed for their gold and diamond contents by our staff of gold and diamond experts.

PAR. 4. Through the use of the aforesaid statements and representations, and others similar thereto, and by the use of the words "Smelting" and "Refining" in his trade name, the respondent represents, directly and by implication:

1. That respondent is a smelter and refiner of gold and other precious metals and that he owns or controls the smeltery and refinery where the gold and other precious metals sold to him are smelted and refined.

2. That respondent is the largest and oldest direct mail purchaser of gold and diamonds.

3. That respondent pays \$35.00 an ounce for gold.

4. That respondent employs a staff of experts to assure the sellers of gold and diamonds a completely accurate assay and valuation of such products sent to him for sale.

PAR. 5. The said statements and representations, as hereinbefore set forth, are false, misleading and deceptive. In truth and in fact:

1. Respondent is not a smelter or refiner of gold and other precious metals, nor does respondent own, operate or control a smeltery or refinery.

2. Respondent is neither the largest nor oldest mail purchaser of gold or diamonds.

3. Respondent does not pay \$35.00 an ounce for gold.

4. Respondent does not maintain a staff of experts to assay and evaluate the gold or diamonds sent to him for sale.

PAR. 6. There is a preference on the part of a substantial portion of persons, having gold and other precious metals to sell, to deal direct with a smeltery or refinery, in the belief that by the elimination of middlemen the sellers will receive a higher price and other advantages.

PAR. 7. Respondent, in the course and conduct of his business, is engaged in competition in commerce with other individuals and with firms and corporations who are likewise engaged in the purchasing of gold, other precious metals and diamonds.

PAR. 8. The use by the respondent of the said trade name, statements and representations has had, and now has, the tendency and capacity to mislead a substantial portion of the public into the erroneous and mistaken belief the statements and representations were and are true, and to induce a substantial portion of the public, because of such erroneous and mistaken belief, to sell their gold and other precious metals and diamonds to the respondent. As a result of said practice, as aforesaid, trade in commerce has been, and is being, unfairly diverted to respondent from his competitors, and injury has thereby been, and is being, done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted and now 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.

Mr. William A. Somers for the Commission.

Mr. Jack Rosen, of Chicago, Ill., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on January 18, 1960, issued its complaint herein, charging the above-named respondent with having

violated the provisions of the Federal Trade Commission Act in certain particulars.

On May 17, 1960, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between respondent and counsel for both parties, under date of May 2, 1960, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Ralph Newberger (erroneously referred to in the complaint as Ralph Newburger), trading and doing business as Chicago Gold Smelting & Refining Company, has his office and principal place of business located at Room 1306, 6 East Monroe Street, Chicago 3, Ill.

2. The respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

3. This agreement disposes of all of this proceeding as to all parties.

4. The respondent waives:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) All the rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

5. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to the respondent. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside

in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease and Desist," said agreement is hereby approved and accepted and is ordered filed if and when said agreement shall have become a part of the Commission's decision. The hearing examiner finds from the complaint and the said agreement that the Commission has jurisdiction of the subject matter of this proceeding and of the respondent herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act against the respondent, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all the issues in this proceeding as to all of the parties hereto; and that said order, therefore, should be and hereby is entered as follows:

It is ordered, That respondent Ralph Newberger, trading and doing business as Chicago Gold Smelting & Refining Company, or under any other name, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering to purchase or purchasing of precious metals, diamonds or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Smelting," "Refining," or any other word of similar import, in any trade or corporate name, or representing in any other manner that respondent is a smelter or refiner, or owns or controls a smeltery or refinery;

2. Representing, directly or by implication:

(a) That respondent is the largest or oldest direct mail purchaser of precious metals or diamonds; or is the largest or oldest direct mail purchaser of any other product, unless such is the fact;

(b) That respondent pays \$35.00 an ounce for gold; or pays any other amount, unless such is the fact;

(c) That respondent employs a staff of experts to assay and evaluate the precious metals, diamonds or other products sent to him by persons desiring to sell the same to him.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 15th day of July 1960, become the decision of the Commission; and accordingly:

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It is ordered, That respondent Ralph Newberger (erroneously referred to in the complaint as Ralph Newburger), trading and doing business as Chicago Gold Smelting & Refining Company, 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.

IN THE MATTER OF
BERNARD INDUSTRIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 7822. Complaint, Mar. 11, 1960—Decision, July 15, 1960

Consent order requiring a New York City distributor of men's ties falsely as "Imported from Switzerland" or "Made in Switzerland", and ties composed of material weighted with metal and blended with synthetics as "All Silk."

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

PARAGRAPH 1. Respondent Bernard Industries, 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 112 Madison Avenue, in the City of New York, State of New York.

Respondents Bernard Bernard and Lotte Bernard are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of men's neckties to retailers for resale to the public.

PAR. 3. In the course and conduct of their business respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business in

the State of New York to purchasers thereof located in various other states of the United States and in the District of Columbia and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the sale of their said merchandise, respondents falsely represent by labels, that their said merchandise is "All Silk", "Imported from Switzerland" and "Made in Switzerland".

Certain of respondents' merchandise represented to be "All Silk" is composed of material which is weighted with metal, blended with synthetic and other material and is not "All Silk", as represented by the label.

Certain of respondents' merchandise represented as "Imported from Switzerland" and "Made in Switzerland", is manufactured in the United States.

PAR. 5. By the aforesaid practices respondents place in the hands of retailers means and instrumentalities by and through which they may mislead the public as to the character of the material in the merchandise and the country of origin thereof.

PAR. 6. In the conduct of their business and at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals in the sale of men's silk ties of the same general kind and nature as that sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices, has had and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of the said erroneous and mistaken belief, and as a consequence thereof, substantial trade in commerce has been and is being unfairly diverted to respondents and their competitors and substantial injury has thereby been and is being done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now 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.

Mr. Harry E. Middleton, Jr., for the Commission.

Spar, Schlem & Burroughs, of New York, N.Y., by Mr. Charles Spar, for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued March 11, 1960, charges the respondents Bernard Industries, Inc., a New York corporation, located at 112 Madison Avenue, New York, N.Y., and Bernard Bernard and Lotte Bernard, individually and as officers of said corporation and located at the same address as the corporate respondent, with violation of the provisions of the Federal Trade Commission Act in the sale and distribution of men's neckties.

After the issuance of the complaint, respondents entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues as to all parties in this proceeding.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By said agreement, the parties expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondents further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and, in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding

and of the respondents named herein, that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondents Bernard Industries, Inc., a corporation, and its officers, and Bernard Bernard and Lotte Bernard, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the sale and distribution of men's ties or other similar products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that their products are of foreign origin, when, in fact, such products are manufactured in whole or in substantial part in the United States; or misrepresenting in any manner the country of origin of their products;
2. Misrepresenting in any manner the materials of which their products are made;
3. Putting into operation or participating in any plan or practice whereby retailers or others may misrepresent the origin of their products or the materials of which they are made.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 15th day of July 1960, become the decision of the Commission; and, accordingly:

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

 IN THE MATTER OF

AMERICAN INTERNATIONAL INDUSTRIES, INC., ET AL.

 CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
 THE FEDERAL TRADE COMMISSION ACT

Docket 7849. Complaint, Mar. 29, 1960—Decision, July 15, 1960

Consent order requiring a Philadelphia distributor of phonograph records and record vending racks to cease using deceptive employment offers, exaggerated earnings claims, and other misrepresentations in advertising in news-

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papers and in letters and other matter mailed to prospective purchasers, as in the order below set forth, to induce purchase of its merchandise.

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 American International Industries, Inc., a corporation, and Joseph Alper and N. Francis Alper, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provision 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 American International Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 507-12 Lewis Tower Building in the City of Philadelphia, State of Pennsylvania.

Respondents Joseph Alper and N. Francis Alper are officers of said respondent corporation. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of phonograph records and record vending racks. In the course and conduct of their business as aforesaid, respondents now cause and have caused said records and racks, when sold, to be shipped from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain and at all times mentioned herein have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of phonograph records and vending racks of the same general kind and nature as those sold by respondents.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the sale of their phonograph records and vending racks, respondents have made various statements and

representations concerning their said products and methods of conducting their said business. Such statements and representations are made, and have been made, by means of advertisements published in The Wall Street Journal, Cleveland Plain Dealer, Richmond (Va.) News Leader and other newspapers circulated in areas where respondents do business, and by means of letters, brochures and other promotional and advertising literature mailed and circulated throughout the country to prospective purchasers.

Among and typical, and illustrative, but not all inclusive, of the statements and representations made, circulated and disseminated as aforesaid are the following:

1. (By newspaper advertisements)

DISTRIBUTOR
MALE OR FEMALE
FULL OR PART TIME

Earn extra money in your own business. No experience or personal selling necessary. Requires only few hours a week spare time to service BEST BRAND RECORD DISPLAYS, located by us in food markets, drug stores, etc. Cheap record racks are rapidly being replaced by SENSATIONAL BEST BRAND SELF-SERVICE RECORD DISPLAYS. Store makes money, so do you. Excellent profit . . . but this is NOT A GET RICH QUICK SCHEME, as we are a highly respected record company rated in Dun & Bradstreet.

Must have car and minimum of \$975 for record inventory, displays, store accounts, and advertising material. Write for local appointment, include phone number.

BEST RECORDS DIV.
American International
Industries, Inc.
Lewis Tower Bldg.
Phila. 2, Pa.

2. (By letter)

. . . this is an ideal opportunity for you to own . . . a full time, high profit, volume business . . .

. . . Best Brand Record Displays, located by us in high traffic retail stores . . .
. . . keep your racks filled with fast moving record selections.

3. (By promotional brochure)

HERE'S THAT ONCE-IN-A-LIFETIME OPPORTUNITY For Unlimited Success On A Limited Budget.

* * *

Make more money in less time than you thought possible.

* * *

YOU CAN SERVICE 5 RACKS IN ONLY 5 to 6 HOURS A WEEK And Pocket Tremendous Profits.

5 to 6 hours a week servicing your locations can bring you clear profit you never dreamed of making in so little time with so little effort. * * * It won't take long to learn this money-making business and once you do—the sky's the limit.

* * *

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POPULAR, UP-TO-DATE RECORDS SOLD AT YOUR LOCATIONS * * *
 Customers will quickly discover that the newest hits from stage, screen and
 Tin Pan Alley . . . are always available at *your* Best racks.

* * *

. . . Best can bring these superb recordings to music lovers everywhere at prices
 far below those being charged for records of comparative value.

* * *

If you cannot service "Fast-turnover" "High-profit" locations—DO NOT
 APPLY.

* * *

Q. HOW DO I KNOW THAT YOUR COMPANY IS RELIABLE?

A. We are listed by Dun & Bradstreet . . .

* * *

. . . we give the public a truly fine \$3.98 Hi-Fi value for the really sensible
 price of \$1.98

In response to inquiries induced by such advertisements, letters
 and literature, respondents or their employees, agents or representa-
 tives call upon members of the public initiating such inquiries, and
 then make oral representations repetitive or elaborative of and in
 addition to those contained in the aforementioned printed materials.

PAR. 5. Through the use of the aforesaid statements and repre-
 sentations set out and referred to in paragraph 4, above, respondents
 have represented and do now represent, directly or by implication,
 to the purchasing public, that:

1. Respondents' newspaper advertisements constituted offers of
 employment.

2. A highly profitable business could be obtained for an invest-
 ment of \$975.00.

3. All money invested by a purchaser of records and racks from
 respondents was secured by the stock he purchased, full refund of
 which money would be made by respondents on return of such stock
 to them.

4. Weekly net profits of \$50.00, \$100.00 and more would accrue to
 said purchaser on an investment of \$975.00, beginning with his place-
 ment of racks filled with records on the premises of stores located
 by respondents.

5. Respondents had negotiated contracts with The Great Atlantic
 & Pacific Tea Company, The Kroger Company, Safeway Stores,
 Inc., Sears, Roebuck & Company, Peoples Drug Stores, Inc., and
 other large and reputable food, drug and general merchandise com-
 panies and stores, by which it was agreed that respondents' distrib-
 utor in a given area would install vending racks with phonograph
 records in such companies' "high-traffic" retail stores located in that
 area.

6. In return for the payment of \$975.00 to respondents for records
 and racks the purchaser thereof would be the sole distributor of

records sold by respondents, in a given city or other defined geographical area.

7. A purchaser's opportunity for expansion, with concomitant earnings of incredible amount, was limited only by the industry of the purchaser and the size of the trading area wherein he would be the distributor.

8. A portion of all records sold by respondents to a purchaser in consideration of \$975.00 contained the newest "hit" tunes currently being sold throughout the nation; and on receipt of subsequent orders from the purchaser for the purpose of replenishing stocks, the respondents would have available current "hit" records as of that time.

9. The records sold by respondents had a retail value of \$3.98 or more each.

10. Respondents' integrity was avouched by the fact that they were listed in *Dun & Bradstreet Reference Book*.

PAR. 6. The aforesaid statements and representations were and are false, misleading and deceptive. In truth and in fact:

1. Respondents did not and do not offer employment to or employ persons answering their advertisements. The purpose of said advertising at all times has been and is to obtain leads to persons of established finances in order that a concentrated effort might be made, through personal solicitation, to induce them to enter into contracts for the purchase of phonograph records and vending racks.

2. Seldom, if ever, has an investment of \$975.00 in respondents' phonograph records, vending racks and plan of merchandising resulted in the establishment of a highly profitable business.

3. Money invested in phonograph records and vending racks was not and is not secured by stocks. The maximum amount returnable to an investor who wishes to terminate his contract with respondents and return all stock thereto is limited by contract to \$560 for each unit investment of \$975.00.

4. Seldom, if ever, have net profits of \$50.00 or more weekly been realized by purchasers, from respondents, of phonograph records and vending racks costing \$975.00. Net profits at certain rates cannot be expected by the purchaser from the beginning of operations or at any other time.

5. Respondents did not and do not have contracts with The Great Atlantic & Pacific Tea Company, The Kroger Company, Safeway Stores, Inc., Sears, Roebuck & Company, Peoples Drug Stores, Inc. or other large food, drug or general merchandise companies or stores whereby agreements had been reached which would permit purchasers of respondents' products to place vending racks and phonograph

records on store premises. Invariably, store locations were not determined until after contracts for the sale of records and racks by respondents had been negotiated between them and purchasers, and then purchasers learned that locations were available only in independently-owned restaurants, drug stores and variety stores not having the high traffic and sales potentials promised by respondents.

6. Respondents breached promises made to purchasers of their phonograph records and vending racks to preserve sales territories for the sole and exclusive distributorship of purchasers.

7. Seldom, if ever, has the purchaser of respondents' phonograph records and vending racks costing \$975.00 found that his return therefrom warranted any effort to expand his operations.

8. Few, if any, records available from respondents at the time of the initial sale thereof to purchasers, or later, contained what the consuming public considered to be the newest or current "hit" tunes.

9. Most, if not all, of the records sold by respondents could be obtained by the consuming public for \$1.98 or less from retailers selling records in competition with respondents' customers in the same trading areas where said customers attempted to establish themselves in business.

10. The corporate respondent's listing in *Dun & Bradstreet Reference Book* signified nothing more than that it had a certain credit rating and a certain estimated financial worth.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' phonograph records and vending racks by reason of said erroneous and mistaken beliefs. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now 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.

Mr. Berryman Davis for the Commission.

Ochman and Greenberg, of Philadelphia, by *Mr. Stanley M. Greenberg*, for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act through the making of certain misrepresentations in connection with the sale of phonograph records and vending racks. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision is disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent American International Industries, Inc., is a corporation organized, existing and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at 507-12 Lewis Tower Building, Philadelphia. The individual respondents, Joseph Alper and N. Francis Alper are officers of said corporate respondent, and formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents American International Industries, Inc., a corporation, and its officers, and Joseph Alper and N. Francis

Alper, individually and as officers of said corporation, and each of them, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of devices which vend merchandise or which are accessory to the vending of merchandise, or of the merchandise to be vended, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that:

1. Employment is offered by respondents or any of them, or by any other person, firm or corporation.

2. A highly profitable business can be obtained by purchasing or dealing in such devices or merchandise.

3. The investment required to purchase such devices or merchandise is secured or will be refunded if the purchaser requests full refund.

4. Profits in any amount can be realized in excess of the average profits realized by all of their customers contemporaneously engaged in the operation of similar devices situated in similar locations and engaged in selling the same kind of merchandise.

5. Respondents, or any of them, have contracts, understandings or agreements with any persons, firms or corporations whereby it is understood or agreed that such persons, firms, or corporations will permit purchasers of such devices or merchandise to install or place the same for sale on their premises.

6. Customers will be granted exclusive sales territories or be the sole distributors of such devices or merchandise in given areas.

7. Opportunity exists for growth in the sale of such merchandise purchased from respondents or any of them.

8(a). Any phonograph records sold by respondents or any of them are new tunes or current hit tunes.

(b) Respondents, or any of them, will make available to customers phonograph records not yet manufactured, as and when such records appear on the market and become popular with consumers in the trade areas where said customers do business.

9. The retail value of any merchandise is in excess of the price at which such merchandise is usually and customarily sold in the trade area or areas in which the representation is made.

10. The integrity of respondents, or any of them, is avouched by Dun & Bradstreet.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 15th day of July 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF
ERIC DISTRIBUTING COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7796. Complaint, Feb. 25, 1960—Decision, July 16, 1960

Consent order requiring San Francisco, Calif., distributors for several record manufacturers to retail outlets and jukebox operators, to cease paying concealed "payola" to television and radio disc jockeys to have their records broadcast day after day in order to increase sales.

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 Eric Distributing Company, a corporation, and Irving Pinensky, individually, and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Eric Distributing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1251 Folsom Street, in the City of San Francisco, State of California.

Respondent Irving Pinensky is the president of the respondent corporation and formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices herein set out. The address of the individual respondent is the same as that of said corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of phonograph records as an independent distributor for several record manufacturers to retail outlets and jukebox operators in various States of the United States.

In the course and conduct of their business, respondents now cause, and for some time last past have caused, the records they distribute, when sold, to be shipped from their place of business in

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the State of California, to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals in the sale and distribution of phonograph records.

PAR. 4. After World War II, when television and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry with a sales volume of approximately \$400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as six to ten times a day, substantially increase the sales of those records so "exposed." Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and television programs.

"Payola", among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records in which the payer has a direct financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication represent to their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 5. In the course and conduct of their business in commerce during the last several years, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents alone, or with certain unnamed record manufacturers, negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across State lines, or to other personnel who influenced the selection of the records "exposed" by the disk jockeys on such programs.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents, by participating individually or in a joint effort with certain collaborating record manufacturers, have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selections of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they otherwise might not have purchased and, also, to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 6. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public, and to hinder, restrain and suppress competition in the offering for sale, sale and distribution of phonograph records, and to divert trade unfairly to the respondents from their competitors, and substantial injury has thereby been done and may continue to be done to competition in commerce.

PAR. 7. The aforesaid acts and practices of respondents, as alleged herein, were and 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.

Mr. John T. Walker and Mr. James H. Kelley for the Commission.

Howard & Prim, by Mr. N. Richard Smith, of San Francisco, Calif., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated February 25, 1960, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

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On April 6, 1960, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Eric Distributing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1251 Folsom Street, in the City of San Francisco, State of California.

Respondent Irving Pinensky is the president of the respondent corporation and his address is the same as that of said corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Eric Distributing Company, a corporation, and its officers, and Irving Pinensky, individually, and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed, in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is de-

fined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature.

(2) Giving or offering to give, without requiring public disclosure, any sum or money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly, received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 16th day of July 1960, become the decision of the Commission and, accordingly:

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

IN THE MATTER OF

J. D. BRUMBACH DOING BUSINESS AS J. D. BRUMBACH
QUILTING MILL

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

Docket 7823. Complaint, Mar. 11, 1960—Decision, July 16, 1960

Consent order requiring a manufacturer in Reading, Pa., to cease violating the Wool Products Labeling Act by such practices as labeling as "wool" and

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invoicing as "Reproc. Wool", quilted woolen lining and interlining materials which contained a substantial quantity of non-woolen fibers, and by failing in other respects to comply with labeling requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that J. D. Brumbach, an individual doing business as J. D. Brumbach Quilting Mill, hereinafter referred to as the respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under said Wool Products Labeling 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 J. D. Brumbach is an individual doing business under the firm name, J. D. Brumbach Quilting Mill. His office and place of business is located at 921 Douglas Street, Reading, Pa.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1, 1959, respondent has manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondent within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products were quilted woolen lining and interlining materials labeled or tagged by the respondent as "wool", whereas, in truth and in fact said products contained a substantial quantity of fibers other than wool.

PAR. 4. Certain of said wool products were further misbranded by respondent in that they were not stamped, tagged or labeled as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act and in the form and manner as prescribed by the Rules and Regulations promulgated under said Act.

PAR. 5. The respondent in the course and conduct of his business, as aforesaid, was and is in substantial competition with corporations, firms and other individuals in the manufacture and sale of wool products, including quilted woolen lining and interlining materials.

PAR. 6. The acts and practices of the respondent as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now 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.

PAR. 7. In the course and conduct of his business, as aforesaid, respondent has made various statements concerning his wool products on sales invoices. Among and typical, but not all inclusive, of such statements was the term "Reproc. Wool".

PAR. 8. The aforesaid statement as to fiber content was false, misleading and deceptive, since, in truth and in fact, said quilted lining and interlining materials were not composed exclusively of reprocessed wool but contained substantially less woolen fiber than represented on said invoices.

PAR. 9. The practice of respondent of selling his misbranded wool products to manufacturers of garments and of furnishing false invoices to such manufacturers has the tendency and capacity to cause such manufacturers to misbrand the garments in which said products are used.

PAR. 10. The acts and practices of respondent as alleged in paragraph 7, were and are to the prejudice and injury of the public and of the respondent's competitors and constituted, and now 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.

Mr. Harry E. Middleton, Jr., supporting the complaint.

DeLong, Dry & Binder, of Reading, Pa., for respondent. *Mr. John W. Dry* of Counsel.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On March 11, 1960, the Federal Trade Commission issued a complaint against the above-named respondent charging him with: Misbranding certain products sold by him in interstate commerce, in contravention of the requirements of Section 4(a)(1) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder; failing to stamp, tag or label certain products sold by respondent in interstate commerce as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act and the Rules and Regulations issued thereunder. A true and correct copy of the complaint was served upon respondent as required by law. Respondent appeared in this proceeding by counsel and thereafter entered into an Agreement Containing Consent Order to Cease and

Desist which is dated May 4, 1960. The agreement has been signed by respondent and his attorney. It has also been signed by counsel supporting the complaint, and approved by the Director, Associate Director and Assistant Director of the Bureau of Litigation of the Federal Trade Commission. The agreement provides that it is to be a definitive disposition of all issues in this proceeding, as to all of the parties herein involved. On May 12, 1960, the agreement was submitted to the undersigned hearing examiner.

In the agreement of May 4, 1960, respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

In said agreement respondent waives (a) any further procedural steps before the hearing examiner and the Federal Trade Commission; (b) the making of findings of fact or conclusions of law; (c) all rights respondent may have to challenge or contest the validity of the cease and desist order entered pursuant to the agreement. The parties to the agreement of May 4, 1960, agree further that the record upon which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The agreement provides further that the order to cease and desist entered in accordance with its provisions may be entered without further notice to the respondent; that the order, when so entered shall have the same force and effect as if entered after a full hearing; that the order may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order. The agreement provides that it is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of May 4, 1960, containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties; the agreement of May 4, 1960, is hereby accepted, approved and ordered filed at the same time that this decision becomes the decision of the Federal Trade Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings; and

The undersigned hearing examiner having considered the agreement and proposed order and being of the opinion that the ac-

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ceptance thereof will be in the public interest, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. That the Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;
2. Respondent J. D. Brumbach is an individual with his office and principal place of business located at 921 Douglas Street, Reading, Pennsylvania, where he does business as J. D. Brumbach Quilting Mill.
3. Respondent is engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.
4. The complaint herein states a cause of action against said respondent under the Federal Trade Commission Act, and the Wool Products Labeling Act, and this proceeding is in the public interest.

ORDER

It is ordered, That respondent J. D. Brumbach, an individual doing business as J. D. Brumbach Quilting Mill, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act, of interlinings or other wool products, as "wool products" are defined in and subject to the Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or identifying such products as to the character or amount of the constituent fibers contained therein.
2. Failing to affix labels to such products showing each element of information required to be disclosed by Section 4(a) (2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondent J. D. Brumbach, an individual, doing business as J. D. Brumbach Quilting Mill or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of his products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the constituent fiber of which his products are composed or the per-

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centages of amounts thereof in sales, invoices, shipping memoranda or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 16th day of July 1960, become the decision of the Commission; and, accordingly:

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.

IN THE MATTER OF

SPARTAN ELECTRIC RADIATOR CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket 7839. Complaint, Mar. 21, 1960—Decision, July 16, 1960

Consent order requiring a New York City distributor of chrome-plated brass shower heads imported from Japan to cease furnishing to its retailer-customers advertising material—in payment of the cost of which it participated—setting out various fictitious amounts as "Value" or as "Usually", together with lesser sales prices, thereby falsely representing the "Value" and "Usually" prices as the usual retail selling prices, and the difference between the larger and smaller amounts as the purchaser's savings.

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 Spartan Electric Radiator Corporation, 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 as follows:

PARAGRAPH 1. Respondent Spartan Electric Radiator Corporation is a New York corporation with its office and principal place of business located at 52-55 74th Street, Maspeth 78, N.Y.

PAR. 2. Respondent is the distributor of chrome-plated brass shower heads imported from Japan and causes and has caused such

items, when sold, to be shipped from the State of New York to dealers located in various other States of the United States.

Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said shower heads in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the conduct of its business, the respondent has been, and is now, in competition, in commerce, with corporations, firms and individuals engaged in the sale of shower heads.

PAR. 4. Respondent, in the course and conduct of its business, furnishes advertising material to the retailers of its shower heads located in various states which sets out various amounts in connection with the several sizes thereof, which amounts are sometimes designated as "Value" and in other instances as "Usually" together with lesser sales prices. Respondent participates in the payment of the cost of the advertising when said material is used by retailers.

PAR. 5. Retailers using the aforesaid advertising matter represented, through the use of the amounts designated as "Value", that such amounts were the customary and usual retail selling prices of the products advertised in the trade area where the representations were made and that the amounts designated as "Usually" were the prices at which the retailers had sold the products advertised in the recent regular course of business. By means of the aforesaid advertisements the retailers further represented that the differences between the larger amounts and the smaller amounts represented savings from the customary and usual retail prices, or the advertisers' customary and usual prices, as the case may be.

In truth and in fact, the amounts designated as "Value" were fictitious and in excess of the prices at which the products were usually and customarily sold at retail in the trade area where the representations were made; the amounts designated as "Usually" were fictitious and in excess of the prices at which the retailers had sold the products advertised in the recent regular course of business.

The differences between the larger and smaller amounts did not represent savings either from the customary and usual retail prices or the retail advertisers' customary and usual prices.

PAR. 6. By furnishing the retailers of its products with the various forms of material containing the fictitious prices, as aforesaid, respondent placed in the hands of said retailers the means and instrumentalities by and through which they were and are enabled to mislead and deceive the public as to the usual and customary retail prices of their products, as aforesaid, and as to the savings which accrue to them when purchasing at less than the designated prices and values.

PAR. 7. The use of the aforesaid practices by the respondent 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 the listed prices were the usual and regular retail prices of respondent's shower heads and that by purchasing at lesser prices, they were afforded savings from the usual and regular retail prices, and into the purchase of respondent's shower heads by reason of said erroneous and mistaken belief. As a consequence thereof, trade in commerce has been unfairly diverted to the respondent from its competitors and injury has thereby been done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now 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.

Ames W. Williams, Esq., for the Commission.
Respondent, *pro se*.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint on March 21, 1960, against the above-named respondent, charging it with having violated the Federal Trade Commission Act, by misrepresenting the price of its product. Respondent appeared and entered into an agreement dated April 26, 1960, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the appropriate officials of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with § 3.25 of the Rules of Practice of the Commission.

Respondent, pursuant to the aforesaid agreement, has admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondent waives all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official

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record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to §§ 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent Spartan Electric Radiator Corporation is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 52-55 74th Street, Maspeth 78, N.Y.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondent Spartan Electric Radiator Corporation, 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 of shower heads, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Placing in the hands of retailers any means or instrumentality by and through which they may represent that any amount is the usual and customary retail price of respondent's product in a trade area, when such amount is in excess of the price at which said product is usually and customarily sold at retail in the trade area or areas where the representation is made;

2. Placing in the hands of retailers any means or instrumentality by and through which they may represent that any amount is the retailer's usual and customary price of respondent's product when

such amount is in excess of the price at which said product is usually and customarily sold by said retailers in the recent regular course of business;

3. Placing in the hands of retailers of its product any means or instrumentality by and through which they may misrepresent the savings available to their customers from the retailer's usual and customary price or from the price at which said product is usually and customarily sold in the trade area or areas in which the representation is made.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 16th day of July 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Spartan Electric Radiator Corporation, a corporation, 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.

IN THE MATTER OF

BERNARD GOLDMAN TRADING AS BERNARD GOLDMAN

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 7843. Complaint, Mar. 24, 1960—Decision, July 16, 1960

Consent order requiring a Cincinnati, Ohio, furrier to cease violating the Fur Products Labeling Act by failing to label fur products with the name of the animal producing the fur, and by failing in other respects to comply with labeling and invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Bernard Goldman, an individual trading as Bernard Goldman, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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. Bernard Goldman is an individual trading as Bernard Goldman with his office and principal place of business located at 205 West Fourth Street, Cincinnati, Ohio.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been and is now engaged in the introduction into commerce and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and has sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified with respect to the name or names of the animal or animals that produced the fur from which said fur products had been manufactured, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 5. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Labels affixed to fur products did not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches in violation of Rule 27 of said Rules and Regulations.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with nonrequired information, in violation of Rule 29(a) of said Rules and Regulations.

(c) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth in the required sequence, in violation of Rule 30 of said Rules and Regulations.

(d) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

(e) Required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced by respondent in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

Mr. William A. Somers for the Commission.
Respondent, *pro se*.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on March 24, 1960, issued its complaint herein, charging the above-named respondent with having violated the provisions of both the Federal Trade Commission Act and the Fur Products Labeling Act, together with the Rules and Regulations promulgated thereunder, and the respondent was duly served with process.

On May 20, 1960, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between respondent and counsel supporting the complaint, under date of May 9, 1960, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Bernard Goldman is an individual trading as Bernard Goldman with his office and principal place of business located at 205 West Fourth Street, Cincinnati, Ohio.

2. Respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

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3. This agreement disposes of all of this proceeding as to all parties.

4. Respondent waives:

a. Any further procedural steps before the hearing examiner and the Commission;

b. The making of findings of fact or conclusions of law; and

c. All of the rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

5. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondent. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes a part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order To Cease And Desist" that the Commission has jurisdiction of the subject matter of this proceeding and of the respondent herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated by the Commission under the latter Act, against the respondent both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

It is ordered, That Bernard Goldman, an individual trading as Bernard Goldman, or under any other name, and respondent's repre-

sentatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Failing to affix labels to fur products showing in letters and figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act;

B. Falsely or deceptively labeling or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured;

C. Setting forth on labels affixed to fur products information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder mingled with non-required information;

D. Affixed to fur products labels that do not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches;

E. Failing to set forth the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the required sequence;

F. Failing to set forth separately on labels attached to fur products composed of two or more sections containing different animal furs the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the fur comprising each section;

G. Failing to set forth on labels the item number or mark assigned to a fur product.

2. Falsely or deceptively invoicing fur products by:

Failing to furnish to purchasers of fur products an invoice showing all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 16th day of July 1960, become the decision of the Commission; and, accordingly:

It is ordered. That respondent Bernard Goldman, an individual trading as Bernard Goldman, 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.

IN THE MATTER OF
WITKOWER PRESS, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6583. Complaint, June 29, 1956—Decision, July 19, 1960

Order requiring a Hartford, Conn., publisher to cease representing falsely in advertising the book "Arthritis and Common Sense"—in newspapers, and by radio and television, on the paper book jackets, and in promotional material and advertising mats furnished local dealers—that the dietary regimen contained therein was a reliable treatment and cure for all kinds of arthritis and rheumatism, correcting the underlying causes and relieving their discomforts.

Mr. Charles S. Cox representing the Commission.

Cohn & Marks, by *Mr. Stanley B. Cohen*, and *Mr. Vincent A. Kleinfeld*, of Washington, D.C., for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

THE PROCEEDINGS

The Federal Trade Commission, by virtue of authority vested in it pursuant to the provisions of the Federal Trade Commission Act, did on June 29, 1956, issue its complaint against respondents, Witkower Press, Inc., a corporation organized and doing business under and by virtue of the laws of the State of Connecticut, and its officers, individually and in their representative capacities, as here noted: Dan Dale Alexander, President, and Bernard Witkower, Secretary-Treasurer. All respondents have their office and principal place of business at No. 71 Asylum Street, in the city of Hartford, Conn.

The complaint charges that the respondents are now, and for more than three years prior to issuance of the complaint, have been engaged in the publication, sale and distribution of a book entitled "Arthritis and Common Sense"; that said book has been sold and transported across State lines by the said respondents who have, at all times herein mentioned maintained a course of trade in said book in commerce within the terms of the Act, and that the volume of

business in the sale of said book, in commerce, is now and has been substantial.

The complaint further charges that respondents, in order to effect sale of said book, have made many false and misleading statements and representations concerning same, by means of advertisements inserted in newspapers of general circulation, over radio broadcasts and television telecasts transmitted across state lines; that the false and misleading statements appearing in said advertisements directly and by inference represented that the regimen set out in their said book, "Arthritis and Common Sense," will provide:

(1) an adequate, effective and reliable treatment for all kinds of arthritis, rheumatism and related conditions, including rheumatic fever;

(2) an adequate, effective and reliable means of arresting the progress of, correcting the underlying causes of, and curing all kinds of arthritis, rheumatism and related conditions, including rheumatic fever;

(3) an adequate, effective and reliable treatment for the symptoms and manifestations of all kinds of arthritis, rheumatism and related conditions, including rheumatic fever, and will afford complete relief from the aches, pains, stiffness, swelling and other discomforts thereof;

and that use by the respondents of the foregoing has had, and now has, the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements are true and, on the strength thereof, to induce the purchase of substantial quantities of respondents' said book, "Arthritis and Common Sense."

To the foregoing complaint the respondents filed answer which, except for admitting the formal charges designating the respondents' capacities and identities, the corporate setup, and the charge of interstate commerce, specifically denies all other allegations and charges.

Contemporaneously with the filing of answer respondents moved for a bill of particulars to define and specify with greater particularity the charges of the complaint, which motion was denied; on October 18, 1956, respondents moved for a "Clinical Evaluation" of respondent Alexander's dietary regimen for the treatment of arthritis, such regimen or theory being contained in the said book, "Arthritis and Common Sense," of which said book the respondent is the author; said motion was denied and an interim appeal was prosecuted to the Commission resulting in an order by that body, dated November 6, 1956, denying the appeal and stating that:

* * * the hearing examiner's ruling was correct and that respondent's contentions on appeal are without merit.

At the outset of the hearings respondents filed a "Motion to Adjourn Hearing," seeking to require the Commission to hold its hearings in Washington, D.C., or in any other one city, to receive the testimony of experts and as reason therefor stated:

* * * there are enough hospitals in the field of rheumatism and arthritis in Washington, D.C., so that expert testimony can be presented at hearings in that city rather than by the unnecessary and burdensome manner of scheduling hearings in various cities throughout the United States.

and further charged the Commission with abuse of discretion in scheduling hearings in Hartford, Conn., New York and Ann Arbor, Mich. However, it is passing strange to note that, despite the alleged abundance of expert testimony in Washington, D.C., the respondents, in presenting their defense, did not offer any expert witness closer than Boston and, for their other experts went to Detroit, Mich., Galesburg, Ill., Shawnee, Okla., and Beverly Hills, Calif. In presenting their lay witnesses hearings had to be held in Cleveland, Chicago, Los Angeles and San Francisco, where the testimony of twenty-six such witnesses was received.

It is also here pointed out that, despite Alexander's statement (Cx. 55 p. 20) that he had:

made thousands of friends in Philadelphia, and thousands in Minneapolis, and thousands of friends in Denver and thousands of friends in San Francisco, and thousands of friends in Seattle, in Washington, in Houston, in San Antonio and Pittsburgh, and a surge of excitement started through the country, something you can't stop.

by reason of his book and lectures, he did not produce any of these friends as witnesses in support of his book in any of the named places except Los Angeles and San Francisco and the testimony of these witnesses is hereinafter considered under the heading of "Lay Witnesses for the Defense."

Thereafter, and subsequent to hearings and arguments on divers motions concerning the times and places for hearings, proceedings commenced for the taking of testimony and reception of evidence in support of, and in opposition to, the charges of the complaint, during the course of which 3,000 pages of testimony were received, (largely of a medical nature touching the subject matter of theories propounded in the aforementioned book). Thirty-five hearings were held in the following cities: Hartford, Conn.; New York, N.Y.; Ann Arbor, Mich.; Buffalo, N.Y.; Boston, Mass.; Washington, D.C.; Cleveland, Ohio; Detroit, Mich.; Chicago, Ill.; Galesburg, Ill.; Shawnee, Okla.; Los Angeles and San Francisco, Calif. All testimony had at these hearings was stenographically recorded and, to-

gether with the exhibits relating thereto, filed in the office of the Federal Trade Commission in Washington, D.C., as required by law.

At the conclusion of presentation of the testimony-in-chief in support of the complaint, and again upon conclusion of the taking of all testimony, the respondents moved for dismissal of the complaint, both of which motions were, and are hereby, denied.

Upon entry of an order closing the matter before the hearing examiner request was made, and granted, for permission to the parties to file their Proposed Findings of Facts, Conclusions, and Order, and, all parties having availed themselves thereof, their respective proposals were received, and considered. Those proposals susceptible of specific rulings have been ruled upon and incorporated herein, and those not susceptible of definite rulings, (tainted by mixture of law and facts, undue prolixity or other infirmities not properly presentable as proposed findings¹), have been either considered and incorporated herein in substance, or rejected, as a reading of this initial decision may indicate.

THE ISSUES

A reading of the hereinabove specific charges, (1, 2 and 3), of representations made by respondents of and concerning their said book, "Arthritis and Common Sense," and the charge of falsity thereof, all as challenged by the allegations and denials contained in respondents' answer, specifies and highlights the issues in this proceeding and it was upon these questions that the case was tried.

FINDINGS AS TO THE FACTS

1. Respondent Witkower Press, Inc., is a corporation organized and existing under the laws of the State of Connecticut; individual respondents Dan Dale Alexander is president and Bernard Witkower is secretary-treasurer of the corporate respondent. All respondents have an office and place of business at No. 71 Asylum Street, Hartford, Conn.

Respondent, Alexander, is a director and President of the corporate respondent, and his wife, Edith, (not named as a respondent), is Vice President. Respondent Bernard Witkower is also a director and officer, as above, the directorate named formulating the policies and directing the affairs of the corporate respondent. The corporate stock, representing the ownership of the corporate respondent is owned, as to 50 percent thereof, by Bernard Witkower and the remaining 50 percent by respondent Alexander and his wife, Edith.

¹ Rules of Practice 3.19. *Knaust Bros. v. Goldschlag*, 119 F. 2d 1022. *Central RR v. Hanover Bank*, 29 F. Supp. 826.

In addition to, and exclusive of his pro rata share of earnings by the corporation based on his stock ownership, respondent Alexander receives an author's royalty of 15 percent of the retail sale price of each book.

2. Respondents are now, and for some six years last past have been engaged in the publication, sale and distribution of a book entitled: "Arthritis and Common Sense," and cause said books, when ordered or sold, to be transported from their place of business in Hartford, Connecticut, or from the place of business of their printer in Bristol, Connecticut, to purchasers thereof located in the various states of the United States. It is, therefore, found upon the record and the admissions of respondents that they were, and are, engaged in interstate commerce, as "commerce" is defined in the Federal Trade Commission Act, wherefore the Federal Trade Commission has jurisdiction over the parties and, as will hereinafter appear from further findings of fact, has likewise jurisdiction over the subject matter of this proceeding.

Production, Promotion, Sale and Circulation of the Book,
"Arthritis and Common Sense."

This book owes its authorship to the respondent, Dan Dale Alexander, who represents that it contains the results of many years of research by him on the subjects of arthritis, rheumatism and related conditions, including aches, pains, stiffness, swelling and attendant discomforts, and to the complete relief of the designated diseases and their symptoms.

The initial publication or printing of the book was had in the fall of 1950 and consisted, in part, of a delivery of 500 copies to respondent, Alexander, and sold by him partly in Hartford, Conn., where the book received favorable press mention by the newspaper, the Hartford Times, and from this beginning launched on a nationwide sale and circulation through at least ten printings of in excess of 500,000 copies, such circulation reaching into every State of the United States. Originally the book retailed at \$2.50 per copy, later increased to \$2.95 and still later to \$3.95 which is, so far as the record discloses, the current retail selling price.

Subsequent to delivery of the first issue to Alexander, and in March of 1951, the corporate respondent, Witkower Press, Inc., was formed for the sole and express purpose of publishing and marketing the book and this corporate setup has been since maintained. The corporation owns no printing presses for production of the book but contracts for same with others and confines itself to publication, advertising, distribution and sale of books, its only two publications

consisting of "Arthritis and Common Sense" and "Mrs. America's Homemakers' Guide," (the latter not here involved).

The preparation of advertising matter in newspapers, magazines, advertising mats for distribution to local booksellers to promote sales, and similar advertising activities and promotions, including the preparation of reading matter, photographic cuts and format of the book-jackets furnished with each copy of the book, was all principally under the supervision and creativity of the respondent, Witkower, assisted by an advertising agency (Ensworth Enterprises of N.Y.) which latter, also, acting with Witkower, had to do with other forms of advertising such as radio and video broadcasting hereinafter mentioned.

The respondents furnished to local dealers and booksellers in various cities certain promotional material among such being advertising mats² to be used in promoting book sales and further agreed to, and did in many instances, bear 50 percent of all cost of advertising incurred by some local dealers, department stores and booksellers.

In order to promote and engender interest in and sale of the book, respondent Alexander made extensive lecture tours across the country, addressing groups in department and bookstores, and appearing on television, both closed and interstate circuits. An undisclosed portion or all of his expenses incidental to these trips were borne by the corporate respondent.

The Advertising: Its Substance and Methods of Dissemination.

The charges of the complaint are based upon false and misleading statements made by respondents of and concerning their book as contained in certain advertising matter disseminated by means of:

- (a) Newspapers of general circulation.
- (b) The paper cover jackets furnished with each copy of the book exhibited or sold.
- (c) Radio broadcasts of interstate coverage.
- (d) Television telecasts on closed circuits and on interstate coverage.

These advertisements will be categorically considered and commented upon in these findings after first setting forth pertinent portions or quotations therefrom. It is noted that respondents have, from the beginning of the proceeding, asserted that they should not be chargeable with false advertising of the therapeutic value of the

² Cx. 31 to 37, Inc.

regimens, theories and conclusions stated in said book because, on the ground as expressed by respondents' counsel:

Very succinctly stated, it is our position here, that to the extent that *any advertisement of any sort* merely repeats the substantive matter in the book, and does nothing more, those advertisements are protected by the First Amendment (R. 1683). [Italics supplied.]

The speciosity and superficiality of such reasoning is patent and untenable, as all one would have to do to evade the law would be to write and publish a book containing any sort of unfounded and impossible theories and statements and, *on the basis thereof*, make false and misleading representations of and concerning the beneficial effects to be had from purchasing and reading of the book, thus thwarting the objects of the specific law, (here sought to be enforced), by a narrow, unrealistic and tortured construction of basic and fundamental law. To permit such would create a vicious circle, patently without the veil of reason and contrary to logic and common sense.

The further defense was made that the book itself is not a "product" nor "an object of commerce" and hence the Commission has no jurisdiction in the premises. In this connection it is noted paragraph 2 of the complaint expressly charges that:

Respondents maintain and at all times mentioned herein have maintained a course of trade in said book in commerce among and between the various states * * * and respondents' volume of business in the sale of said book in commerce is and has been substantial.

By their formal answer respondents admitted the charge which would appear thus to be, at least, inconsistent with respondents' point here made. Despite the fact such judicial admission, being the highest form of evidence known to the law, may be construed to be a sufficient response to this point, the examiner lays no stress thereon, preferring to let the facts as found, and based upon the record, speak for themselves.

The main defense of respondents is that in attacking the respondents' advertising the Commission is attempting an illegal, improper and unconstitutional use of its powers for the purpose of effectively censoring and suppressing the publication, sale and distribution of said book, and the contents thereof, which, if successful, would destroy the value thereof and result in irreparable damage to the respondents. After considerable argument and submission of briefs on both objections, embodied in the form of a motion to dismiss, the examiner overruled the same³ and ordered the proceedings to go

³ In order that the examiner's position on these questions may be made known and this decision not unduly encumbered, a transcript of his ruling thereon, appearing in the record at pp. 1683-1695, is attached to this decision as "Appendix I." Also, briefs of counsel on the subject appear as part of the formal record.

forward, saving to the respondents their exceptions to his ruling in the premises.

Advertising:(a) Newspapers of General Circulation.

Many advertisements were inserted in newspapers of general circulation in many different states of the union the purpose of such being primarily (1) to advertise and promote the sale of the book by local dealers or bookstores, and (2) announcing imminent personal talks or lectures by Alexander and/or the showing of television programs of the so-called "Conrad Nagel" type hereinafter more fully considered. Representative specimens of such advertisements are of record⁴ and the following are excerpts of some passages therein contained:

After 15 years of scientific research Dan Dale Alexander, Ph. D., will discuss his new method of combatting arthritis.

Alexander is the author of the famous book "Arthritis and Common Sense," . . . more than 225,000 copies are in use throughout the Nation! Watch this T.V. program . . . learn how and why Alexander's discoveries have been so successful against arthritis.

Help yourself to health!

Here's how victims of arthritis across America have won their fight against this dread disease.

* * * this book gives you facts and a tested guide toward recovery.

Read these findings by an authority. This expert has spent his entire lifetime specializing in research on just one disease—arthritis!

Patience . . . Please . . .

A short delay on delivery . . . due to trucking accident.

50,000 copies ready April 20th completely sold out.

25,000 copies ready May 1st almost sold out.

17,000 copies will be available May 15th.

Another 50,000 copies planned for June 1st.

During this temporary emergency shortage, bookstores please place your orders with your regular jobber or wholesaler.

Throughout the United States, author Dan Dale Alexander has talked with more than 70,000 arthritics, met them personally during his lecture tours. Millions of Americans have seen and heard Alexander on coast-to-coast radio and television programs. He has done research among these actual victims of the disease, and he understands your arthritic pains and problems.

Now you can gain relief and better health. Thousands have. They followed the methods of this author-expert.

Then follow a series of excerpts from letters purportedly written by readers of the book—some claiming "excellent," "amazing" and "miraculous" results.

⁴ Cx. 18, 19, 28, 29, 30, 31, 32, 33, 34 and 35, 36 and 37, the last three mentioned being papier-mache mats furnished by respondents to interested local advertisers.

It was stipulated between counsel that all of the exhibits designated in footnote No. 4, from which the foregoing quotes have been excerpted:

* * * appeared in newspapers or magazines or other periodicals having a circulation in various states of the United States and appeared in connection with the sale and distribution of respondents' book entitled "Arthritis and Common Sense" by Dan Dale Alexander.

Based upon the record, it is found that the foregoing falsely represent that the book, "Arthritis and Common Sense" contains the key to successful treatment of arthritis and rheumatism and to the recovery from and cure thereof:

It is further found as a fact that Dan Dale Alexander is not "The [a] noted author and authority" in this field of medical science, as will hereinafter be made to appear by a critical analysis of the education, experience and background of the author; that no witness was produced by respondents attesting to his capabilities as an "author," (in fact Alexander expressly disclaimed this appellation when he said (Cx. No. 20) "I'm really not an author. I didn't study to be a writer"). It is further noted that there is absolutely no evidence or testimony of record, by anyone competent to testify, which would set up the author as an "authority" in this demonstrated complex and abstruse field of medical knowledge.

It is further found that Alexander's assumption of the degree title of "Ph. D." was used solely for its effect upon the public and to lend an aura of professional medical authenticity, authority and background to his utterances and writings; that said "Ph. D." was unearned and bestowed upon the author by the "St. Andrew's Ecumenical University College" of the City of London, England; that witness had never visited the institution; does not know if it is authorized to confer degrees; that his only knowledge of the existence of such a "university college" is based upon his having "seen it in print emblazoned on his diploma" * * * "but I was happy to receive it." Witness denied he had "paid a consideration" for the degree but he "sent a check for \$100 in appreciation thereof" *prior* to receiving same.

During the course of the proceeding the "medical training and personal qualifications" of Alexander were placed in issue although strongly resisted by respondents. This subject is hereinafter dealt with under an appropriate heading. Important in this connection is the use by Alexander of his "Ph. D." title as to which, as well also Alexander's general training and qualifications, the respondents, in their motion to dismiss filed July 5, 1957, had this to say:

Therefore, in order to focus attention on the significant problem at issue [the defense of the First Amendment to the Constitution] and to terminate

this proceeding as quickly as possible, respondent[s] will stipulate as to these collateral matters.

Under Commission policy and rules the parlance used, to wit, "will stipulate," meant that respondents would admit the truth and materiality of the charge and agree to abandon use of same but without the binding force and effect of a cease and desist order. The offer to stipulate was refused.

It is further found as a fact that the author did not spend "15 years of scientific research" in arriving at "his new method of combatting arthritis" because of his lack of fundamental training as a scientist to appraise and evaluate the scientific researches and opinions of qualified researchers in the field and, as implied by the statement used, to give a competent and scientific opinion of his own.

It is further found as a fact that a fair and reasonable construction and interpretation to be placed on said newspaper advertising by use of the representations:

Methods of combatting arthritis . . .

Alexander's discoveries have been [so] successful against arthritis . . .

Help yourself to health!

Here's how victims of arthritis across America have won their fight against this dread disease . . .

This book gives you facts and a tested guide toward recovery

All import and represent that a cure of arthritis is possible by following the precepts and theories of the book, and it is further found that such representation is false, misleading and deceptive.

Advertising: (b) The Paper Covers or Jackets Furnished With Each Book.

The next considered method or form of advertising indulged by respondents consists of accompanying each book with paper jackets or covers, strikingly printed in red, white and black, bearing the legend, on the outside thereof, "Arthritis and Common Sense" and:

A startling revelation on arthritis and what you can do about it right in your own home. (Cx. 25)

On those portions of said paper jackets folded over the front and rear covers appear certain printed material and in some examples, a half-tone cut of a photograph of the author. It is the material thus described which will be now considered. There are of record a number of specimens of these covers.⁵

At the outset it should be stated that respondents have consistently urged that these jackets were not "advertising" material which might properly or lawfully be considered in this case but, on the

⁵ Cx. 25, 26, 27, 40, 41, 44A, 47A and 48A.

contrary, formed an integral, constituent and component part of the book and, as such, were sacrosanct and protected by the First Amendment heretofore referred to as a defense. This contention was disallowed by the examiner who takes official notice of the fact that it is, and has been for a long period of time the custom of book publishers to "dress up" their books in attractive and colorful jackets of an eye-arresting nature and appeal so that the book, when exposed for sale in competition with other books, will attract the attention and interest of "browsers" and prospective purchasers; that it is customary to present (on the front and back overleaf portions of said covers or jackets), representations as to the author; the subject matter covered by the book; laudatory expressions concerning the book by reviewers, critics, newspapers and the like, as well also any other matter of interest which will assist in the sale of the book; that such jackets are of great persuasive power, (should one be inclined to accept the statements therein contained at face value), and, serving thus, are clearly and indisputably "advertising matter" under any reasonable standard and interpretation applying to the phrase; that respondents were cognizant of the results to be expected and hoped for by use of such jackets in increasing sales, and having thus availed themselves, must accept the responsibility.

It is found, as a fact, that the book-jackets circulated by the respondents constituted advertising matter and must be judged by the standards applicable to such.

Following are excerpts which are found to be false and misleading statements. In order that continuity may be maintained and specific refutation of the statements cited, (such being based upon the evidence of record), it has been thought well to footnote the latter in juxtaposition to the quoted false statements. This method has been adopted for the purposes of this decision because of the easy reading and clarity of the decision of the Ninth Circuit Court of Appeals in the matter of Carter Products Company, (#15,373, June 16, 1959), where it was effectively used by the court in order that the various portions of its opinion might be instantly related to and exemplified by means of running comments and references to pertinent portions of a lengthy, involved and technical record, thus saving space and obviating the chance of overlooking facts necessary to be found in support of the conclusions expressed.

In Commission Exhibit No. 25 appears the following:

A startling revelation on arthritis and what you can do about it right in your own home.

The author offers this analysis of health to serve as a guide between the *cause and cure* of arthritis that will outlive dramatic drug discoveries. Unlike present miracle cures with possible detrimental effects, this book propels the

establishment of a good basic foundation of health leading to an inexpensive potential *cure* for arthritis. [Emphasis supplied.⁶]

* * * "Joints must be lubricated if bodily movement is to be free . . . cortisone and ACTH restore and even increase the stickiness of the membrane so that it can act as a lubricating cushion." . . . The author adds: So does cod-liver oil, a steroid compound of harmless Nature.⁷

The author, as guest of the Army and Navy General Hospital of Hot Springs, Arkansas, had further opportunity to observe results of therapeutic treatment by the Services.⁸

Attendance at the International Congress of Rheumatic Diseases at the Mayo Clinic, in Rochester, Minnesota, finally convinced Mr. Alexander that his theory of cure by diet was superior to the many dramatic but potentially harmful drug treatments now in use. Under medical supervision scores of long-suffering patients treated by the author's therapeutic diet regimen were amazed at their astounding recovery.⁹

⁶ Here we have a direct and unequivocal representation that the book is a guide to the cure of arthritis. The overwhelming testimony of the competent medical practitioners and researchers is that there is no cure of arthritis known to medical science. And further, confirmatory of this conclusion, the author admits such to be true in some of his lectures and interviews, which are herein elsewhere considered.

⁷ Here the author contends that cod-liver oil, which is a keystone of his "discoveries" laid down in his book, will furnish a lubricated cushion for the affected joints and thus relieve and cure arthritis. The competent medical testimony here of record negates and refutes this statement.

⁸ This implies the author was invited by competent authority to visit the hospital and observe and evaluate treatments used in this hospital on arthritic patients. On this point the testimony of the author is sufficient refutation of this statement:

Upon his discharge from Army Service, and while enroute home, he stopped off at the hospital for the "best part of the day"; was a visitor on this one occasion only (Tr. 557-558): "went through the wards, talked with 'the boys', asked what they were taking for arthritis and looked at their physiotherapy department"; that "I just browsed through the hospital"; upon being asked—Q. "You just went in and went looking around asking questions?" A. "It may be hard to believe, but as far as I can remember, that's what it was"; that he spoke only to patients, asking "what they were getting for arthritis," and "did not talk with anyone in charge on the scientific subject of arthritis." (Tr. 517-520.)

This is the sum and substance of the author's "opportunity to observe results of therapeutic treatment by the Services," which statement was false and intended only to increase his scientific stature and lend credence to his false claims of technical competency, training, experience and background in the field of arthritis, and incidentally to aid in selling the book.

⁹ Here we have another even grosser misrepresentation than that of the Hot Springs incident, coupled with the cozy, smug reference to the big names: "International Congress of Rheumatic Diseases," "Mayo Clinic" and "Rochester," all associated in the public mind with vast importance in the medical field.

The facts of this visit, in the author's words, are as follows: Without prior permission, and "as a result of self-invitation" he visited the Mayo Clinic; that he had read of the discovery of the drug cortisone so "he borrowed some money and flew out to the Mayo Clinic to see first hand what it was all about"; that he met a Dr. Kendall with whom he spent a "very short time. Perhaps less than a half hour. Maybe as much as an hour"; he then casually became acquainted with a Dr. Slocum, (having recognized him from a picture in "Life" Magazine), with whom he had several discussions, principally aimed at getting Dr. Slocum interested in his, the author's, "discovery" of his cod-liver oil therapy and, while Dr. Slocum was interested, his supervisor or chief would not "go along with his interest in cod-liver oil." (Tr. 520, 522.)

And that's the story of the author's attendance at the Congress and at the Mayo Clinic. There is no mention of actual attendance upon any meeting of physicians or others covering any discussion of the subject of arthritis. It would be difficult to conjure up a more innocuous visit than was paid by the author to Rochester and, certainly, there were no demonstrable results therefrom to justify the innuendoes inherent in the representations here under discussion.

As an acid test, the author experimented with his own body by introducing an arthritic condition and then effecting the *cure* through his corrective diet regimen.¹⁰ [Italics supplied.]

Firm in his belief that the average arthritic sufferer can effect his own recovery with little expense, Mr. Alexander spent over a year transposing his theories and accumulated experience into one easily understandable book.¹¹

In Commission's Exhibit No. 26:

Here are the results of 12 years of research by the author. In these pages an authority reports his findings about the disease . . . he lists successful steps which can be taken to bring relief.

You will find, here, a complete analysis of the causes of arthritis and a guide toward an effective recovery.¹²

Laboratory tests by the author developed a plan and a dietary regimen which have brought health to arthritics and have caused their pains to disappear.¹³

Unlike present "cures" supposedly caused by costly miracle drugs, this book

¹⁰ The unquestioned and unrefuted evidence in this case is to the effect that it is impossible to "introduce an arthritic condition and then effecting the cure through corrective diet" or by any other means known to medical science.

On pages 473 to 485 of the transcript the author testified at length on his method of inducing and curing arthritis in his own body; that he did so on numerous occasions throughout the years with the facility that one would turn on or off the water from a tap, the truthfulness of such statements being challenged and denied by competent witnesses, and no valid proof of the truth thereof having been proffered or produced by the witness, aside from his own unsupported testimony.

¹¹ It was found that these words hold out and represent that "recovery" (here construed to mean "cure"), is possible and that such interpretation would be placed on the word "recovery" by the public, as used in its present context and overall intentment, despite the fact that the dictionary (Webster's International) characterizes this usage as obsolete. As the courts have so often held, the general public is not to be presumed expert in the finer definition and usage of words but rather that words shall be given their common meanings as generally understood and accepted.

¹² It is found as a fact that the book is not "a complete analysis of the causes of arthritis" nor is it "a guide toward an effective recovery." Aside from the fact, which is here found, that Alexander is a layman, not qualified to formulate or express "a complete analysis of the causes of arthritis" it is significant to note that even the acknowledged experts in this field who have testified herein were most guarded and restrained in expressing an opinion as to the causes of arthritis, being content with giving general descriptions of the various categories of the disease and their symptoms, giving it to be understood that the entire field is shrouded in obscurity, abstruseness, imponderables, and many problems which engage the efforts in research of vast numbers of scientists and technicians in an effort to arrive at "a complete analysis of," or an "effective recovery" from the disease, which aim has not been accomplished wherefore vast and expensive research centers, (supported largely by public donations of money secured by nation-wide solicitation), continue their work and, except for natural remission and temporary amelioration of pain and symptoms, the victims of the disease continue to suffer, Alexander's book to the contrary notwithstanding.

¹³ There is no believable evidence or testimony of record that Alexander made any laboratory tests of significance or worthy to be considered; nor were competent and critical tests of Alexander's theories as expounded in the book, under known and controlled conditions, ever performed on human beings or on animals to test out and evaluate Alexander's theories although he made many attempts to secure clinical tests without success as he was unable to secure the services of a competent person in this field; nor has the "dietary regimen" developed by Alexander "brought health to arthritics" nor "caused their pains to disappear." Again it is found that the language used in this paragraph constitutes a false assertion and representation of a "cure" for arthritis and is so here construed.

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gives a complete outline of an inexpensive corrective diet which lubricates the patient's joints and returns arthritics to better health.¹⁴

In Commission's Exhibit No. 27:

490,000 copies already in use across America. The most widely accepted book ever printed on arthritis. \$3.95.

Here, for the first time, is a way to defeat the illness [arthritis] . . . a plan which arthritics can follow right in their homes . . . The author spent 15 years doing scientific research to gather the facts for this book . . . You will find here a complete analysis of the causes of arthritis and a guide toward an effective recovery

* * *

SEE THE COVER
FOR COMMENT BY ACTUAL ARTHRITICS . . .
PEOPLE WHO WERE HELPED BY THIS BOOK,
READERS REPORT ON THE BACK COVER.

Following repetition of his visit as a guest at the Army and Navy General Hospital, it is asserted:

In New York City Alexander collaborated for two years with an orthopedic surgeon, and saw his method being carried on under medical supervision. * * *¹⁵ Finally convinced that his discoveries and his theory of treatment by diet were superior to the use of potentially harmful drugs,¹⁶ he spent more than a year writing this book.

¹⁴ It is found as a fact, on the basis of the medical testimony of record, that there is no known or demonstrable effect which any diet, "corrective" or otherwise, or any ingested foodstuff, can or does have in "lubricating the patient's joints," on the basis whereof it is found that this representation is false and misleading.

¹⁵ The name of the orthopedic surgeon mentioned is Dr. Daniel I. Giddings. Alexander, in his application for employment (Cx. 2b) with the U.S. Veteran's Hospital, Bronx, N.Y., gave this history of his relationship with Dr. Giddings: Employed as "Assistant in Research in Preventive Medicine" from "April 1947, to November 1947"; "starting salary \$45 per week"; "final salary \$75 per week." He admitted that he had no formal scientific or medical training to equip him for research in preventive medicine and that he arrogated to himself the use of this title. His specific work with Dr. Giddings was: "to seek out the foods that caused transitory diabetic syndrome by regulated blood chemistry analysis and urinalysis work-ups."

Although he claims (Cx. 2c) that he commenced his association with Dr. Giddings in December 1945, it was only on a part time basis, three afternoons or evenings and a full day on Sunday; that the object of his work was to "expedite transitory diabetic syndrome on myself," and this work led to his April-November 1947, employment, as above. Dr. Giddings was called as a witness and testified: He never employed Alexander at any time to do research in preventive medicine, or any other kind of research; he did not confer the title "Assistant in Research in Preventive Medicine," or any other title on Alexander; that Alexander's description of his work with him, as contained in the U.S. application for appointment is not correct; that Alexander's statement that the reason for terminating the employment was "termination of the research problem" is incorrect, the truth being he, Giddings, was occupied with other things and could not devote any more time to the problem; that he never discussed with Alexander any research problem involving production of a transitory diabetic syndrome in Alexander and never attempted to do so; that Giddings evaluated all tests and Alexander never evaluated any blood chemistries, blood sugars, cholesterols, uric acid, urinalysis or hematologic tests, as Alexander testified he had done; that during the entire period of their association between twenty and thirty volunteer patients were examined in the rheumatoid and osteoarthritis fields although no specific classification of each was made; that Giddings performed all physical examinations

For his work, Dan Dale Alexander, Ph.D. is now being recognized by colleges and recently he was awarded another honorary degree.¹⁷

and recorded findings and evaluations; that "later on" Alexander was permitted to take case histories "like any doctor's nurse"; all blood chemistry tests were done by an independent laboratory and blood counts and urines were done by the office nurse.

These tests performed by him to test Alexander's theories involved the taking of cod-liver oil and orange juice mixture and under a protocol advocated by Alexander; that the tests ran over a period of three months and thereafter the patients reported for periodic checkups to ascertain what results in the way of benefits had accrued from the treatments, whereupon the following question and answer ensued:

Q. "Did you come to any conclusions relative to your study that you made with the cod-liver oil—orange juice regimen?"

A. "I would say that the series of cases were too small and a follow-up was too brief to make any valid conclusions. I would also like to add I don't feel qualified as a rheumatologist, although arthritis does come under my particular specialty, and I don't feel that this was actually a real experiment. *It was just a hit and miss affair. I don't consider it a scientific project of any sort.*" [Italics supplied.] (Tr. 684)

While of some length, the foregoing has been deemed pertinent to recapitulate in order to set up the true facts concerning Alexander's statement, above quoted, and to point up that he did not "collaborate for two years with an orthopedic surgeon and saw his method being carried on under medical supervision." Certain it is that no affirmative testimony or exhibits were offered concerning such experiments and, it is fair to assume, had any significant beneficial results been obtained in support of Alexander's theory such would have been produced.

It is also significant to note that, while the direct examination of this witness consumed some 30 pages of the transcript, (657-687), the cross-examination covered almost 90 pages, (687-774), all without effect in detracting from the witness' direct statements.

Despite the testimony of Dr. Giddings, Alexander testified (Tr. 462), that he believed the former's clinical evaluation justifies and supports his, Alexander's, theories. When it is further borne in mind, as the record discloses, that Giddings and Alexander parted company in 1947, some five years prior to the publication of the first issue of the book, it will be seen that Alexander reached into antiquity for a straw with which to bolster up his background stature and thus promote the sale of the book.

It is found as a fact that the statement as used in the advertising material of respondents was false and misleading and used solely for the purpose and with the aim of enhancing the reputation of Alexander as an expert, received and consulted by a medical doctor, and an attempt to further the sale of the book.

¹⁶ It is found that this broad statement that Alexander's "theories of treatment by diet" are superior to those methods of treatment followed by the medical profession generally, the latter entailing the use of "potentially harmful drugs," is false and misleading and not substantiated by the record, nor is the author qualified to make a valid appraisal or evaluation of the relative merits of the treatments. It is further found that such statement may have the potentially dangerous effect on the gullible and untutored of inducing them, to their detriment, to abandon the use of drugs prescribed by competent medical practitioners in favor of a diet as proposed by Alexander.

¹⁷ There is nothing in the record to substantiate the author's "recognition by colleges," certainly not by any college of any standing in the educational or scientific field. Recognition by the aforementioned "St. Andrew's Ecumenical University College" was not a spontaneous recognition but an unqualified "purchase" of a "Ph.D." by the author. The standing of "St. Andrew's" in the educational field is not referred to in the record nor did respondents offer any testimony thereon.

The further statement that: " * * * recently he, [the author] was awarded another honorary degree" was explained by Alexander as follows: [Tr. 613, 614 and 615]: He received the degree of "Doctor of Arts and Oratory" [sic] from Staley College of the Spoken Word, of Brookline, Mass.; "that one of the staff pointed out to Dr. Staley about my lectures around the country and perhaps it would be nice if the college honored, with their highest degree, the Degree of Oratory, myself who had been lecturing around the country and speaking before thousands of people." Dr. Staley evidently acquiesced in the suggestion and the degree was conferred, but before its conferment Alexander made a "contribution" of \$1,000 to the College "with the idea that it would be useful in the building of their next college." This was in 1954. Alexander has no other degrees.

It is found as a fact that this degree, as was the "Ph.D." degree, was an outright purchase on Alexander's part and used and referred to by him for the principal purpose of enhancing his educational background to impress the public and further the sale of his book.

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To prove his discoveries the author experimented with his own body . . . introduced an arthritic condition in himself, and then used his methods . . . which are described in these pages . . . to defeat the disease and regain full health.¹⁸

There are a number of other specimens of advertising of record, (see footnote No. 5), containing representations in this category which are not here analyzed or commented on. It is felt that the foregoing forms a sufficient basis on which to rest the findings herein arrived at and further, that were said exhibits placed under scrutiny, it would be disclosed they all contain representations similar, or analogous to, those exhibits here considered, and the findings thereon, and criticism thereof, would apply thereto with equal force and reason.

Advertising: (c) Radio Broadcasts
of Interstate Coverage.

For the purpose of promoting sale of the book through the medium of radio and television broadcasting, respondent Witkower procured the services of a "public relations" agency in New York City whose sole duty, so far as respondents were concerned, was to promote the sale of the book, "Arthritis and Common Sense"; that in pursuance of this employment the agency arranged many radio and television appearances of Alexander, such taking the form of interviews by Conrad Nagel, "Mike Wallace" and "Long John," the first mentioned being a film prepared at the instance of respondents purely for advertising purposes, and the latter two being arranged appearances of Alexander on regular network shows; a witness of the agency testified that it had been instrumental in arranging appearances of Alexander on radio broadcasts in New York, Connecticut, Texas, Illinois, Michigan and "lots of little cities," (Tr. 1620), although he could not give precise information, having destroyed his records; that the agency received from Witkower the sum of \$7,500 for services performed, and \$1,005.84 reimbursement for out-of-pocket expenditures.

There are of record herein the footnoted exhibits affecting radio broadcastings.¹⁹

¹⁸ It is found, as a fact, that the language here used constitutes a false and misleading representation that the book offers an open sesame to the cure of arthritis and the "regain[ing of] full health."

¹⁹ Cx. 54, A-B-C—Tape recording of radio interview of Alexander by "Long John" on station WOR on April 2, 1957.

Cx. 55—Typed transcript of Cx. 54.

Cx. 56 A-G—Phonograph disc records of radio interview of Alexander on "Tex and Jinks" show, on station NBC, on March 25, 1957. This exhibit consists of seven 12" discs.

Cx. 57—Typed transcript of Cx. 56 A-G.

Indicative of the very high esteem in which the author holds his book, he is here quoted on a radio interview, (Cx. 55): "Don't you see this book is not just another book. *This is a reference book now known as the Bible of Health.* This, and I base it on the opinion of others who write to me, *next to the Holy Bible, this book of mine 'Arthritis and Common Sense,' gives a person a right to take the guesswork out of their own lives, as far as health is concerned. This can turn pain on, and this can release pain. This book has that knowledge in its pages. This book is the greatest since the Holy Bible, in the opinion of people who write to me, and I am willing to accept that opinion.*" (Italics supplied.)

This unabashed use of hyperbole by the author is indicative of his own evaluation of himself and his accomplishments as evidenced by his attitude and testimony during the course of the proceedings. Specific instances: While he professed high esteem for the medical profession, such was lip service only and it was plain to be seen that he had only contempt for the profession because its members would not agree with his theories and great "discoveries," [the most outstanding of which appears to be that "oil and water will not mix"] all of which theories he considered superior to the combined knowledge of the profession in the field which he had preempted as his particular province; that "he has a tremendous educational program on his head" to convince all the doctors who are being trained today to get them to "realize that diet is the controlling factor of the entire problem" [of treatment of arthritis]. This feeling of superiority may have been induced by a sense of frustration on the part of the author because, despite continued effort on his part he was never able to procure the services of any competent or outstanding person, clinic or laboratory which would undertake a clinical evaluation of his theories, despite his tender of remuneration. Even subsequent to the commencement of this action respondents filed herein a lengthy motion titled: "Motion for Clinical Evaluation," in which the aid of this Commission was sought in procuring such an authoritative evaluation, and tendering reimbursement to the government for the cost thereof. On appeal from this examiner's denial of the request, the Commission sustained the ruling and dismissed the appeal as "without merit."

A further example of Alexander's intransigence toward the orthodox concepts of the profession in its appraisal and treatment of arthritis and related diseases and symptoms, may be cited his statement that: "His function was to teach [Dr. Giddings] everything I knew about arthritis." This statement, considered in the light of Alexander's dearth of training and experience, hereinafter set forth

in detail, may be, and is, set down as without foundation, unwarranted and presumptuous.

The following quotations are excerpted from the radio broadcast, (Cx. 55), consisting of some 32 pages, which is the reason for the selection of certain portions:

Arthritis struck my family. My mother was bothered with arthritis * * * I noticed that when she walked upstairs she had a great deal of difficulty with her legs and I became quite interested in her welfare and her arthritic problem.

Q. Do you have any medical background?

A. No, not in the true sense. I did take a premedical course at Trinity College.

I think it was because I was so interested in arthritis that this interest caused me to spend most of my time studying works on arthritis. In other words, I was taking a basic premedical course at Trinity College, in Hartford, Connecticut, but my time was spent on the study of arthritis, and when I lost interest in my regular curriculum I left school to continue my studies on arthritis. In addition to that I spent three years as a medical technologist, either in the Service, in the Airforce * * * or as a laboratory technician * * *. And I have spent all of ten or more years studying in the medical libraries of Hartford, Connecticut, New York City and Boston, Massachusetts.²⁰

* * * It was my belief that unless you knew how to make arthritis, you really didn't know how to get rid of arthritis.²¹

I believe the shoulder is involved in a lubrication mechanism; that if you protect the cartilage in the joint linings of the shoulder by natural nutrition, you're not gonna' ever get arthritis. * * * If you strip the oils that have effect on joint linings from your diet, and then start eating or drinking foods that might tend to dry out the joint areas, * * * you are not lubricating the mechanism, you are drying it out, and that exercise and excessive wear and tear will cause arthritis to settle in the joint. * * * In this case we are talking about the right shoulder. If you preferred it in the left knee, for example, well, it would just be a question of following the improper diet, and then causing or doing an exercise that involves wear and tear on just the left knee, and you can have arthritis that way, right in the knee.²²

Upon being asked why the American Medical Association and doctors in general do not agree with the theories expressed by Alexander, he responded:

There are today about 180,000 doctors in the United States of which 12,000 are particularly interested in arthritis. These doctors, who perhaps on chance conversation may say "Well, I don't go along with it", you have to go back to just this year or to 1880, 1900, or 1925 when these doctors were trained in the medical schools of our country there was nothing in the textbooks from which they were taught to the effect that diet had any relationship to arthritis, and

²⁰ This uncompleted and attenuated "premedical course," as well also claimed training as a "medical technologist" and "laboratory technician." (both of which latter titles are self-assumed), and his ten or more years of medical "browsing" in various libraries are hereinafter reviewed under the "Author's Education and Background."

²¹ Here Alexander repeats his ability to "make [cause] arthritis" and "get rid of" [cure] arthritis, a statement, the truth of which in both of its aspects, is denied by all the competent medical testimony of record herein.

²² This is Alexander's theory of the cause of arthritis, the soundness and truth of which is seriously challenged and effectively rebutted by the weight of the evidence of record.

therefore the doctors will think "Well, I didn't study that in school, he must be wrong". So, I say to you, my fight is an uphill type of fight; that my problem will become easier only when the medical textbooks are rewritten. When the next generation of doctors going through the various medical schools see in their textbooks that diet is related to arthritis, and why it causes arthritis, and how diet can overcome arthritis, then, and then only, will my work be accepted by the leading doctors interested in arthritis in this country.²³

He then undertakes to explain his discovery that "water and oil don't go together." In doing so he discusses chapter No. 12 of his book and by way of explanation likens the human machine to that of an automobile, "both having many joints":

An automobile has a radiator system in which one puts water, and an oil pump in which one places oil and if you were to take the water from the radiator system and put it in the oil pump with the oil the chances are the motor would wear out; but the human machine does not have a separate radiator system, an oil pump or a gasoline tank; we get fuel from breadstuffs, ingested oil such as butter and eggs, and ingested water; the only way that water should be taken into the body is when there is nothing else in the stomach, i.e., 10 or 15 minutes before a meal. If you take water thus it's a blessing but drink it with the meal and let there be oil in that meal and that same water can be a curse on your body. It'll wear your motor out. It'll lead to arthritis.

He was then questioned about a statement appearing in "Look" Magazine written by Dr. Russell M. Cecil, M.D., Medical Director of the Arthritis and Rheumatism Foundation, in which the doctor said in commenting on the foregoing facet of Alexander's theory concerning water and oil in the diet:

That's pure nonsense. The human body is not an automobile, or machine that needs to be oiled regularly. It has a natural lubricating substance, not dependent on any special fat, or oil-containing food. And in relation of water to arthritis, there is no medical or scientific evidence to show the amount of water you drink has any bad effects upon the disease.²⁴

Alexander then goes on to explain, according to his theories, how the addition of milk or cream to coffee "is a violation of the old rule in chemistry—oil and water do not go together"; that there are exceptions to this rule as in the case of soup, which is a mixture

²³ In this statement Alexander erroneously castigates a large body of physicians and the textbooks from which they studied, as being out of rapport with his, Alexander's, advanced thinking and "discoveries" in the interdependency of diet, fluid intake, exercise, and "oiling of the joints" in the causation and cure of arthritis, theories wholly at variance with the competent medical testimony of record. However, it should probably be conceded that his statement to the effect "when the next generation of doctors going through the various medical schools" see his theories vindicated then "will my work be accepted," may be true if, in fact, such a state of revised thinking on the subject ensues "in the next generation of doctors." Certain it is none such have been produced in this generation who have testified in favor of his theories, and this examiner is without science or prescience to speculate on the future generations of doctors.

²⁴ Dr. Russell M. Cecil, here quoted, did not appear herein as a witness but it is worthy of note that his statement above coincides with the consensus expressed by the witnesses appearing at the instance of the Commission.

of oil and water, and also milk, which is likewise such a mixture, but by the addition of cream to coffee:

* * * you are getting heavier molecule. You are violating the oldest rule in chemistry—oil and water do not go together—and sooner or later your circulation is going to become involved, because you are asking for sludging of the blood. I don't mean in one day, I don't mean in one month, I don't mean in one year, or in ten years. If you drink coffee with milk or cream for 30 or 40 years you are going to feel that, in the way of circulation, in the latter part of your life.

In any drink, or huge amount of wine, or any liquid for a meal that has a high surface tension, is going to force the digestive system to work overtime. And when you force the digestive system to work overtime, you are going to tax the liver. And when you tax the liver you are going to tax the uric acid cycle and make yourself more susceptible to a gouty arthritic type of condition.

He then branches off on the subject of cholesterol and says:

Cholesterol is a funny thing. You can have either endogenous cholesterol or exogenous cholesterol, by that I mean, endogenous cholesterol originating within the system, and exogenous would be coming into the body from outside of the body, * * * in other words, if you were to cut all the cholesterol out of your food completely, whether you eat any food cholesterol or not, you are gonna' have, if your system is at fault, if your metabolism is at fault, if your cycles of metabolism is in error, you are going to have an increase of cholesterol, whether you intake cholesterol, or not.²⁵

He then undertakes to say that arthritics have not been given "an even break," (presumably by the medical profession) because, despite an increase in the incidence of rheumatoid arthritis, the medical profession has refused to acknowledge the validity of his theories, and bases this statement upon the fact that he approached the head of the American Medical Association, the National Institutes of Health, the Mayo Clinic in Rochester, and the Hot Springs Hospital for clinical evaluation of his theories but "could not get to first base with them" and "when I couldn't get my work evaluated, I then came to New York and collaborated with an orthopedic surgeon, and we found our work very successful. But, when he was asked by me, to publish this work in the New York State Medical Journal, I was turned down completely."²⁶

²⁵ This quotation, and those of the two preceding paragraphs, are merely a hodgepodge of scientific folderol and medical mumbo jumbo, used for the purpose of impressing his public by implying deep-seated knowledge on medical subjects which he picked up by perusal of medical books, and the statements made are found to be not warranted or justified, either by Alexander's educational history or experience or by any evidence of competence exhibited on the witness stand through his eight appearances.

²⁶ Alexander's unremitting and unsuccessful efforts to procure a valid medical appraisal or clinical evaluation of his theories appear throughout the record. The nearest he ever came to such was his "collaboration with a [New York] orthopedic surgeon," [Dr. Giddings, whose testimony is hereinabove related and evaluated]. But, as Alexander puts the matter, while "we found our work very successful 'Dr. Giddings' turned him down completely" when requested to publish the results of their "very successful work." Dr. Giddings' refusal is amply explained by his testimony (Footnote No. 15).

Continuing the interview Alexander related that in seeking acceptance of his theories at the hands of the medical profession he found he was:

bucking my head against a stonewall . . . I took the next best step * * * I set out to lecture to the people who had arthritis throughout the United States and spent four and a half, nearly five years talking to these people. * * * *and when people started to getting well by the thousands,*²⁷ they took this book of mine to the doctor, and this week for the first time I grew up because this was the week that the American Medical Association chose to make their first recognition of my work.²⁸ [Italics supplied.]

Indicative of the finding of fact, here made, that Alexander was engaged in the selling of his book and in pursuance thereof engaged in the giving of lectures, the following is quoted from the interview:

Q. Did you sell books at the end of your lecture, or were they made available in the local bookstores?

A. In most cases, when I lectured in the different cities, they were available at the close of the lecture, and you must take this into consideration, that when I lectured in a city, there was no fee, the public came to hear these lectures without charge. * * * My only source of income, my only way of traveling to pay my hotel expenses would be, of course, through my book, and its sales.²⁹

The interviewer then asked Alexander:

Q. Do you really feel that your qualifications are sufficient to permit you to make a decision, as to a cure for arthritis, or at least relief for arthritis?

A. I am glad that you used the word "relief" for arthritis. I based this on my strong feeling, that there will never, never be a cure for arthritis. It's impossible.

Q. There will never be a cure for arthritis?

A. Never, under any stretch of the imagination, will there ever be a drug, or a pill, or an idea.³⁰

²⁷ The italicized language of this quote is cited as a representation that because of the contents of the book and lectures by the author cures "by the thousands" were being effected. The paucity in numbers of these "thousands" who appeared as witnesses on behalf of respondents is here adverted to with the observation that had there been such numbers of cures as claimed respondents failed to produce more than a corporal's guard thereof and none such had been proved by diagnosis to be arthritic hence none were proved to have been cured of arthritis.

²⁸ In his later testimony Alexander identified this reference to be the American Medical Association's Journal of March 16, 1957, which was not offered or received in evidence for which reason no comment thereon is here made.

²⁹ It is worthy of note at this point that nothing the author ever said at any lecture has been questioned in this entire proceeding but, on the contrary, all inquiry has been directed to and centered upon statements contained in advertising matter used in furtherance of sales of the book.

³⁰ It is here pointed out that these pious denunciations of the use of the word "cure" is wholly at variance with its frequent use by respondents in the advertising matter herebefore and hereinafter considered, and aside from the express use of the specific word itself, there is the overall intendment and construction to be placed upon all of the advertising matter herein considered which is: "That such holds out a cure and relief from the disease and its symptoms and offers a method "for the restoration of health to the afflicted." No other construction than this is possible within reason and the tremendous sale and popularity of the book is due entirely to these representations. Certain it is that 500,000 people did not purchase this book because they are book lovers in search of erudition or entertainment, or because the book itself is a gem of literary composition.

It is found as a fact that the foregoing interview was arranged for and procured by the public relations or advertising agency of the respondents and was solely for the purpose of fomenting interest in, and the sale of, the book, "Arthritis and Common Sense," and for no other purpose whatsoever. That as such it is subject to the ordinary rules of construction and enforcement of truth in advertising which applies to all such matters; that the statements therein made, to wit, that the most important controls and management of arthritis consist of diet, water intake at controlled temperatures on an empty stomach, and the administration of cod-liver oil in controlled dosages for the purpose of supplying lubrication to the joints of the body is false and misleading, such finding being based upon unrebutted scientific medical evidence of record in this proceeding.

The following are excerpted from Commission Exhibit 57, a radio broadcast over radio station NBC on March 25, 1957, from an interview of Alexander on the "Tex and Jinx" program. This radio broadcast was arranged for by the public relations agent of the respondents in the same manner as the interview immediately preceding.

Many of Alexander's statements on this broadcast were repetitious of similar ones dealt with in detail in consideration of Commission Exhibit 55 and will not here be repeated. However, the following are additional statements which serve to illustrate the character and purpose of the interview and, because of the length of the transcript here under consideration, only salient excerpts are cited.

Alexander relates in this interview how it was necessary for him to wait five years, during which time he lectured and made other endeavors to bring his book to public attention, when as the result of the mention of the book, "Arthritis and Common Sense," by Peter Lind Hayes on the Arthur Godfrey show, (the interview lasting 10 or 15 minutes), the respondent Witkower was deluged with orders for 14,800 of the books and within a few days thereafter they had urgent requests for 50,000 more; not long afterwards the book hit the best seller list with sales approaching 555,000 copies.

It would appear that the basis of discussion during this interview was occasioned by an article in "Life" Magazine, and many questions were posed by the interlocutor to Alexander based on statements contained in that article. During the course of the proceeding respondents offered in evidence the aforesaid article but same was objected to by Commission counsel and refused in evidence.³¹ Despite the fact that the article itself is not in evidence

³¹ Tr. pp. 1,900-1,902.

the interview with Alexander, wherein he many times adverts thereto, is in evidence and comments, as well also findings of fact herein, are based on the interview and Alexander's statements concerning the article rather than upon the article itself.

At the outset of the interview Alexander was asked:

Q. Well, now those merits on the good parts of that were brought out a year ago on the program with Peter Lind Hayes and that tremendous reaction in boosting it up into the best seller list, but now a year later "Life Magazine" has the story about you, Dan Dale Alexander, and they say right here at the top of the story by Robert Wallace: "Dan Dale Alexander, who tried to help mother by oiling her joints and thereby grew famous, finds himself accused of false advertising." Now how do you feel about Life . . . ?

* * * A. Frankly speaking, Jinks, I think my biggest break so far other than the Peter Lind Hayes interview, is this "Life Magazine" because now for the first time the story of "Arthritis and Common Sense," is available to the American public in print. You have a growing interest in arthritis today: children are getting arthritis by the tens of thousands * * * and I think this Life story * * * will do more to solve the riddle of arthritis than any one thing up to today and I am including the discovery of cortisone. I believe that this article we have now in Life Magazine will save our country. I think we are going to reach the peak. * * *

Q. And you say this is the best thing that's happened even though it doesn't have the final results of the, what is it, the Federal Trade Commission investigation. It still leaves it hanging with the question finding you accused of false advertising * * *

* * * A. The result of the hearing is incidental. The fact is that the people in the United States have already decided, in their Canasta games and their bridge games, at their church meetings, at their social meetings, that the idea of being relieved from arthritis through sensible eating habits, a better system of eating is now here to stay. The fact that the FTC is going to rule, whenever they do, becomes almost insignificant as far as I am concerned.³²

* * * Up until this FTC got involved fortunately for me it now becomes * * * they really are helping me because they are making it a nation-wide issue, where before it was a fight of myself alone. I was the one that had to leave the house for months at a time and lecture through the country and literally stand up by myself, but now I've got, as a result of this Life Magazine in just today's mail, mail that's coming in, "I read Life Magazine and I'm one got well and I'll stand up with you by the Federal Trade Commission." I'm getting allies now by the tens of thousands standing up to help me so I'm in good shape, so to speak.³³

³² This statement about the article in Life "Saving the Country," and that it will "Do more to solve the riddle of arthritis than any one thing up to today, and I am including the discovery of cortisone," is palpably an expression of opinion by the author made for the purpose of boosting sales of the book, and it is difficult to fully appreciate the rationale of Alexander's reasoning in linking a magazine article, which purported to give or to advance no theory for the cure of arthritis, with the discovery of cortisone or any other supposed cure or alleviator or palliator of the symptoms of arthritis.

³³ In citing with approval his mail from book readers to the effect "I'm one got well," Alexander is representing to thousands of listeners that his book has effected the cure of arthritis and, with regard to his sales talk that "tens of thousands [are] standing up to help me," it is pointed out that these supposed hosts of adherents failed wholly to materialize, in respondents' time of need, as a perusal of the transcript of the proceedings will demonstrate.

During the course of the interview Alexander was presented with a question, submitted by a public listener to the broadcast, who desired to know:

Q. What type of scientific experiments has Mr. Alexander done to arrive at his conclusion?

A. Well, all I did, Mr. Jackowitz, was make arthritis in my own body about eight different times and made arthritis about four different times in my wife's body and I don't know of any better way of solving the problem, causing it, getting rid of it. There is no sense guessing. * * * If you have arthritis a good way to get well would be to use some cod-liver oil and orange juice as a mixture.³⁴

He then goes on to offer an explanation of his use of the Ph. D. degree heretofore mentioned, and volunteers this statement:

And since there are some people who prefer to use little loopholes of that choice, to criticize, I would like to say that in the next printing of my book which is now on the presses, we have deleted the Ph.D. from the flyleaf of the book because I've dealt in honesty, I prefer to deal that way.

Q. Does the Federal Trade Commission bring that up?

A. They talked but they didn't say I had to delete it. But we went ahead anyway and deleted it because it was something that was given to me and it was something that I realize now shouldn't have been accepted, but as I say, it was done in the midst of the shooting of the picture and I didn't consider it important when it happened.³⁵

Another example of the author's exuberance in his lavish recommendations of his book is the following:

I'm very happy to say, do you know, Jean, that there are several million people today on my bandwagon, so to speak, who are telling one another "This is the greatest, this book really works."³⁶

It is here found as a fact that the interview above considered and dealt with was arranged for and obtained by the public relations or advertising agency in the employ of respondents for the sole and single purpose of advancing the sale of the book, "Arthritis and Common Sense," and that the interview was heard by great num-

³⁴ Here, in the language of the author himself, we have the extent of his experiments to prove his theories and as to the validity of such, and the impossibility of "causing it," [arthritis], and "getting rid of it," [effecting a cure of arthritis] are, according to the undisputed medical evidence of record, not feasible of realization in the present state of scientific knowledge.

³⁵ This explanation of use of the term "Ph. D." and which herein elsewhere is found to be false and deceptive is here adverted to merely as an admission by Alexander that he now realizes his use thereof was improper and announces his abandonment thereof in future editions.

³⁶ In this one interview, where the author cites his friends as numbered in the "tens of thousands," he has now progressed to "several million" who are "on his bandwagon," telling each other "This book really works." It is found that, according to Alexander's consistent representations, the book, in order to "work," must effect a cure of arthritis, rheumatism and the allied diseases and their symptoms, and it is found, as a fact, that no other or lesser construction of his representations throughout his advertising campaign, is possible.

bers of people across state lines and therefore constitutes an act in interstate commerce, as the term "commerce" has been consistently construed by the Federal Trade Commission, sustained therein by the courts.

Advertising: (d) Television Telecasts on Closed Circuits
and on Interstate Coverage.

There were introduced in evidence certain television films, tape recordings and transcriptions which are described in the footnote.³⁷

It was contended in support of the complaint, and is so found, that the activities of respondents in the use of television telecasts was for the sole and exclusive purpose of promoting the sale of the book, "Arthritis and Common Sense."

It was testified by one Ensworth, the public relations and publicity agent of the respondents, who had theretofore booked the personal appearances and lectures of Alexander in his many appearances in some ninety cities throughout the country, that it would be physically impossible for Alexander to keep abreast of the schedule of lectures which Ensworth was capable of producing, whereupon it was decided to place the whole action on film, to be made use of on closed circuits, such as in department stores, or for use in general broadcasting. The whole sequence was staged in a studio and the first film (Cx. 42) was produced in 1953, and the second film, (Cx. 24), about a year and a half thereafter. As far as subject matter was concerned, both films are substantially the same. Exhibitions of the films in each instance were arranged by Ensworth and, prior to each showing or broadcasting, certain newspaper advertisements were run locally calling attention to the up-coming program, all expenses in connection with the advertising and showing being equally borne by respondents and the interested purveyors of the book in the various locales.

Upon completion of the films such received the approval of the respondents without objection and the films here of record are true copies. Concerning the scripts of the films, such were prepared by Ensworth as follows: The approximate first one-third thereof, having to do with the biography of Alexander, was prepared from ma-

³⁷ Cx. 42—Being the original so-called "Conrad Nagel" T.V. film prepared at the instance of respondents originally for closed circuits in department stores.

Cx. 24—Print No. 7 of Cx. 42 after revision thereof for network and individual station broadcasts.

Cx. 20—Transcription of sound track on T.V. film, Cx. 24.

Cx. 58 A-B-C—Tape recording of audio portion of T.V. telecast of March 27, 1957, of "Night Beat," (Mike Wallace), over T.V. station WABD-T.V. There is no film of this interview of record herein.

Cx. 59—Typed transcription of Cx. 58 A-B-C.

terial furnished by him; the second one-third, an explanation of the author's theories and beliefs about arthritis, his dietary plans, etc., as set out in the book, were prepared by Ensworth; and the final third, consisting of a so-called panel discussion, were staged by Ensworth who, in the original film, had prepared the entire script to be delivered by the panel but, in the second version, he found, upon interviewing the proposed panel members, they were so enthusiastic in their encomiums concerning the book: "We just threw away the script and let them go ahead in an unrehearsed panel discussion and we shot the whole thing." All of the panel participants, save one, accepted the invitations to appear in New York for the shooting of the film and their individual expenses of approximately \$250 or \$300 were paid by Witkower.

In the film Alexander appears in a "laboratory" scene, (set up especially for the purpose by Ensworth), and undertakes to explain his method of mixing or emulsifying cod-liver oil and orange juice, as well also his belief and theory as to how and why arthritics are helped to better health by use of his book.

Apprehending that, because of lack of projection facilities, the reviewing authorities may not be able to view the films here under discussion, and believing same to be desirable in order to fully comprehend the bases for the facts herein found, it has been deemed expedient to attach hereto, as Initial Decision Appendices Nos. 2, 3, 4, 5 and 6, (being selections from Cx. No. 24) a few excerpted frames which, considered together, give an over-all presentation of the general subject matter and underlying theme of the films which is, as hereinabove found, a project designed for the sales promotion of the book by advertising its claimed potency and competency to relieve and cure arthritis.³⁸

Certain statements of Alexander excerpted from the film, Cx. 42, (appearing in the transcript of the sound track thereof, such transcript being Cx. 20), are here set forth. For brevity, specific findings of fact are set forth in immediate conjunction with each selected excerpt:

I am not really an author. I didn't study to be a writer. I am a laboratory technician, a man who fights disease like a scientist.

³⁸ The five prints above referred to appear hereinafter as Initial Decision Appendices 2, 3, 4, 5 and 6, all having been reproduced from Cx. No. 24, and described as follows:

No. 2: Alexander and actor Conrad Nagel in the laboratory scene.

No. 3: Alexander interviewing the chosen panel wherein all testified to their satisfactory use of his book in overcoming arthritis.

No. 4: Alexander illustrating his lecture by use of an anatomical chart and.

No. 5: A "close-up" of the anatomical chart.

No. 6: Alexander ending his appearance with a final "pitch" advocating the purchase of his book by the listener.

Alexander is not a "laboratory technician," this being an assumed title, unearned by experience or education, nor, on the same basis, is he a "scientist" nor can he "fight disease like a scientist."

Searching for an answer to arthritis, I made thousands of scientific tests. Then I wrote a report on my discovery. Later, to my surprise, these facts were published in the form of a book.

Alexander did not make "thousands of scientific tests," nor was he capable of performing such. He was not, and could not have been, "surprised" when his findings were published in book form because, as he testified throughout, he authored the book, paid \$500 for printing the first copies thereof and formed, and is president of, the Witkower Press, Inc., which took over and has continued the publication of the book.

My research and studies on arthritis began more than fifteen years ago. * * * I began talking to doctors and going to medical libraries to read everything I could find on the subject of arthritis. There were volumes and volumes of medical books. Books on physiology, the chemistry of the body, and textbooks about diseases in general. But soon it became evident that there were no comprehensive books on arthritis—alone. And no one seemed to be coming even close to finding a cure. * * * I may have been too optimistic to think that I could track down the answer to arthritis * * * but I resigned from my job and entered a college in Connecticut as a premedical student.

Under the specific heading dealing with the author's educational background, (post), as well also his testimony as a witness, it is found that he did not possess the requisite medical or empiric training or experience to evaluate his reading "of everything I could find on the subject of arthritis," nor was he competent, when he found that, "no one seemed to be coming even close to finding a cure," to step into the vacuum he discovered and write his book to fill the void. Again, by innuendo in pointing out that others had "failed to find a cure," he intimates his own success, and if such was not his intention, then why, may it be asked, was he making this appearance?

Upon my return to civilian life I joined an orthopedic surgeon in New York City and we spent two years collaborating on arthritic research. * * * These were actual patients with clinical case histories * * * and they regained their health. * * * I have become convinced that my laboratory tests have developed the best means of relief for arthritis. My conferences with experts, my visits to many other hospitals and laboratories, caused me to write my book.

References in the foregoing allude to Alexander's "collaboration" with the New York orthopedic surgeon, Dr. Giddings; Alexander's visits to the Mayo Clinic and the Hot Springs Veterans' Hospital; his utter lack of scientific laboratory experiments and his "conferences with experts," all of which are herein elsewhere considered in

their true settings as effectively refuting the truth of the above quoted statements. Further, his statement that the patients of Dr. Giddings were clinical cases who "regained their health" is not borne out by the record and constitutes a false representation that they were "cured."

To end your arthritic pain, stiffness, swelling * * * the secret is diet. You can eat your way into arthritis and you can eat your way out. * * * My laboratory tests indicate that the cause of arthritis is a lack of lubrication * * * a lack of oil in the human body. Arthritis occurs when certain oils are missing from your daily diet. * * *

Friction causes the body joints to become inflamed. If you let the oils in your body dry out, the joints begin to creak * * * the joints rub against each other * * * and a grinding action sets in.

After many years of research work, I devised a method of dieting which can stop the symptoms of arthritis. I'll tell you the secrets of this dietary plan in just a moment * * * Many arthritics have dry and brittle fingernails. Other symptoms may include a dry scalp, dry hair or persistent dandruff. * * * [t]he skin over the knees, ankles or elbows is often dry, scaly or white-ish looking. If you are a victim of arthritis, *dryness* keeps appearing everywhere. A lack of bodily oils.

By making tests, I have discovered that the synovial membranes, the tissues located next to the joints, are very selective. These membranes will accept only certain *types* of oil, and will reject all others. But there is one type of oil that will travel directly to the lining of the joints, and will be absorbed to combat arthritis. That lubrication is * * * Vitamin D oil.

* * * To make the oil stay near the joints—and do the lubrication job—the answer is cortisone. Cortisone is a hormone which adds viscosity to the membrane.

The above theories as stated by Alexander, including his plans of dieting, the ingesting of water and other liquids, the administration of vitamin D oil, (i.e. cod-liver oil), and the various other details of his proposed regimens, as well also the causes of arthritis, are all contrary to the overwhelming weight of the medical and scientific evidence of record and have no substantiation other than Alexander's unsupported statements, as will appear by a consideration of the scientific testimony of record in support of the charges of the complaint and the inability of the examiner to extend any significant measure of acceptance or credence to the evidence produced by respondents in opposition to such affirmative proof.

Alexander at this point invites his television audience into "my laboratory" for a demonstration of "the fastest possible way to relieve your arthritis." The "my laboratory" is not Alexander's laboratory at all but a theatrical staging simulating a laboratory, in a photographic studio, with the usual accompanying test tubes and racks, tubing, retorts, flasks, beakers, Bunsen burner, porcelain dishes, weight scales, separating funnel, recording smoke drum, reflux distilling apparatus, etc., as generally found in a medical lab-

oratory. During his talk and actions on demonstrating his method of emulsifying "cod-liver oil and pure orange juice," which method consists solely of pouring the two liquids back and forth from one glass to another, Alexander wears, for the occasion, a white coat or smock, and his "demonstration of the fastest possible way to relieve your arthritis" consisted solely of his mixing the juice and oil.

It is found, as a fact, that the use of a simulated laboratory, as here depicted, was for the sole purpose of surrounding Alexander with an aura of medical and scientific atmosphere to impress prospective purchasers of his book and promote its sale. As said by W. F. Lynch in his work, "The Image Industries:

American civilization is suffering from a plague of idea men of very minor competence who go around wearing the vestments of professionalism.

The laboratory demonstration was interrupted by a call from Alexander's "conference room" where some "guests" had just arrived with some "special questions which they would like to ask about arthritis." The "guests" appearing on his panel were especially selected on the basis of commendatory letters they had written to Alexander concerning this book. Whereupon the moderator announces:

Ladies and gentlemen, you have been listening to Mr. Alexander expound his theories about how to combat arthritis. Now you are going to have the living proof that these theories are sound, are effective and are practical.³⁹

Samples of the testimonials given by panel members:

I have had arthritis off and on the greater part of my life. But, about three and a half years ago, it settled very badly in my neck, and shoulders, and arms * * * and then went all over my body.

Q. Well, after reading the book, if you followed the instructions, how soon did you notice an improvement?

A. I noticed improvement in the first few weeks, and after about six weeks my pain was entirely gone. And after about a year, I was completely well.

* * * My young son, at the age of seventeen, was stricken with rheumatic fever and arthritic pain. And after going on the diet, and taking cod-liver oil, he became well.

Q. And was the improvement permanent?

A. Yes it was.

This witness, (Mrs. Russell Watson), was tendered as a witness by respondents in Galesburg, Ill., and her examination on the stand failed to disclose any diagnosis that she suffered from arthritis or a

³⁹ The moderator, Conrad Nagel, was hired by respondents because he is a prominent member of his profession and for such appeal as his presence could engender with his public, and the words uttered by him are chargeable to the respondents. The "living proof" offered, and the announcer's asseverations that Alexander's "theories are sound, are effective and are practical" can have no other meaning, within the ambit of the issues of this case, than that the book will serve as an instrument in the cure of arthritis, all of which statements are successfully refuted by the medical evidence of record.

related disease, and the testimony of her physician who made the examination, showed she was suffering from a "minimal" case of arthritis. Also the reports of a Dr. Newman and Dr. January, filed herein as Respondents' Exhibits Nos. 16 A-B-C and D, failed to disclose any finding of "arthritis." In fine, the lady was afflicted with many and divers pains, none of which, according to any proof adduced by respondents, would classify her as an arthritic "who became well" as the result of the dictates of the book and as she represented to the public on her television appearance.

Another panel member, Mr. Oswald Jacoby, "the world renowned authority on bridge," testifying on behalf of the book's efficacy in the treatment of his wife for arthritis said:

I was lecturing in Memphis at the same time as Mr. Alexander. We met. We exchanged books. I read his book, liked it * * * brought it home to Mrs. Jacoby.

Q. And did it help her?

A. Well, all I can say, Mr. Alexander, is that if my bridge book does as much for your bridge as your arthritis book did for Mrs. Jacoby's arthritis, then I want you as my partner in my next bridge tournament.

Here we have a witness of undetermined competency in the field of medicine testifying *to the public* as to the therapeutic value of the book in its use by another person, [his wife], in the most glowing terms, a fair interpretation of which can only mean that "the master of bridge" salutes "the master of arthritis." This in the total absence of any evidence to the effect that Mrs. Jacoby was in fact a victim of arthritis. Supplementing which Mrs. Jacoby testified *to the public*:

I had suffered from arthritis for eight years * * * in the cervical and lumbar region of my spine. Several months back, it traveled to the base of my spine. At that time my husband brought home Mr. Alexander's book from Memphis. I read the book, and followed his dietary regimen rigidly. And within two weeks, all pain had left the base of my spine.

Q. Did an over-all improvement continue?"

A. Definitely * * * I couldn't play [tennis] for years * * * but I started again some months back, and I play just as well and enjoy it tremendously now.

Neither of the two foregoing panelists were produced by respondents to testify herein.

Another panel witness:

I found it [arthritis] a very definite handicap. In fact, my fingers were so bad I could hardly pound the keys of a typewriter * * * I could hardly hold a pencil. * * * The doctors diagnosed it as rheumatoid arthritis. And for many years I had to use a cane. I started the next day [to use the dietary plan of Alexander's book] and within two weeks the pain left me. I felt very much improved * * * and from then on the progress was steady.

The final panelist said:

* * * I had arthritis in the terminal joints of my fingers [and] considerable stiffness, through the hips, upon rising.

She heard of the book and bought a copy:

And when the book came I was delighted with it. I found it to be everything that the title, ["Arthritis and Common Sense"], says. Simple common sense, written in a language anyone can understand. I followed the directions given in the book faithfully and within a month's time the swelling and the pain had gone from my joints. And now the daily, pain-free use of my hands is a constant reminder of this grand little book and what it did for me.

It is found that the statements of all of the foregoing interviewed were direct representations of cures of arthritis; that all were made at the instance, expense and procurement of the respondents and are just as binding as though the words had been uttered by Alexander himself, such having been made upon his prompting and in his presence.

In conclusion Alexander said:

* * * The people you have just met are typical case histories. Thousands of arthritics, just like them, are using my dietary plan. You have seen and heard proof. Do as they did. Read my book and gain relief from arthritis. I have devoted fifteen years of my life to making these discoveries. My *one* goal has been to help people with arthritis. * * * May this book serve you well * * * and bring you better health.

Alexander is then shown exhibiting a copy of his book.

From the foregoing Alexander would have the public believe that his *one* goal was to serve the altruistic purpose of helping arthritics and that the vast profit accruing to him from sales of the book was merely incidental—a representation this examiner is unwilling and unable to accept, having listened to, scrutinized, analyzed and weighed all of the evidence and testimony herein, as well also the actions and demeanors of all witnesses.

No analysis of the audio portion of a television film, (being Cx. No. 58, A, B and C, and Cx. 59 a transcript thereof), will be undertaken as such would be much along the line of the foregoing and unduly prolong the length of this decision, if in fact too much has not already been said. However, inasmuch as the charges of the complaint are directed solely at the advertising matter, and in view of the attempted defense of the First Amendment to the Constitution, claimed to grant immunity to the book as well as the advertising matter referring to the book, it has been deemed important to "lay on the line," so to speak, all matters pertaining to advertising in order to demonstrate the true issue in the matter and to negative the defense of attempted censorship of the book by this action.

The Expert Medical Testimony in Support of the Complaint

It is found, as a fact, that, despite the use of expert medical testimony adduced by both sides, that produced in support of the charges of the complaint is so preponderant as to leave with this finder of the facts an abiding and unquestioned conviction that there exists herein no significant divergence of expert testimony which would give rise to the necessity of a minute analysis of all such testimony, *pro* and *con*, and an exploration of any divergencies, in order to justify the acceptance or selection of one school of scientific opinion over another. In determining this as a fact, this examiner recites that he has presided at every hearing wherein testimony was received; has listened attentively and painstakingly to all testimony; has carefully observed and evaluated all witnesses and their testimony and is aware of the "substantial evidence" rule to the effect that an order must be based upon the "entire record" which, perforce, includes testimony and evidence *contra* that introduced in support of the complaint.⁴⁰

Notwithstanding all of the foregoing, it is felt incumbent to give a general outline of the pertinent testimony upon which are based the requisite findings of fact. In the following resumé of such testimony, (and because of the indicated absence of significant and compelling reasons so to do by reason of any cogent or convincing evidence invalidating the great body of affirmative testimony and evidence), no attempt will be made to set forth in minute detail the bases for each and every finding, in other words, to attempt to justify, by a careful analysis of all testimony, every fact found or statement made.⁴¹

In this connection reference is had to the language of the court.⁴²

Carter's arguments * * * emphasizes, and to a marked degree appears to be predicated upon, the assumption that the Commission's final administrative findings of ultimate probative facts in this case are tainted and should and must be rejected on this review as invalid because *portions*, (or possibly *all*), of the actual testimony of some of the Commission's witnesses was, (to quote Carter), "unreported in its findings," that is to say, such testimony was not set out verbatim in the Commission's findings of fact. If it be Carter's theory that in order to be valid and be tolerated in this Court the Commission's findings of fact should repeat part, or all, of such testimony, we must and do reject such a theory as lacking validity under established practice in our system of law. And it should be added that our attention has not been drawn to any responsible authority which gives sanction to such a theory concerning the fact

⁴⁰ *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, et seq.

⁴¹ For excellent resúmes of the scientific testimony in support of, and in opposition to, the charges of the complaint, reference is had to the Proposed Findings of Fact submitted by counsel on both sides and which are of record in the formal proceedings.

⁴² *Carter Products, Inc. v. F.T.C.* #15373 (June 16, 1959) U.S.C.A. 9th Cir.

finding functions of an administrative tribunal like the Commission. (The italic is by the Court.)

A witness, Dr. William D. Robinson, testified at the instance of the Commission that he is now a professor of internal medicine at the University of Michigan and has occupied that position since the year 1952; was in charge of the Rackham Arthritis Research Unit of the University of Michigan, 1944-1953 and has since been a consultant to said Rackham Arthritis Research Unit, that he is responsible for the teaching and residency training program in the Medical Outpatient Department, University of Michigan Medical School, having been such from 1953 to date. The witness, as an instructor, has been primarily responsible for the instruction of medical students in diagnosing and treating diseases in human beings due to nutritional deficiencies in the field of the rheumatic diseases.⁴³

He testified that arthritis is a general term for the disease affecting the joints. There are many types, the principal ones being infectious arthritis, the arthritis of rheumatic fever, osteo-arthritis, rheumatoid arthritis, gout and a large number of subdivisions of arthritis. Rheumatism is a more general term which groups together conditions producing a common symptom pattern, and under this heading would be a large group designated as arthritis in which the joints would be involved. The other large group is non-articular rheumatism, in which the symptoms may be much the same, but where the difficulty is not in the joint proper, but in the tissues around the joint, such as the bursa, the tendon, the muscles, and sometimes the nerves, and such would include fibrositis, muscular rheumatism, lumbago, and sciatica, as well also psychogenic rheumatism.

Infectious arthritis is caused by specific known infectious agents of a great variety of organisms and at the present time the tuberculosis arthritis is the largest problem in this area. The arthritis of rheumatic fever is the more acute manifestation and does not involve the chronic type of arthritis. Rheumatoid arthritis is a chronic inflammatory disease of the joints with the development of granulation tissue which may lead to joint destruction. Osteo-arthritis is a disease where the cartilage is primarily affected and follows quite a different pattern of behaviour than does rheumatoid arthritis. Gout is the only form of arthritis in which a definite

⁴³ The educational qualifications and professional background of this witness appear on pages 843 to 866 of the transcript, supplemented by his *curriculum vitae* appearing as Cx. 45 A, B and C, as well also his bibliography appearing as Cx. 46, the latter listing some fifty of his writings, many of such dealing with nutritional deficiency diseases as they pertain to the diseases of arthritis and rheumatism, and the symptoms thereof.

abnormality of body chemistry has been identified and is characterized by recurrent acute phases which may send the patient into a chronic gouty arthritic stage.

Eighty-five percent of all patients with arthritis fall into three general groups: (1) osteo-arthritis, (2) nonarticular rheumatism, and (3) rheumatoid arthritis. This witness has had extensive experience in the diagnosis and treatment of all of these classes of arthritics, as well as others not specifically named, and is consulted by other physicians concerning the diagnosis and treatment of arthritic patients.

Rheumatoid arthritis has an extremely variable course, impossible to predict in any given individual; that in a group of patients so afflicted approximately a third to a half will go into remission within the first two or three years of the disease, but unfortunately nearly half of those will subsequently have relapses. Others in this group will follow a course of variations in degree of activity and, after a period of several years, the disease will become relatively quiet and they will be left with some degree of deformity but able to function pretty well. There is another group in the neighborhood of 20 or 25 percent in whom the disease pursues a relentless course, leading to permanent joint damage and destruction and a considerable degree of incapacitation. It is absolutely necessary that a correct diagnosis be made by a competent physician after which the treatment required utilizes all of the resources of internal medicine that can be brought to bear to improve the general health of the patient, including additional use of certain specific measures carefully adapted to the needs of the individual patient, and perhaps the utilization of the principles of orthopedic surgery for the preservation of function and prevention of deformity; treatment likewise utilizes the methods of physical medicine to preserve joint function and the use of muscles. It is quite impossible to generalize about the treatment of rheumatoid arthritis as such has to be adapted to the stage of the disease found to exist at the time and having due consideration to the needs of the individual patient. While rheumatoid arthritis is a disease most common in the adult age it may occur in any age, in young children or in elderly people. Osteo-arthritis is more common in older people and tends to affect the larger joints of the body causing discomfort and a stiffness rather than joint swelling. The symptomatology of this type varies considerably and is puzzling in that the individual patient may have significant symptoms for a period of time and then be free of symptoms and yet, objectively and by X-ray, the appearance of the joints is exactly the same.

In the various types of nonarticular rheumatism, (among the more common being bursitis, such as bursitis of the shoulder), such are generally self-limited diseases and are effectively treated by various measures to relieve acute pain, a very important step in the treatment being the use of various physical measures to maintain or to restore motion in the joints. These measures include the use of heat, massage and exercises coming under the heading of physical medicine.

Among the other types of nonarticular rheumatism, the common muscular rheumatism is sometimes termed as fibrositis and is characterized by pain, stiffness and tenderness. It is not associated with any demonstrable pathology. This is usually a self-limited condition and various types subside spontaneously from periods of approximately three weeks to three to six months. The treatments are directed primarily to the relief of pain and, again, the use of physical medicine measures are indicated.

At the University of Michigan Hospital, where the witness is stationed, the arthritis clinic treats approximately 2,500 patients per year.

The witness testified that a layman cannot tell whether he has arthritis or rheumatism and that, in addition to the symptoms, the diagnosis of arthritis, and of the particular type of arthritis, requires a scientific evaluation of many other items in the history of the patient. It requires a complete physical examination based on a knowledge of the range of normal variation and joint structure and the muscle and the musculo-skeletal structures which may require X-ray examination and, to secure a more certain finding and differentiation, will often require special laboratory tests. The witness emphasizes that arthritis is not "just one condition" but is a complex of many.

Concerning rheumatoid arthritis, it is his opinion that the same is not caused by any deficiency of any vitamin or combination of vitamins in the diet, nor by a deficiency of any oil or fat or combination of oils or fats in the diet; nor by a lack of lubrication or lack of oil in the body or its joints, the fact being that the joints of the body are not lubricated by oil, such fluid existing in the joints of the body being denoted as synovial fluid, in volume a half teaspoonful at most existing in each joint. This fluid contains no oil and is the product of filtration of the liquid part of the blood and contains the components of the liquid part of the blood, plus hyaluronic acid. Chemically speaking, it is a member of the class of muco-polysaccharides, and its basic structure consists of n-acetyl glucosamine and glucuronic acid in equal molecular proportions.

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These two substances are derivations of glucose, one of the simple sugars. In Rheumatoid arthritis the amount of synovial fluid is increased and the joint swells because of this increase. Its primary function is believed to be that of lubrication and is dependent on the viscosity of the joint fluid; that the viscosity is dependent in turn on the degree of polymerization of this hyaluronic acid component of the joint fluid. Rheumatoid arthritis is not caused by any type of improper diet.

In the opinion of the witness osteo-arthritis is not caused by a deficiency of any vitamin or combination of vitamins in the diet, nor by a deficiency of any oils or fats, or combinations of oils or fats, in the diet, nor by lack of lubrication, nor the lack of oil, in the body or its joints, nor is it caused by any dietary or nutritional deficiency.

Rheumatic fever, in his opinion, is not caused by deficiency of any vitamin or combination of vitamins, nor by deficiency of oil or fat, or any combination of oils or fats, in the diet, nor is it due to a lack of lubrication, nor lack of oils in the body or joints, nor by any kind of dietary or nutritional deficiency or improper diet.

The same is true, in the opinion of the witness, concerning gout and every other kind of arthritis and rheumatism, and related conditions, including bursitis, myositis, fibrositis and lumbago.

It is here pointed out that the foregoing opinions are directly contrary to the theories and opinions expressed by Alexander in his book, all of which theories form the bases for the false and misleading representations made by Alexander and the truth of which are challenged in this proceeding. The various expressions of opinion above given were elicited by questions propounded to the witness, based upon the subject matter appearing in the book, and the opinions stated by this witness are not controverted in this proceeding by any testimony or evidence which, in the opinion of this examiner, is of sufficient weight to countervail or adversely affect the validity and truth of the testimony of the witness, nor did the extensive cross-examination of this witness, as disclosed by the record, all of which has been carefully analyzed by this examiner, serve to weaken in any manner the opinions expressed by the witness.

Relative to arresting the progress or correcting the underlying causes of, or preventing, any kind of arthritis, rheumatism, rheumatic fever and related conditions, he testified that no vitamin or combination of vitamins will arrest the progress of any kind of arthritis, rheumatism or related conditions, or rheumatic fever, and that no vitamin or combination of vitamins will correct the under-

lying cause of any kind of arthritis, rheumatism or related conditions, or rheumatic fever; nor is there any vitamin or combination of vitamins that will prevent a person from developing arthritis or rheumatism or related conditions, or rheumatic fever and that, in his opinion, there is no vitamin or combination of vitamins that will cure any kind of arthritis, rheumatism or related conditions, or rheumatic fever. And further, there is no oil or fat, or combination of oils or fats, that will arrest the progress of, correct the underlying cause of, or cure, any kind of arthritis, rheumatism or related conditions, or rheumatic fever.

He further testified that there is no dietary regimen that will arrest the progress of any kind of arthritis, rheumatism or related conditions, or rheumatic fever, but that the use of dietary measures adapted to the particular individual, varying to some extent with the disease, is one aspect of the treatment of several of these disorders, but that the use of diet in this connection would have to be predicated upon the individual case, by one competent to diagnose and treat a particular case in the then condition or state of the disease, nor will any dietary regimen, as such, correct the underlying cause of, prevent the development of, or cure any kind of arthritis, rheumatism or related conditions, or rheumatic fever, the assertions of Alexander appearing in said book to the contrary notwithstanding.

In the opinion of the witness there is no vitamin or combination of vitamins that constitute an adequate, effective or reliable treatment for the symptoms of any kind of arthritis, rheumatism or related conditions, or rheumatic fever, although in some instances, where certain individuals are afflicted with a complicating vitamin deficiency, the administration of vitamins would have a definite effect on these accompanying manifestations *only*, but would have no effect on the primary or underlying causes producing the arthritic or rheumatic disease.

Concerning the aches and pains arising from the underlying causes it was the opinion of the witness that no vitamin or combination of vitamins will afford any relief from such aches, pains, stiffness, swelling or other discomfort or manifestations brought about by any kind of arthritis, rheumatism or related conditions, or rheumatic fever, nor is there any oil or fat, or combination thereof, which will afford any relief from the aches, pains, stiffness, swelling or other discomforts of any kind of arthritis, rheumatism or related conditions, or rheumatic fever. It is pointed out, and so here found, that the foregoing opinions are at direct variance with those of the author as expressed in his book.

Concerning dietary regimen, as laid down and advocated in the book, the witness is of opinion that none such has a direct effect on the symptoms and manifestations of the arthritic or rheumatic process itself. However, in certain instances dietary management may be needed to control some of the manifestations related to weight loss in the patient who has rheumatoid arthritis and has lost a great deal of weight or, in a patient with osteo-arthritis who is considerably overweight, but this is a consideration which would apply to the individual case under expert supervision and is more of an auxillary tool in the hands of the physician than a cure-all because there is no fixed dietary regimen whatsoever for any type of arthritis or rheumatism.

Contrary to the assertions in the book, and the utterances of Alexander in his advertising endeavors, advocating the use of cod-liver oil for its soluble vitamin content in order to lubricate the joints, the witness testified that acceptance of oil by the body is not dependent on whether or not it contains an oil soluble vitamin, nor is the manner in which it is accepted by the body dependent thereon; that the vitamins found in cod-liver oil are "A" and "D"; that there is no deficiency of vitamins "A" or "D" that gives rise to arthritis, rheumatism or related conditions, or rheumatic fever. A deficiency of Vitamin A is characterized by a definite type of skin eruption with a development of additional layers of thickening of the skin and of the other covering structures of the body; that a deficiency of Vitamin D gives rise to rickets and a disturbance of bone structure and growth, and in this connection the witness does not consider the diseases of scurvy or rickets as forms of arthritis or rheumatism.

Contrary to the statements contained in the book, the repetition of which, in advertising the book, forms the bases for the charges of the complaint, the witness stated that cod-liver oil is not absorbed from the gastro-intestinal tract as cod-liver oil and that the shaking or stirring of cod-liver oil with orange juice does not form an emulsion; that the theories of Alexander of mixing cod-liver oil with fresh orange juice to prevent the digestion of the cod-liver oil in the gastro-intestinal tract, is without foundation in fact, nor does such mixing enable the cod-liver oil to go directly to the joints. That the taking of cod-liver oil will not arrest the progress of, correct the underlying causes of, or cure arthritis, rheumatism or related conditions, or rheumatic fever and that cod-liver oil, as advocated by Alexander, is not an adequate, effective, or reliable treatment for the symptoms and manifestations of any kind of arthritis, rheumatism or related conditions, or rheumatic fever, nor will the same afford relief from the aches, pains, stiffness, swelling or other manifestations of any of the named diseases.

Further, contrary to the statements contained in the book, the witness was of opinion that drinking water with one's meals will not result in the drying out of the joints, muscles or other parts of the body, nor will the same result in development of any kind of arthritis, rheumatism or related conditions, or rheumatic fever; that the order and sequence of eating foods has no bearing on the development of any kind of arthritis or rheumatism and this statement is not his offhand opinion but that the subject of the sequence of eating foods has been under study for the past sixty years and it has been found that there is no scientific basis to support such a premise; that the timing and spacing of eating solid foods and drinking liquids has no bearing on the development of any kind of arthritis or rheumatism nor has the temperature of the food eaten any bearing on the same and this statement is equally true relative to the drinking of fruit juice, carbonated and alcoholic beverages, soft drinks, tea and coffee with meals or between meals, all of the foregoing being directly contrary to the representations made in the book.

Contrary to one of the major assertions of the causes of arthritis, as contained in the book, in the opinion of the witness: "One cannot eat his way into arthritis nor can he eat his way out of arthritis"; that the consumption of sugar in the diet has no effect on the development of any kinds of arthritis or rheumatism, nor does it have any deleterious effect by way of deterioration of the intestinal walls; that sugar in the diet does not attack and destroy the fats in any part of the body; and further, that none of these or any combination of the foregoing, such as drinking water with meals, the temperature of food eaten, timing and spacing thereof, or the like, have any bearing on, or relationship to, development of any kind of arthritis, rheumatism or related conditions, or of rheumatic fever.

The author, Alexander, in the book, and during the course of certain of his sales talks and representations in furtherance of sale of the book, has set forth certain indicia of the states of arthritis and rheumatism, among such being the existence in the individual of the lack of luster of the skin, brittle fingernails, dry scalp, etc. These various manifestations were suggested by Alexander in the book in order to enable the reader thereof to recognize a state of arthritis or rheumatism and a series of questions were propounded to the witness, specifically based upon the enumerated indicia, the responses thereto indicating the following opinion of the witness: The lack of luster of the skin or the dryness thereof has no bearing upon the relationship to the development of any kind of arthritis, rheumatism, or related conditions, or of rheumatic fever, and that the same is true concerning ridged or brittle fingernails, dry scalp, dry hair, persistent dandruff, dry, scaly ear canals, little or no ear wax or the

total absence of ear wax, dry, scaly or whitish looking skin over the knees, ankles and elbows or dryness elsewhere on the body, nor are any or all of such conditions, where they exist, symptomatic of a condition of arthritis or rheumatism. The same is likewise true concerning crust in the corner of the eyes, itching of nose, itching of the body, or pallor; that while pallor may be one of the findings in certain types of arthritis and rheumatism such is due to a complicating anemia which may be present in some types of arthritis and yet, by itself, is not diagnostic of any kind of arthritis, rheumatism or rheumatic fever.

The witness has read the book, "Arthritis and Common Sense," and it is his considered opinion that the dietary regimen therein set forth, supplemented by the taking of one tablespoonful of cod-liver oil mixed with two tablespoonfuls of orange juice, does not constitute an adequate, effective or reliable treatment for any kind of arthritis, rheumatism or related condition, or rheumatic fever, nor for arresting the progress of, correcting the underlying cause of, or curing any kind of arthritis, rheumatism, or related conditions, or of rheumatic fever; nor does it constitute an adequate, effective or reliable relief for the symptoms and manifestations of any kind of, or afford relief from, the aches and pains, stiffness, swelling or other discomforts of any kind of arthritis, rheumatism, or related conditions, or of rheumatic fever; nor will it afford adequate relief from the aches, pains, swelling, stiffness or other discomforts of any kind of arthritis, rheumatism, or related conditions, nor afford effective relief from the aches, pains, stiffness, swelling or other discomforts of arthritis, rheumatism, or related conditions, or the reliable relief therefrom; that such dietary regimen and cod-liver oil, contrary to the representations in said book, will not lubricate the joints, nor remove friction, nor stimulate the adrenal glands to produce more cortisone; that one complaining of a pain in a joint only could not conclude therefrom that the joint was afflicted with arthritis as this, standing alone, is insufficient for making a diagnosis of arthritis because the condition could be due to many other things; that a patient following the dietary regimen with cod-liver oil for a number of months, experienced a cessation of pain, he could not thereby assume that the pain disappeared because of the cod-liver oil and dietary regimen for the reason that such cessation may have come about by entirely natural physiological processes; that "low back stiffness" in and of itself would not be sufficient for diagnosing the condition to be due to arthritis.

The witness was very skeptical and disbelieving of any of the results which Alexander claimed to have arrived at by reason of his, Alexander's, so-called experiments, and particularly was this true of

Alexander's representations of the results obtained during his association with Dr. Giddings, which association has been hereinbefore reviewed. In this connection it is worthy of note that the opinion of this witness coincided with the testimony given by Dr. Giddings concerning the inconclusiveness and ineffectiveness of the tests made by Dr. Giddings and Alexander, which was to the effect that Giddings was not satisfied that any of such tests were of any significant moment to demonstrate the effectiveness of Alexander's theories and further that he, Giddings, refused to publish the results of those tests. In sum, this witness totally disregarded, as being without foundation in scientific fact, any of Alexander's claims favorable to the theories expressed by him in the book which could be arrived at as a result of any of Alexander's associations with Dr. Giddings. It is also here pointed out that Alexander's association with Dr. Giddings is the only claim that Alexander has ever made of association with any competent medical witness for the evaluation of his theories and, specifically, the only claim which Alexander has ever made of pursuing tests in conjunction with any person medically or scientifically competent to set up the necessary protocol, conduct the tests and to evaluate the same, but on the contrary, according to Alexander's own testimony, he has at all times been unable to procure a clinical evaluation of his theories all as hereinbefore set forth. In this connection, however, the examiner is mindful of the testimony of Dr. Edward T. Johnson, a physician who testified on behalf of the respondents as to certain tests conducted by him for the express purpose of appearing as a witness in this case and testifying on behalf of the respondents. At the appropriate point hereinafter, under consideration of the respondents' defense, the testimony of Dr. Johnson and the results claimed to have been achieved by him in his experiments and studies, will be the subject of separate comments and findings.

The next medical expert appearing at the instance of the Commission in support of the charges of the complaint was Dr. Marian W. Ropes, of Boston, Mass., a practicing physician since 1931, who limits her practice to internal medicine with emphasis on the rheumatic diseases.

The witness graduated, *cum laude*, from the Johns Hopkins School of Medicine with the degree of M.D., and is now, in addition to her general practice, an Assistant Clinical Professor in Medicine at the Harvard Medical School, having occupied that position since the year 1947.

The examiner was very much impressed by the professional background of this witness, not only as given orally on the stand but as

reflected in her *curriculum vitae* and bibliography,⁴⁴ a reading of all of which demonstrates that the witness is eminently qualified to speak with authority on those matters concerning which she testified. The examiner was likewise impressed with the professional and utterly detached manner in which she gave her testimony, her cooperation and willingness to make clear to the mind of the layman the various difficult subjects, and her evident unbiased attitude. Irrespective of the details concerning the witness contained in the exhibits as footnoted, it is felt appropriate that certain comments thereon be made at this point in this decision in order that the weight attached to this testimony by the examiner may be appreciated by any reviewing authority.

Practically from the time of her qualification as a physician, and down to the present, it is apparent that the witness has been peculiarly and actively engaged in a pursuit of the various subjects injected into the issues in this case, and in order to demonstrate the almost cyclopedic familiarity of this witness with the particular subjects, it is deemed proper to set forth the titles of various writings and papers which she has either authored, or co-authored with others, as contributions to medical science, a reading of which titles will indicate the scope of her experiments and studies: "The Origin and Nature of Synovial Fluid in Health and Disease"; "Pathological Joint Effusions"; "Synovial Fluid in Joint Diseases"; "The Physiology of Articular Structures"; "The Origin and Nature of Normal Human Synovial Fluid"; "The Diagnostic Value of Synovial Fluid Examination"; "The Treatment of Infectious Arthritis with Sulfonamide Compounds"; "Atypical Forms of Rheumatoid Arthritis"; "Differential Diagnosis of Rheumatoid Arthritis"; "Rheumatoid Arthritis: It's Varied Clinical Manifestation"; "The Natural Course of Rheumatoid Arthritis and the Changes Induced by ACTH"; "Vitamin 'D' Intoxication"; "Proceedings of the Seventh International Congress on Rheumatic Diseases"; "Advances in the Treatment of Chronic Rheumatic Diseases"; "Proposed Criteria for the Diagnosis of Rheumatoid Arthritis, Annals of the Rheumatic Diseases", and many other works of a related nature.

Having been extensively engaged in research work concerning arthritis, rheumatism, and conditions related thereto, as well also with nutritional or dietary problems connected therewith, she has likewise engaged in extensive research concerning synovial fluid which she defines to be:

⁴⁴ The *curriculum vitae* of this witness appears herein as Cx. Nos. 52 A and B, and her bibliography as Cx. No. 53 A, B, C, D, E, and F. All testimony concerning her present professional activities and background commences at page 1344 of the transcript.

The fluid contained in the joint spaces in the body. We think this is comparable to the tissue fluid in other tissues. It represents the tissue fluid of the joints.

In describing her work in connection with synovial fluid she said:

We have tried to study joint fluid from the physiological point of view in an attempt to learn more about nutrition and metabolism in joints.

This study included possible therapeutic efficacy of vitamins "D" and "C" for arthritis and rheumatism, as well also various chemicals, minerals and drugs, concerning which researches she has authored approximately twenty articles. She has observed and treated patients with various kinds of arthritis and rheumatic ailments, including rheumatoid arthritis, osteo-arthritis, gout, bursitis, myositis, fibrositis, lumbago, neuritis and rheumatic fever. In her treatment of arthritis and rheumatic patients she has at times used Vitamin "D" in dosages of from 1,000 units up to 300,000 units, which latter would be comparable to 240 times as much Vitamin "D" as one tablespoon of cod-liver oil as advocated by the book; she has also used Vitamin "C" in the treatment of such patients in amounts from 100 milligrams up to 12 grams a day, which latter is equivalent to the dosage of that vitamin as contained in from 6 to 800 glasses of orange juice, and she has had observation of patients so afflicted taking cod-liver oil in dosages from 1 to 4 tablespoonfuls a day and also orange juice in the amount of 6 ounces per day, so that her observations in this field cover the administration of minute as well as massive doses of the vitamins named because of which experiences she feels qualified to speak with authority on this subject.

It is her opinion that no kind or type of arthritis or rheumatism is caused by a deficiency of any vitamin or combination of vitamins in the diet, nor by a deficiency of oil or fat, or combination of oils or fats in the diet; nor by a lack of lubrication or lack of oil in the body or its joints; that the joints of the body are not lubricated by oil, which opinion is based on her study of over 3,000 of the synovial fluids from humans, including those from normal, as well as from arthritic joints. She has made critical examinations of synovial fluid from degenerative joint diseases; rheumatoid arthritis; traumatic arthritis; infectious arthritis; gouty arthritis; villo-nodular synovitis; rheumatic fever; neuro-arthropathy; hypertrophic pulmonary osteo-arthropathy and from such miscellaneous diseases as bursitis and others. It is her opinion that normal synovial fluid contains no oil or fat but that its lubricating properties depend on and proceed from the presence of hyaluronic acid combined with protein; that clearly there is no evidence of oil, either microscopic or macroscopic in normal joint fluid.

Based on her studies and experience she testified that there is no kind of arthritis or rheumatism that is caused by any kind of dietary or nutritional deficiency or improper diet; that there is no vitamin or combination of vitamins that will arrest the progress of any kind of arthritis, rheumatism, or related conditions, or correct the underlying causes of, or prevent the development of, or cure, any kind of arthritis, rheumatism, or related conditions, or rheumatic fever; that there is no oil or fat or combination of oils and fats, ingested in the diet, which will arrest the progress of, correct the underlying causes of, or prevent the development of, or cure any kind of arthritis, rheumatism, or related conditions, and likewise there is no vitamin or combination of vitamins which will afford any relief from the aches, pains, stiffness, swelling or any other discomforts of any kind of arthritis, rheumatism, or related conditions; that there is no basis for the theory, expressed by Alexander, that the acceptance of any oil by the body is dependent on whether or not the same contains oil soluble fats or vitamin content, nor is the manner in which the oil is accepted by the human body dependent on whether or not it contains an oil soluble vitamin.

Contrary to the theory advanced by Alexander in his book, the witness testified that she is familiar with the nutritional and therapeutic properties of cod-liver oil and orange juice; that the vitamins present in cod-liver oil are "A" and "D" and that a deficiency of Vitamin "A" in the diet does not give rise to any kind of arthritis, rheumatism, or related conditions, or rheumatic fever, but that such a deficiency of "A" in the diet gives rise to severe alterations in the skin and eye, consisting of thickening and a hyperkeratosis condition; that a deficiency of Vitamin "D" in the diet does not give rise to any kind of arthritis, rheumatism, or related conditions, or rheumatic fever, but does give rise "in childhood to rickets, which is an abnormality of bone development altering the joints particularly." Vitamin "D" does not lubricate the joints, nor is there any evidence that it stimulates the adrenal glands to produce more cortisone, and in her opinion, cod-liver oil does not stimulate the adrenal glands to produce more cortisone.

Having reference to the immediate foregoing, attention is invited to the fact that the specific testimony of this witness is directly confirmatory of the preceding witness in the functions and therapeutic qualities of the two vitamins, both of which witnesses are in direct conflict with Alexander in his book on the subject.

Also contrary to Alexander's theories, she stated that cod-liver oil, when ingested, is absorbed from the gastro-intestinal tract, is then passed on to the duodenum where it is split into fatty acids, during which process some of the fatty acids are saponified and the con-

stituent parts are then absorbed into the system; that cod-liver oil as such cannot bypass or avoid this digestive process whether taken on a full stomach or an empty stomach, and thus proceed directly to the affected joints resulting in "oiling" the same; that the shaking or stirring of a mixture of cod-liver oil and freshly squeezed and strained orange juice does not, in the true sense, form an emulsion, and that when the stirring or shaking is stopped there is a separation of the oils and fats and water into the basic products; that when such a mixture enters the stomach it is mixed with the other contents thereof and becomes indistinguishable therefrom; that such mixture does not and cannot prevent the digestion of cod-liver oil in the gastro-intestinal tract, nor does it enable the cod-liver oil to be absorbed intact from the gastrointestinal tract as cod-liver oil and go directly in this form to the joints; that this is likewise true concerning the digestion and absorption of oils and fats present in foods.

In further opposition to the theories expressed in the book, the witness is of the opinion that the drinking of water with one's meals will not dry out the joints, muscles, or other parts of the body nor result in the development of any kind of arthritis, rheumatism, or related conditions; that the sequence in which one eats one's food, and when, has no bearing on the development of any of these diseases, nor does any particular spacing of the eating of solid foods and the drinking of liquids affect these conditions; that the temperature of the food eaten has no relation whatever to any kind of arthritis, rheumatism, or related conditions, nor will the drinking of fruit juices, carbonated or alcoholic beverages, soft drinks, tea or coffee, with meals or between meals, have any bearing on the development of these diseases; that a person cannot "eat one's way into arthritis and eat one's way out of arthritis," nor is there any relationship, in the opinion of the witness, between the indicia or symptoms of ridged or brittle fingernails, dry scalp, dry hair, persistent dandruff, dry scaly ear canals, little ear wax or absence of ear wax, lack of skin luster, dry, scaly or whitish looking skin over the knees, ankles and elbows, and elsewhere on the body, which would connect any such symptoms or conditions to any kind of arthritis, rheumatism, or related conditions, nor are such indicative of incipient or advanced stages of arthritis or rheumatism; that there is no relationship between crusts in the corner of the eyes, itching of the nose, itching of the body, or lack of color, and the development of any kind of arthritis, rheumatism, or related diseases.

The witness has read the book, "Arthritis and Common Sense" and, basing her opinion on her scientific knowledge, training, research and experience in the field of arthritis and rheumatism, it was her opinion that the dietary regimen set forth in said book, which

includes the taking of one tablespoonful of cod-liver oil mixed with two tablespoonfuls of freshly squeezed and strained orange juice, taken daily on an empty stomach at least one or two hours before breakfast, etc., does not constitute an adequate, effective or reliable treatment for any kind of arthritis, rheumatism, or related conditions, nor will such correct the underlying causes of these, or any of these conditions. And furthermore, the same will not constitute an adequate, effective, or reliable treatment for the symptoms or manifestations of, or afford any relief from, the aches, pains and stiffness, swelling or other discomforts of any kind of arthritis, rheumatism, or related conditions, or of rheumatic fever; that such dietary regimen and its adjuncts, observed and taken under the conditions mentioned in said book, will not lubricate the joints or reduce the friction thereof in any person with any kind of arthritis, rheumatism, or related conditions, nor will the same stimulate the adrenal glands to produce more cortisone, and in connection therewith her experience with Vitamin "D" is that such will not accelerate the secretion of cortisone in any quantity, and that this statement is likewise true of the vitamins "C" and "A".

This witness, who testified subsequent to the appearance on the stand of the respondent, Dan Dale Alexander, testified that she had read pages 1 through 840 of the transcript, such covering, *inter alia*, the tests, experiments and research by Alexander with Dr. Giddings, as testified to by Alexander and that, based thereon, she would not conclude that arthritis is caused by a lack of lubrication:

Because I found no evidence of adequate experiments in any sense, or adequate tests in which there was any experimental plan which would furnish an adequate answer to this problem. For instance, there was no indication of any measurement of synovial fluid or viscosity, which would be essential to any measure of lubrication of joints.

and therefore she would reject the same. In the opinion of the witness the tests aforesaid, by Alexander and Giddings, failed to disclose any evidence which would lead to a valid conclusion that arthritis is caused by a lack of oil in the human system, nor would she conclude therefrom that arthritis is caused by an oil deficiency or by lack of Vitamin "D", this being due to the total inadequacy of any such tests or experiments so to evidence. She noted further that the aforesaid tests were totally inadequate to support the theory that the consuming of water with meals, the consuming of carbonated beverages with meals, drinking alcoholic beverages, coffee or tea with meals, and the like, or consuming an abundance of candy, would predispose to result in any kind of arthritis, rheumatism, or related conditions, for the reason that "no adequate sound evidence was presented on which such a conclusion could be based."

The witness was unable, from anything that she had read in the book or in the testimony of Alexander, as aforesaid, to believe or conclude that he had induced a state of arthritis in himself or that he could "eat his way into arthritis or eat his way out of arthritis," because there was no evidence of adequate criteria indicating the actual presence of arthritis nor any sufficient diagnosis that such a condition existed.

The witness, by her testimony generally, gave as her opinion that it was impossible to prescribe on any general or mass basis, in the manner attempted by the book, for the treatment of the various diseases in the field here under consideration, but that, on the contrary, each case should be individually considered; it is likewise true that no informed scientific or medical opinion may be had, on a mass basis, concerning the efficacy of the administration of any drug, oil, vitamin or regimen of diet, but in order to arrive at any informed opinion there must be first a complete physical examination of the patient, and history obtained; necessary laboratory examinations where indicated, based upon appraisal of which must be established an adequate control series and repeated follow-up throughout the course of treatment; that after this has been completed subsequent additional and adequate examinations and laboratory tests must be made in order to arrive at an evaluation of the treatment administered and under consideration.

Having to do with the subject of those persons who had read the book and claimed a cure therefrom: The witness was disposed to place the sufferers in the category of psychogenic arthritics who, upon receiving a placebo at the hands of a physician notes an entire remission of pain and believes himself to be cured. In her opinion the reading of this book may act upon some individuals much in the same manner as a placebo and she was frank to say that the medical profession, insofar as she is aware, has no explanation to offer in this connection but she was positive in her statements that, despite the presumed recovery on the part of the patient, neither the book nor the placebo, nor the book acting as a placebo, as the case might be, had no physiological effect whatsoever upon the underlying causes, or the cure or the alleviation of pain, swelling, etc., of arthritis or rheumatism, or any of the related diseases; that the witness has attempted, in her researches down through the years, to arrive at some percentage of this type of victim of arthritis, who may be characterized or classified as of psychogenic origin, but without success. However, she believes the percentage to be very small in relation to the great number of sufferers; that this psychogenic feature or factor is not peculiar to sufferers from these diseases but, on the contrary, plays a significant role in all the other categories of diseases.

Another medical witness appearing at the instance of the Commission, Dr. L. Maxwell Lockie, of Buffalo, New York, testified in substantial accord with many of the opinions expressed by Drs. Robinson and Ropes. The witness has been engaged in the practice of medicine since 1932 and is Chief of the Arthritis Clinic of the Buffalo, (New York), General Hospital and has, throughout his active practice, limited such to the study and treatment of patients with arthritic and rheumatic diseases.⁴⁵ He has seen approximately 18,000 patients with arthritis, rheumatism, or related conditions, since the beginning of his practice and has approximately 1,500 patients with arthritis on his list or in the index at the clinic which he heads; that he has had occasion to treat approximately one hundred cases of these ailments with vitamins "D" and "C" and has found such treatment to be of no therapeutic value.

It was his opinion that a layman cannot determine for himself whether or not he has arthritis as that is peculiarly the province of a doctor; that he knows of no kind of arthritis or rheumatism which is caused by deficiency of any vitamin or combination of vitamins in the diet, nor by deficiency of any oil or fat, or combination of oils or fats, in the diet or by lack of lubrication or lack of oil in the body or in its joints. It was his opinion that the joints of the body are not lubricated by oils but that there is a certain amount of synovial fluid present in all normal joints, and in most arthritis, particularly the rheumatoid type, there is a delinquent amount of synovial fluid; that synovial fluid does not contain any oil. There is no vitamin or combination of vitamins which will arrest the progress of, correct the underlying causes of, or prevent or cure, any kind of arthritis, rheumatism, or related conditions, and that the same is true with regard to any dietary regimen, or of any oil or fat or combination thereof. That there is no diet regimen, or vitamins, or oil, or any combination thereof, which will afford any relief from the aches or pains, stiffness, swelling or other discomforts attendant on these diseases, insofar as he is apprised.

The witness expressed familiarity with the nutritional and therapeutic properties of cod-liver oil and orange juice and has also studied extensively the effects of diet upon these diseases. In the light of this background he has read the book, "Arthritis and Common Sense," several times and categorically makes the following statement based upon his experience and training: That he does not consider the dietary regimen set forth in the book, including the taking of one tablespoonful of cod-liver oil mixed with orange juice,

⁴⁵ The qualifications of this witness and his professional and educational background, appear in the testimony at pages 1240-1252, supplemented by his *curriculum vitae* and list of publications, being Cx. No. 67 A and B.

etc., as set forth, under all of the conditions prescribed in the book, constitute an adequate, effective or reliable treatment for any kind of arthritis, rheumatism, or related conditions; that it is not an effective, adequate or reliable means of arresting the progress of, or correcting the underlying causes of, or curing, any of said diseases; nor will the same afford relief from the aches, pains, stiffness, swelling or other discomforts of these conditions; nor will the same lubricate the joints or reduce friction, or stimulate the adrenal glands to produce more cortisone.

This witness had read the testimony of respondent Alexander concerning his tests and research as appearing in the record on pages 1 to 781 concerning which he stated:

In reading the transcript I was unable to make out any type of research, which we identify as scientific research, carried out by him under any such circumstances. I know he did some tests but I cannot see how any of the tests which he described could have any bearing on any phase of arthritis.

The Inadequacy of Educational or Empirical Qualifications of Dan Dale Alexander to Author the Book, "Arthritis and Common Sense."

In this matter we have the unusual situation of an author being charged with false and misleading advertising of and concerning his book, coupled with a defense of freedom of speech under the First Amendment. In order to explore the charges of misrepresentation it becomes necessary, among other things, to examine the subject matter of the bases of the charges, in this case the book, and, in order to decide the issues, embodies the requirement to inquire into the capability of the authority to create the work which he has represented, (by public statements directly leading to sales of the book), to be capable of accomplishing certain specific therapeutic results.

The pursuit of this topic is not with the purpose to denigrate or gratuitously challenge the educational qualifications of Alexander or his basic right to express his opinions, as set forth in the book, be they good or bad, but rather to demonstrate by the facts of record, that the matters set forth in the book, and the theories therein expounded, have no basis in scientific fact and further, that the theories advanced by the book have been formulated by the author within the framework of total ignorance of his subject matter, this finding being based upon the competent medical testimony of record, and hence are untrue.

Throughout these proceedings this examiner has been intrigued and beguiled by the impressive lack of medical or other training or education which would fit Alexander to write a book on such a recondite subject as arthritis and rheumatism, and to come up with

all the *ipse dixit* solutions in a field which is, and for many years has been, an insurmountable challenge to the outstanding scientific minds of the medical profession. This lack of qualification on his part was made clear by Alexander in his own testimony and by his appearance and demeanor on the stand, as well also the impressive array of competent witnesses who hold views diametrically opposite to practically every statement and theory of the author as expressed in the book and in television and radio appearances.

It is further found that no attempt was ever made by the defense to qualify Alexander as an expert in this field of medicine, and on the basis of all of the testimony, it is here found that he could not have been so qualified, even upon application of the most generous and relaxed interpretation of the common tests and standards usually applied to expert witnesses. This finding is prompted by the necessity, on the part of an author writing a treatise on a scientific or medical subject, to be the possessor of at least a minimal capacity and background to treat of his subject.

Inasmuch, therefore, as consideration of the foregoing has been a factor and concern of this examiner in arriving at the findings of facts and conclusions based thereon, it is felt that a brief summation of Alexander's qualifications, or lack thereof as the case may be, should be set forth, just as any other fact which has motivated the making of any finding, this in order to assist others in evaluating the verity of the findings herein made.

Alexander was graduated from the Norwich Free Academy, of Norwich, Connecticut, in June of 1937, as a member of a total class of 353 students, in which he ranked as No. 313; he thereafter entered Trinity College of Hartford, Connecticut, in March of 1945, and took one course during that semester which was a pre-college course in mathematics affording no scholastic credits; in September of 1945 he started his pre-medical courses of which he did not complete even his first semester, was placed on probation by academic action because of failure in two of the required courses and in fact did not earn any semester hour credits or any college credits whatsoever at Trinity College.

Alexander has no earned degree on any subject from any college or institution of learning. His fatuous attempt to pose as a "Ph. D." by reason of his purchased degree from the St. Andrew's Ecumenical University College of London, England, and his "recently awarded [another] honorary degree," being that of "Doctor of Arts and Oratory" from the Staley College of the Spoken Word, have both been dealt with under footnote No. 17 (ante).

The foregoing in substance represents the sum total of Alexander's formal education, supplementing which it has been his claim through-

out that he has been a voracious reader of medical literature on the subject of arthritis and rheumatism in the several libraries which he has named, and has been a close student of medical subjects as they pertain to the field of arthritis and rheumatism. The record fails to disclose that Alexander named any of the medical books or articles which he studied or which formed the basic material for the writing of his book and this very important information was not brought out on cross-examination, nor tendered on direct examination, when Alexander appeared in his own behalf. There was, therefore, no opportunity of cross-examinations as to the value of the medical subjects or books which he perused and which would have enabled an exploration of the basis for his theories, nor does the record disclose, (which it is the object of this phase of this decision to demonstrate), that Alexander possessed the educational or scientific wherewithal to sift and evaluate the subject matter of these medical treatises, nor to accept some statements and theories as true and to reject others as untenable or untrue.

It is also here found that no attempt was ever made by the respondents throughout this proceeding to attribute to Alexander any special competence in the field of arthritis and rheumatism, aside from the phenomenal success and acceptance of his book by the public, but this success of the book as a "best seller" can in no wise be considered as, or take the place of, scientific or medical competence on his part.

As heretofore pointed out, Alexander in his television and radio broadcasts laid great stress and dramatic emphasis upon the large number of people who had found surcease from their afflictions through the medium of his book, all, as he claimed, to have been demonstrated in actual tests alleged to have been conducted by him. These tests, a number of which have been hereinbefore adverted to, appear to have been a sort of "post-graduate" activity of Alexander after his extensive reading in order to attempt to prove, by practical experiment, the validity of his theories, but none of these tests were proved to have any competent or scientific background, protocol, or results, but, on the contrary were wholly worthless. In order to demonstrate from Alexander's own testimony his naiveté concerning medical tests and their functions, and rather than paraphrase his testimony it is considered the following excerpt is revealing:⁴⁶

Q. Mr. Alexander, did I understand you to say this morning that the only person you performed any experiments on relevant to your regimen was your mother and your aunt and some patients at Dr. Giddings' office?

A. On the whole; yes, sir.

Q. Well, was it confined to these persons?

⁴⁶ Transcript pages 103, et seq.

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A. Perhaps there were one or two other instances, but insignificant.

Q. If there were others then you don't know about it at the present time, is that correct?

A. Well, I picked up a soldier one day driving to Middletown, and he told me he had an arthritic condition in his knee and I said that my mother had had arthritis and she had been helped by cod-liver oil and perhaps he might try it, and later he telephoned me and said that the pain, after he started taking cod-liver oil, was reduced.

Q. You didn't perform any experiments on that soldier, then, did you?

A. (The witness shook his head negatively.)

Q. Do you know his name and address?

A. His name was Mahoney, I believe. It was a name similar to that, and he lived in Middletown.

Q. You don't know his full name and address?

A. Well, I can say that he at that time was employed by the DeSoto Garage on Main Street and he said he lived in Middletown.

Q. When was that?

A. I think 1945, I would say. * * *

Q. As a matter of fact, you don't know that he had arthritis, do you?"

A. "Just what he told me.

Q. And, as a matter of fact, you don't know that he was cured of whatever he had, do you?

A. He just said that he had pain, took the cod-liver oil, and was helped.

Q. So, you don't know that that was true, do you?

A. Just what he told me. * * *

Q. Now, relative to these people that you tested, is that what you said, you tested them in Dr. Giddings' office?

A. These three instances where prior —

Q. No, I understand, were there any others prior to the time —

A. I can't think of any at the moment.

So here we have a recount of the extent of his tests on humans and, so far as the entire testimony discloses, aside from the Giddings-Alexander tests which have been hereinbefore adverted to, these were the sum and substance of such tests.

No good purpose would be served here in attempting to analyze the various miscellaneous so-called tests which he claims to have conducted, notably those based upon the effect of water taken with meals; temperature tests; chicken soup tests; the tests to demonstrate that "water and oil don't mix"; ear wax tests; ridged fingernail tests; butter tests, etc. Suffice it to say that the credible testimony of record concerning such tests gives no weight whatever to any of the results claimed to have been secured thereby. Supplementing the foregoing Alexander made certain representations as to the experience which he had gained in this field while in the service of the United States Army and thereafter in hospitals under the United States Veterans Administration. The records of Alexander's actual service indicating his experience while in the United States Army

and under the Veterans' Administration,⁴⁷ supplemented by the actual testimony of Dr. Benjamin S. Gordon, Chief of Laboratory Service of the U.S. Veterans Hospital at the Bronx, N.Y., and Dr. Joseph B. Clay, sometime Chief of the Medical Laboratory Service, Military Training Center, Randolph Field, San Antonio, Tex., both of whom were Alexander's superiors under whom he performed his duties, indicate that the actual experience in laboratory technical procedures which Alexander claimed to have acquired in these services not only were not instrumental in adding to Alexander's claim of knowledge on the subject of arthritis and rheumatism, but in truth and fact that Alexander's claims were, and are, greatly magnified and not borne out by Army or Veterans' Administration records, nor according to the specific knowledge of the two physician witnesses named. In fact, the testimony of these two witnesses went to some length in setting forth many of the various fields pertaining to rheumatism and arthritis in which Alexander had acquired no experience while under their supervision, such as blood chemistry, blood sugars, blood uric acids, blood cholesterol, basal metabolism, etc., all of which procedures, and others, Alexander had represented as having been performed by him during these particular employments.

THE DEFENSE

Respondents based their defense on three grounds: (1) a plea in bar of the First Amendment to the Constitution hereinbefore (Footnote No. 3, page 8) and hereinafter (Conclusion No. 1 and Appendix I to Initial Decision) considered; (2) the testimony of two physician experts directed to an attempt to justify and prove as genuine the claimed therapeutic or curative value of the theories and regimens contained in the book, "Arthritis and Common Sense"; and (3) the testimony of twenty-five lay, or so-called "public" witnesses who claimed to have been physically benefitted by use of the book. Additionally, three physician-witnesses testified in support of three of the twenty-five witnesses in the lay group.

Respondents' Lay or "Public" Witnesses

Respondents were accorded opportunity to tender all evidence they felt necessary to conduct their defense, pursuant to which the testimony of some twenty-five lay or "public" witnesses was received, (see Footnote No. 48 on page No. 77), as well also the testimony of three physicians who had been in professional attendance on three of these lay witnesses. Practically all of these lay witnesses were

⁴⁷ Cx. 1 A-B; 2 A to E; 3 A-B; 4; 5; 6 A-B; 7 A-B; 8; 9; 10; 11 A, B, C, D; 12 A, B, C, D; 13; 14; 15 A to G; 16 and 17.

emphatic in attesting to the value of the book in the relief of rheumatic and arthritic pains and discomforts and some were emphatic in their conviction that the book had "brought blessed relief" and, in fact, had "cured" these specific diseases. Notwithstanding that the witnesses were apparently honest and essentially truthful, the fact is that not even one thereof had ever been medically diagnosed by any competent diagnostician as being afflicted with rheumatism, arthritis or rheumatic fever, or with any of the diseases related thereto, so that their testimony was based wholly upon the supposition or thought that their aches and pains were occasioned by the presence of any of these diseases; that the credible testimony of record is conclusive to the effect that a layman is incapable of diagnosing his own case; that competent diagnosis entails many different factors which must be evaluated by one skilled so to do, and involves many procedures such as the taking of X-rays, individual histories, laboratory tests and procedures as to all of which the layman is quite incapable of performing, and further, again according to the credible evidence of record, the diagnostic indicia suggested by the book such as crusts in the eye corners—absence of ear wax—pallid complexion, brittle ridged fingernails, dry scaly scalp, dry patches over knees and elbows, etc.—even acute pains in the muscles or joints, any or all are not significant or convincing diagnostic indicia.

Concerning those who were convinced they had been "cured", the testimony of Dr. Ropes hereinbefore reviewed, (pp. 64-65), may suggest an answer. At all events it would appear axiomatic and is so found, that before one may be *proven* to be relieved or cured one must first be found to have been concurrently suffering from the disease so claimed to have been cured or relieved.

The inherent weakness of evidence of this type is apparent and therefore has been disregarded by this examiner because of having no weight in favor of the defense.

The testimony of the three physician-witnesses, in support of the three specific lay witnesses, was also meaningless and unconvincing to this examiner and, in fact, in one instance was demonstrated to be false, hence is also disregarded as without weight.

Respondents' Medical Witnesses

The only witness for the respondent who testified on the broad scope of the medical aspects of this inquiry was Dr. Edward T. Johnson, of Brookline, Mass., who received his degree of B.S. in chemistry in 1943, and his M.D. degree in 1946, both from Tufts College, Medford, Mass.; after some postgraduate studies and internship in New York, he was engaged in private practice in Cali-

fornia from 1954 to 1957, after which he returned to the vicinity of Boston and is now (January 1958) a medical consultant with the Brusch Medical Clinic, Cambridge, Mass., which is a small clinic with a medical staff of three physicians, where patients are seen and treated. Aside from this verbal description of his experience, which appears of record, no further professional qualifications were offered. Dr. Charles Brusch, the Director of the Clinic, invited the witness to undertake the supervision of a clinical evaluation at the Brusch Clinic which would entail reference to the witness of "arthritic patients, to be placed on a regimen similar to that recommended by Mr. Dale Alexander." Witness met Mr. Alexander through introduction by Dr. Brusch and witness knew that Alexander was not a physician. The witness was not tendered as an expert in the field of arthritis or rheumatism or any of the related diseases; that he is not a member of any professional association having to do with these rheumatic diseases and has had no previous experience in clinical investigation and evaluation in the field of rheumatism or arthritis, his actual experience being limited to "approximately 150" patients administered to in his private practice.

This witness testified at great length concerning tests which he had made on some 140 patients who had been referred to him for his study pursuant to his employment, although he had records only of 98, explaining the discrepancy by stating that he received "no co-operation [from the patients] in connection with visits, incompleting laboratory work, and so on." That while he knew Alexander was not a physician, nevertheless, Alexander was present when witness examined many of these [male] patients, particularly during the taking of patients' histories and for the giving of directions as to diet and sundry procedures of the regimen prescribed by the book; that over a period of approximately six months during the course of the tests Alexander was present about 90 percent of the time. Witness was asked if he realized, at the time he commenced his study, that he would be required to testify concerning same in this proceeding and replied: "Definitely not"; that he has not read the book, "Arthritis and Common Sense," and learned of the contents and regimens outlined therein by talking same over with Dr. Brusch and Mr. Alexander, and his understanding thereof is derived solely from these conversations; during the course of the studies certain written data of the tests were made on each and all of the patients concerning whom the witness testified, such reports being contained in a bound volume of 615 pages designated as Respondents Exhibit No. 27; that the formats of the forms upon which reports were made, and the various subjects to be reported

upon therein, were set up and prescribed mainly by Dr. Brusich and Mr. Alexander after some consultation with the witness.

The witness testified in great detail concerning the aforesaid tests, both individually and collectively, and limitation of space, as well also the absence of value and weight to be accorded that testimony, indicates that no good purpose would be served, nor is it necessary, to review same or to comment in detail thereon. Suffice it to say that all of this testimony has been carefully studied and reviewed by this examiner, who paid strict attention at the time it was taken, and it is here found that because of the many shortcomings in that testimony, and the obvious inconclusiveness of the tests, that the testimony of this witness is of no value to the defense.

At the time of the taking of the testimony of this witness the examiner was not favorably impressed with the professional experience or capability of the witness to conduct the tests concerning which he testified; that witness had had no previous experience in making clinical evaluations in this field of medicine; that he was hazy and hesitant in the giving of his testimony; that the patients which he examined were not diagnosed by him to be afflicted with rheumatism or arthritis, nor had the witness been qualified, nor did he give, any evidence of his ability to make such diagnoses; that patients were referred to him in many instances because they were believed by others on the medical staff of the Brusich Clinic to be afflicted with arthritis or rheumatism, although none of the presumed diagnosticians were produced or tendered to confirm such a diagnosis; that no adequate or competent protocol had been set up by him to adequately direct the tests which he performed, or the observations which he had made, which would form a sound scientific basis to enable him to express the test results and opinions concerning which he testified; that many X-rays, concerning which he testified, were not produced; that some X-rays on which he had based his then current findings had been taken many months prior to the time the patient appeared before him, and that no follow-up X-rays had been made to confirm the objective and subjective observations of amelioration of pain, symptoms or other details concerning which he undertook to testify; that he made none of the chemical or laboratory tests, nor were any of the original laboratory notes produced to substantiate his testimony and thus to accord Commission counsel an opportunity for cross-examination. Many of the above defects, noted by the examiner at the time of receiving this testimony, were later confirmed by a competent rebuttal witness appearing on behalf of the Commission, Dr. Lawrence E. Shulman, whose testimony will be hereinafter noted.

The testimony of Dr. Johnson in large part was predicated on the forms contained in the aforesaid Respondents Exhibit No. 27, the entries therein contained, in large measure, being admittedly not original records; that Alexander participated in these tests and the report forms in question are concededly, to the estimated extent of perhaps 50 percent thereof, in the handwriting of Mr. Alexander who, as hereinbefore set forth, in the opinion of this examiner is without demonstrated qualification or ability to participate in any such tests to the extent indicated by his handwriting on the various forms.

The record will disclose that the Commission closed its case in chief on June 19, 1957, and that the witness commenced his tests around the middle of July 1957, completing them sometime prior to January 9, 1958, the latter being the day on which he commenced to testify. It will thus be seen that the tests were conducted only after the respondents were apprised of the extent to which they would be compelled to go by way of defense, and after all of the testimony on behalf of the Commission had been received and was available to the respondents, as well as to the witness.

At about the time when the witness undertook to make these tests at the request of Dr. Bruschi, (he up to that time not being in the employ of the Bruschi Clinic), he received an initial payment of \$500 and, for his services in making the entire series of tests, he received the total sum of approximately \$3,000.

Respondents offered as a further witness, Dr. Everett W. DeLong of Beverly Hills, California, who testified that he received his M.D. degree in 1933 from the University of Michigan; spent approximately two years internship in the Cedars of Lebanon Hospital, of Los Angeles, Calif., during which time, (for two days a week), he was Chief of the Outpatient Clinic of Internal Medicine at that Hospital; has published several papers, connected with the subject of nutrition, which have been published in the Journal of Applied Nutrition, the official organ of the American Nutrition Society, and that (in 1948) he was the President of that Society; for a number of years has been on the Board of Directors of the Academy of Nutrition. This witness was qualified as, and used by, the respondents as an expert in the field of clinical nutrition, his qualifications and testimony having been limited thereto.

The witness has not read the book, "Arthritis and Common Sense," but claims acquaintance with the theories therein enunciated which he acquired by talking with the respondent Alexander; that he be-

believes there is a relationship between diet and nutrition on the one hand, and osteo-and rheumatoid arthritis on the other hand, in that:

* * * arthritis is a result of chemical changes in the body, and since this chemistry is in part supplied by our nutrients, I will state that there is a relationship.

It is significant to note that the witness was not asked, and did not express, any personal or expert opinion, as a physician, on the book, "Arthritis and Common Sense," nor on the efficacy of any of the theories or regimens therein set forth, to constitute an adequate, effective or reliable treatment for any kind of arthritis, rheumatism, or related conditions, or rheumatic fever, or any of the pains or symptoms thereof; that he did not advance or advocate that any such result could be accomplished through the instrumentality of dietary change or regimen or by the administration of cod-liver oil or the use of vitamins, all of these tools of treatment being within the especial expertise of the witness whose specialty was dietary studies. Quite to the contrary, when such questions on these and related subjects were put to him he was hesitant and unsure in his answers, in each instance explaining that research was still being pursued and had not arrived at a point which would warrant his expression of a definite opinion; that there were many questions in this field yet to be answered.

Respondents paid for the transportation of the witness from California to Washington, D.C., where he testified, as well also his hotel bill and expert fee of \$200 per day.⁴⁸

This examiner was not at all impressed with the qualifications of this witness to testify on the various technical subject matters inherent in this proceeding, nor did the witness in fact testify to any matter or thing which would be of assistance to the respondents in proving their defense, or in rebutting the testimony of the Com-

⁴⁸ From the commencement of this proceeding respondents have urged that there was no necessity to hold hearings elsewhere than in Washington, D.C., because:
" * * * [t]here are enough hospitals and recognized authorities in the field of rheumatism and arthritis in Washington, D.C., so that expert testimony can be presented at hearings in that City * * * and that some consideration should be given to the difficulty and expense thrust upon respondents by scheduling hearings in various cities. * * * and it is an abuse of discretion * * * to require respondents to attend hearings in various cities throughout the country for no substantially useful purpose."

(Motion by Respondents to Adjourn Hearing, filed herein October 16, 1956.)

Despite the foregoing assertions it is noted that respondents did not produce a single expert witness from Washington, D.C., but demanded and received hearings, and produced such witnesses, in Cleveland, Ohio, Detroit, Mich., Galesburg, Ill., Shawnee, Okla., Boston, Mass., and the above witness from Los Angeles, Calif., all at great expense to the parties. From this it is found that respondents not only experienced the impossibility of securing a clinical evaluation of the claimed value of the book as a therapeutic agent, but likewise found it difficult, if not impossible, to produce competent expert testimony in such behalf within the entire area of the United States.

mission's witnesses in any material respect, and is, therefore, disregarded in its entirety.

Commission Rebuttal Witness Contra Dr. Johnson

The Commission next introduced a witness, Dr. Lawrence E. Shulman, for the purpose of rebutting the testimony of respondents' witness, Dr. Edward T. Johnson, the entire testimony of Dr. Johnson and all exhibits pertaining thereto, (specifically Respondents' Exhibit No. 27), having been theretofore submitted to him for the purpose of reviewing the tests and testimony of Dr. Johnson and giving his expert testimony thereon.

Dr. Shulman has been a practicing physician since 1949, specializing in internal medicine; degree of A.B. Harvard University, 1941; Ph. D. from Yale University, Graduate School, Department of Public Health, 1945; M.D. Yale University School of Medicine, 1949; at present (July 22, 1958), Assistant Professor of Medicine, The Johns Hopkins University, where his duties include research work, practice and teaching, necessitating the keeping abreast of therapeutic developments in the field of arthritis and rheumatism. His *curriculum vitae* is of record as Cx. No. 67 A, supplemented by a list of his publications (Cx. 67 B) numbering thirteen, of which eleven deal with the subject of arthritis and rheumatism.

The witness testified at some length, and in much detail, concerning Dr. Johnson's testimony, and likewise subjected many of the tests, made by Johnson and reported in Rx. No. 27, to critical examination. He testified to many shortcomings in the tests; could not agree with many of the findings based on the tests; pointed out that some of the test subjects were wrongly diagnosed in that the recorded symptoms, objective and subjective, did not support the diagnoses; the absence of X-ray photographs where it was highly desirable, if not indispensable, to have such in aid of diagnosis, and a great many other facts and factors which impugned the validity of the tests and the weight of testimony of Dr. Johnson.

It having heretofore been found as a fact that the testimony of Dr. Johnson was unavailing and worthless to respondents as a defense, it follows that no lengthy discussion or consideration of the testimony of this witness, Dr. Shulman, need be indulged. If, however, that finding of fact should be attacked by respondents, the testimony of Dr. Shulman should certainly be considered as, in the opinion of this examiner, which is here found as a fact, the sum and substance of Dr. Shulman's testimony poses a complete and understandable refutation of Dr. Johnson's testimony.

GENERAL FINDINGS OF FACT

Based upon the entire record, and for the many reasons assigned in the foregoing findings of specific facts, and in addition thereto, the following general findings of fact are made:

1. The regimen, material or contents of the book, "Arthritis and Common Sense," do not provide or afford adequate, effective or reliable treatment for any kind of arthritis, rheumatism or related condition, or rheumatic fever; nor

2. Adequate, effective or reliable means of arresting the progress of, correcting the underlying causes of, or curing any kind of arthritis, rheumatism or related condition, or rheumatic fever; nor

3. Adequate, effective or reliable treatment for the symptoms and manifestations of any kind of arthritis, rheumatism or related condition, or rheumatic fever, nor will the regimen, material or contents of the book, "Arthritis and Common Sense," afford any relief from the aches, pains, stiffness, swelling or other discomforts arising from such conditions.

CONCLUSIONS

1. As hereinabove recited, respondents have entered herein a plea in which they allege that the action of the Federal Trade Commission in issuing its complaint in this matter constitutes an attempt on the part of said Commission to censor the book, "Arthritis and Common Sense," and to thus restrain and interfere with the respondents in the exercise of their right of free speech as guaranteed under Amendment I to the Constitution of the United States prohibiting "* * * abridging the freedom of speech, or of the press."

In refusing to grant the motion to dismiss the complaint predicated of this plea, the examiner gave his reasons for such denial, all of which appear in Appendix No. I to this decision. It is concluded as a matter of law, as well as a matter of fact, that this action does not constitute an attempt to censor, restrain, interfere with, or impinge upon, the rights of respondents as guaranteed by the Constitution; that the action herein, as hereinbefore found with great specificity, involves representations made in and by false and misleading advertising by the respondents of and concerning the book, "Arthritis and Common Sense," and of and concerning the results which were thus represented could be obtained by the purchase and perusal of said book, and the use of the regimens and theories therein enunciated for the therapeutic treatment of arthritis, rheumatism, and related conditions or rheumatic fever. Such are thus clearly within the scope of the jurisdiction of the Federal Trade Commission

as conferred by its organic act. This having been so determined, an analysis or review of the many authorities cited by respondents in support of their position in this behalf is unnecessary. And further, the order to be passed herein will not interfere with the right of the respondent Alexander to freely express himself, and to freely publish his writings, the scope of such order being directed to prohibiting the respondents from publishing and circulating, any false or misleading advertisements of and concerning the beneficial and therapeutic results that could be expected by use of the theories and regimens set forth in the book. This vital differentiation between the book itself and advertising matter pertaining to the book, is clear and necessary to be made because, were it otherwise, one could simply write or compose a book containing many untenable, even absurd, theories and then, by means of advertising in the public press, and by radio and television, represent that all such things were in fact true and, according to the theory of the respondents, they would occupy an impregnable position in so asserting under the aegis of the constitutional right, an obvious *non sequitur*. As said by the Court in *Drew v. F.T.C.*, 235 F. 2d 735, "there is no constitutional right to disseminate false or misleading advertisements."

2. It is concluded that the corporate respondent as well also the individual respondents named in this proceeding are all engaged in the common enterprise and that the order to be herein passed shall include the individual respondents in their personal and representative capacities, (this for the reason that the latter have been proved to be the dictators of the business policies and acts of the corporation), thus to ensure that the order to cease and desist may be fully effective.

International Art Company v. F.T.C., 109 F. 2d 393.

Steelco Stainless Steel, Inc. v. F.T.C., 187 F. 2d 693.

Sebrone Company v. F.T.C., 135 F. 2d 676.

Consumers Sales Corporation v. F.T.C., 198 F. 2d 404.

Parke, Austin & Lipscomb, Inc. v. F.T.C., 142 F. 2d 437.

3. It is concluded as a matter of law that the dominant aim and theme of the advertising found to be false and misleading, is to sell the book, "Arthritis and Common Sense," and that the occasional pious mouthings of the respondent, Alexander, in his television and radio broadcasts, to the effect that the book is not held out as a "cure" for arthritis and rheumatism, cannot be considered as effective to negate or submerge the dominant theme of his activities, as herein found, even if such mouthings could be considered in isolation, which it is concluded, because of their context, cannot be done.

4. It is concluded as a matter of law that neither the Wheeler-Lea Amendments to the Federal Trade Commission Act, (38 Stat. 111 as codified at 15 U.S.C. 52 et. seq.) nor any other law⁴⁹ imposes an obligation or burden on the Federal Trade Commission to prove that there is a consensus of the medical profession in support of the allegations of the complaint, or of the opinions expressed by the individual medical experts on behalf of the Commission given in support of the charges of the complaint. It is pointed out that no such consensus has been herein found, nor has it been deemed necessary to make such a finding in order to sustain the charges; that the Commission is within its rights in relying upon the testimony of its experts herein which testimony, incidently, stands unrefuted.

On the right and duty of the Commission to make independent and unassailable findings on technical questions where apparent conflict exists, the Court, in *Carter Products, Inc. v. F.T.C.*, 9th Cir., CCA, (June 16, 1959) (p. 44) had this to say:

We agree with Commission counsel that it was for the hearing examiner and the Commission, not the courts, to pass upon the credibility of witnesses and the weight to be accorded their testimony. See decision of this Court in *Tractor Training Service v. F.T.C.*, 227 F. 2d 420, 424. See also *Corn Products Refining Co., et al. v. F.T.C.*, 324 U.S. 726, 739. Many decisions of like purport fully support this well established rule. So much may also be said concerning the *weight* to be given by the Commission to the facts and circumstances admitted as well as inferences reasonably to be drawn therefrom. The possibility of drawing either of two inconsistent inferences from the evidence does not prevent the Commission from drawing one of them.

and further * * *

*In our appraisal and assessment of the record as a whole, we endeavored to make a fair estimate of the worth of the medical testimony of the expert witnesses, having in mind that in the last analysis, the evaluation of the Commission as to the weight to be given such testimony concerning medical truths was a matter committed for decision to the informed judgment of the Commission, and that making a primary decision on that question was a duty that fell within the area of its competence. So far as concerns any conflicts in such testimony, we are also of the view that such conflicts presented questions of fact for resolution by the Commission and not for resolution by this Court. See Irwin v. F.T.C., 143 F. 2d 316, 323. * * * (Italic supplied.)*

5. It is concluded that there is no respectable body of medical opinion of record to support the enunciated theories contained in the

⁴⁹ In this connection the following authorities have been considered:

American School of Magnetic Healing v. McAnnulty, 187 U.S. 94.

Universal Camera Corp. v. NLRB, 340 U.S. 474.

Reilly v. Pinkus, 338 U.S. 269.

Alberty v. F.T.C., 182 F. 2d 36.

Also studied at length and found not controlling here:

F.T.C. Matter re Lambert Pharmacal Co., ("Listerine" case) F.T.C. Docket No. 4232.

book, "Arthritis and Common Sense," and in fact there is no credible expert or other testimony or facts of record, worthy of consideration or belief, in substantiation of the theories of the book.

6. It is concluded that there is no substantial, credible or significant divergence of medical opinion, appearing of record, on any or all of the pertinent disputed theories advanced by the book, which would necessitate a "picking and choosing" therefrom, or the disregarding thereof, in order to arrive at, or select one school of medical thought over another so as to arrive at a choice of which school or segment of medical opinion should prevail for the determination of the issues herein, this for the reason, that the preponderance of evidence in favor of the charges of the complaint is overwhelming.

7. It is concluded, on the basis of the record and by observation and appraisal by this examiner, that respondent Alexander, due to total lack of professional status, experience, background and education, or by reason of anything whatsoever of record, was not qualified to write an authoritative book or treatise on, or to express an authoritative opinion upon, the causes of, cure of, or method of alleviating the pains and discomforts of, or arresting or diagnosing, arthritis, rheumatism or related diseases, or rheumatic fever. This conclusion is based upon, and distilled from, the entire record, or so much thereof as pertains to Alexander, hence it is concluded that the representations by respondents made in their said advertisements are false, deceptive and misleading and as such must be enjoined.

8. Another argument urged by respondents in their defense is that no harm can come to the public by following the diet, medication theory and regimens advanced in the book: In sum, they say the book, at worst, is innocuous. Laying aside, for the moment, any consideration of the possibility of inherent danger to the public in not promptly seeking proper and competent medical diagnosis, advice and treatment in serious cases because of reliance upon the falsely asserted remedial and curative procedures advocated by the book, (in which aspect this Commission is, of course, seriously interested), it is likewise solicitous of the public's pocketbook to the end that it be protected against false and misleading statements inducing large outlays of money for the purchase of articles and books which do not meet such representations, or worse still, are utterly worthless. In the instant matter, based upon respondents' admission of 500,000 sales of the book, (there are no figures of record as to total dollar sales), a simple computation thereof at \$3.95 each amounts to \$1,975,000 and to this extent the public has been mulcted and the respondents, less their cost of production and operating expenditures, have profited. Further, it is observed, that the number of books *sold*

Order

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is not a true indicia of the actual *circulation* among those who gain access to, and read and rely upon, the book to their detriment.

9. It is concluded that the book, "Arthritis and Common Sense," is but a thesis by Alexander, predicated of unsupportable and unprovable postulates and amounts to nothing more than a collection and summation of the author's theories concerning arthritis, rheumatism and related diseases, all of which yet remain pure theory, insofar as the probative testimony of record is concerned and which this examiner must accept, in the absence of technical competence of his own. Viewing Alexander's theories, as opposed by the facts of record in opposition thereto, prompts the quotation:

One of the Tragedies of Life is the Murder of a Beautiful Theory by a Brutal Gang of Facts.

10. The use by the respondents of the foregoing found false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead and deceive the purchasing public into the erroneous and mistaken belief that said representations are true and into the purchase of respondents' said book by reason thereof.

11. The aforesaid acts and practices of the respondents 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 Witkower Press, Inc., a corporation, and its officers, and respondents Dan Dale Alexander and Bernard Witkower, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a book entitled "Arthritis and Common Sense," in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that the regimen set out in said book provides:

1. An adequate, effective or reliable treatment for any kind of arthritis, rheumatism or related condition, or rheumatic fever.
2. An adequate, effective or reliable means of arresting the progress of, correcting the underlying causes of, or curing any kind of arthritis, rheumatism or related condition, or rheumatic fever.
3. An adequate, effective or reliable treatment for the symptoms and manifestations of any kind of arthritis, rheumatism or related

condition, or rheumatic fever, or will afford any relief from aches, pains, stiffness, swelling or other discomforts thereof.

APPENDIX I TO INITIAL DECISION

HEARING EXAMINER'S RULING ON RESPONDENTS' MOTION TO DISMISS ON CONSTITUTIONAL GROUNDS

Hearing Examiner PURCELL. Gentlemen, I have given a great deal of thought to this matter down through the past ten months, so that the question raised today—and I am directing my remarks primarily to the constitutional objection—has been a matter of concern to me, because, as you will recall in Hartford at the initial hearing quite an extensive argument was made, and I refused to rule on that argument, at that time, either favorably or adversely, but directed the proceedings to go on.

Now, Mr. Cox, the object of any argument on your part would be, naturally, to convince me that the respondent is wrong in his motion. I don't need any such argument, and I will not accept it. Suffice it to say, I have given very earnest study to the briefs on both sides in the light of my knowledge of the facts, and this is not a decision which I have arrived at on the spur-of-the-moment, but only after careful reflection, and I have taken the occasion to write down my thoughts on the subject.

Mr. Cox, in the light of the examiner's statement, if you care, irrespective of the examiner's statement, to make any argument, to point out anything special, the record is at your command, sir.

Mr. Cox. I have no necessity of replying to what respondent has said. My brief covers the situation.

As to my position regarding what was stated on page nine, that was superfluous. It still doesn't change my position about it being false advertising that I am attacking.

Hearing Examiner PURCELL. Now, in ruling on the respondents' motion to dismiss, and as a basis for the following observations, I might say that I have carefully observed and evaluated the testimony and exhibits thus far introduced in this matter and that I have practically lived with the case for the past ten months. This has not been confined to listening to the testimony of some twenty-two witnesses, scientific and otherwise, but also listening to replays of extensive radio broadcasts and the viewing of replays of television programs, plus analysis of some seventy-three exhibits and, of course, the reading of the book, "Arthritis and Common Sense."

That the respondents have misconceived the object of the present proceeding is evidenced not only in their motion to dismiss filed

herein on July 5, 1957, and in their supporting brief, but also in their motion to dismiss at the outset of these proceedings and in various statements and arguments made during the course of the proceeding, all of which may be exemplified in a paragraph contained in respondents' petition for a review of denial of motion for clinical evaluation, filed herein October 29, 1956, in which document on page 7, paragraph 11, respondents have the following to say:

"The complaint in the instant case raises the question of misleading advertising, not in the sense that the advertising is not reflective of what is in the book, but rather on the assumption that if the theory and treatment advocated in the book are ineffective, then any advertising suggesting that the book has any value in connection with the treatment of arthritis is also per se false and misleading. It is thus apparent that the instant complaint involves the suppression of a medical theory—the book itself. That this is so is further evidenced by the fact that a subpoena *duces tecum* to produce copies of the book's jacket has been issued."

Now, Mr. Cohen, that is a statement of your position on October 29, 1956, and I wish to inquire, is that still counsel's position?

Mr. COHEN. Yes sir.

Hearing Examiner PURCELL. Very well.

Respondents further proceed in the same instrument to say: "Respondents' constitutional right of freedom of speech and freedom of press are invaded by this governmental action which, although disguised in the form of an attack upon 'advertising,' is clearly and obviously an attack against publication of respondents' book and the theories outlined therein. * * *"

Further along in the same instrument, on page 11, respondents urge:

"* * * At worst, respondents' book would result in a delay, '(on the part of an afflicted person)' of several months in securing medical attention," (this referring to arthritis of a degenerative or of a nonspecific origin).

Further along in the same paragraph, advertising to the possible injury to the public of delays in seeking medical advice, respondents say: "This maximum delay of a few months will work no hardship in connection with any arthritic case of a degenerative or of a nonspecific infectious origin," but they fail to accept any responsibility because of the "few months" of perhaps unnecessary suffering by the afflicted person, nor the dangers attendant upon failure to secure, *in limine*, proper medical advice in instances where arthritis or rheumatism is due to infection of a specific nature, such as gonorrhoeal infections and rheumatic fever, stating only that: "The re-

spondents have instituted precautions to preclude any inadvertent reference to such diseases and are willing to cooperate with the Commission to achieve this result and to insure that there is no danger to the public."

This may be, although not so decided at this moment, a tacit admission on the part of respondents that there is some realization on their part, of a potential injury to the public under specific circumstances or facts. But whether it is admitted or not, the fact remains that the dangers attendant upon nondisclosure, or by the making of any representations as to the remedial or curative capabilities contained in the book, are clearly matters within the purview of the jurisdiction of the Federal Trade Commission.

That there is clearly involved in this proceeding the matter of false advertising statements is admitted to be true by the respondents on page 22 of their brief in support of this motion to dismiss wherein they say:

"Respondents concede, for present purposes, that misstatements in advertising, such as those relating to Mr. Alexander's qualification, may be proscribed."

The complaint in this case does not in any way, and contrary to the earnest contentions of the respondents, seek to criticize, censor, or curtail the circulation of the book or its publication. On the contrary, the complaint is carefully drawn and specifically charges in paragraph 3 as follows:

"In the course and conduct of their business aforesaid respondents have made many statements concerning said book, in advertisements inserted in newspapers having a general circulation," (and such advertisements have been received in evidence), "over radio broadcasts and television telecasts which were transmitted across state lines into various states of the United States and in the District of Columbia," (evidence of which radio broadcasts and television telecasts have all been received in evidence). "By means of the statements made in said advertisements, respondents represent, directly and by inference, that the regimen set out in their said book 'Arthritis and Common Sense' provides:

"(1) an adequate, effective and reliable treatment for all kinds of arthritis, rheumatism and related conditions, including rheumatic fever;

"(2) an adequate, effective and reliable means of arresting the progress of, correcting the underlying causes of, and curing all kinds of arthritis, rheumatism and related conditions, including rheumatic fever;

"(3) an adequate, effective and reliable treatment for the symptoms and manifestations of all kinds of arthritis, rheumatism and

related conditions, including rheumatic fever, and will afford complete relief from the aches, pains, stiffness, swelling and other discomforts thereof."

The foregoing paragraph contains the genesis of all of the charges here in issue. Such charges are clearly confined to the representations made by means of advertising in newspapers, radio broadcasts and television telecasts, concerning the ineffectiveness of the book itself to live up to and discharge the effective remedial qualities ascribed to it by the author and his co-respondents. Concrete evidence of all of these media of representation have been introduced in evidence and while at this stage of the proceedings the hearing examiner does not pass upon the effectiveness or validity of the recorded evidence to prove the charges of the complaint, nevertheless the proof thus far had and accepted in evidence, tends strongly to prove the complaint's charges and conclusions concerning the necessary construction attendant upon their publication and as such they form the very foundations of the evidence in this case. Supplementing the foregoing media of advertising is the matter of the various representations made on the jackets covering the ten successive printings of the book in question, all of which were and are contended by Commission counsel to be clearly within the category of advertisements and necessary to be considered as relevant matter in this proceeding. This view has been concurred in by the hearing examiner and the Commission's contentions in this particular sustained, as is evidenced by a large number of rulings accepting such matters in evidence.

Having to prove the representations which are claimed to be false, it thereupon became and was the duty of the attorney in support of the complaint to show by expert or scientific evidence, as well as by additional evidence of a non-scientific nature, that the representations were in truth and in fact false and misleading in that the subject matter of the book itself did not bear out the truthfulness of the representations attributed to it in the many advertisements made for the purpose of promoting sale of the book. It thereupon became and was the duty of the attorney in support of the complaint to produce the testimony of medical experts to examine in detail the various portions of the book and to show with particularity those specific instances in which the book was shortcoming in carrying out the remedial processes attributed to it. As a result of the advertising aforesaid some five hundred thousand copies of the book have been sold. It was upon this theory that the hearing examiner received, over the objections of the respondents, testimony and evidence of this particular type, being mindful of the fact that the naked charges of false advertising and misrepresentations could not stand unsupported

by proof, and the type of proof delineated constituted the only possible method of showing falsity. It was upon this belief and his understanding of the law on the subject, that the hearing examiner received such evidence and not because there was any desire on behalf of the Federal Trade Commission or its counsel, or of this hearing examiner, as charged by the respondents, to censor the subject matter of the book, "Arthritis and Common Sense," or to in anywise suppress its publication or curtail its sale and circulation.

In his brief in support of the motion to dismiss, respondents' counsel cites many cases as precedents for his position, in none of which has the hearing examiner found to exist a sound basis for granting the relief sought. Some of the cases cited by counsel had to do with curtailing or hindering expressions of religious opinions, all such expressions of course being based primarily upon opinion, faith, belief or the medium of the Revealed Word, such being obviously not susceptible of clear proof or disproof as facts, but rather, perforce, must be left to the hereafter for ultimate determination. Other citations were based upon cases involving political rights and expressions of political beliefs and these, too, are not demonstrable as facts other than by the asseverations and arguments of the particular individuals advancing them as facts, but on the contrary, the proof thereof must be left to history. However, in the instant matter, the representations made in furtherance of the sale of the book, are, in many respects, refutable by medical testimony, even though "medicine" may be classified as an inexact science, and this the Commission counsel has undertaken to do the best of his ability and within the framework of the clearly defined issues herein. The weight to be accorded such testimony is peculiarly within the province of the Commission as the ultimate finder of the facts.

At this point then, in passing, it is to be observed that we are not here confronted with the necessity of choosing and selecting between different schools of medical thought. The conflicting testimony of the several medical experts, outstanding in this field, contrasted with the writings and testimony of Alexander, an admitted layman, whose formal education in matters medical consists of but one semester as a pre-medical student, negates any argument that there may be a divergence of medical opinion. If any choosing as between medical schools has been indulged, that has been confined to Alexander himself in his perusal in libraries of many books on the subject of rheumatism and arthritis and from such selecting those theories which, to his lay mind, seemed to him to be proper, and I am not at all convinced, from the evidence before me, that Alexander has, or ever had, the necessary competence or expertise to make that decision.

In making these observations the hearing examiner wishes it to be distinctly understood that he is making no definite ruling as to the probative value of any evidence thus far offered in the case, but, on the contrary, is expressly reserving any such expression to a time in the future when he shall have had an opportunity to rule upon and appraise the testimony to be offered by the respondents in their defense.

Now, advertent to the point made by the respondents of the lack of any "product" in this proceeding: On the subject of "books" not being "products" within the purview of the Act, as contended by the respondents, it must be remembered that respondent Witkower Press, Inc., is the publisher of the book and certainly, as to it, the book is its "product." The author, respondent Alexander, is the president of Witkower Press, and he, Alexander, and his wife, own fifty per cent of the capital stock of Witkower, Inc., and the profits accruing from sale of the product book enriches him so that he is vitally and financially interested in sales volume. In addition, as the evidence to date tends to show, Alexander is the prime utterer of the alleged false representations of physical benefits to be derived from perusal of the book and has, according to testimony, misrepresented his past personal history as to his medical background in an endeavor to cast an aura of authenticity and medical foundation and acceptance to his book utterances and thus to promote its sale.

The Commission has assumed jurisdiction in a number of instances where the contents of books did not measure up to the representations made on their behalf in advertisements by means of various media. One such is the F.T.C. matter re: *Levine*, Docket No. 5028, where the Commission issued an order restraining respondent:

"* * * his agents, representatives and employees * * * in connection with the offering for sale, sale and distribution in commerce . . . of respondent's book entitled 'The Complete Guide to Bust Culture,' do forthwith cease and desist from disseminating any advertisement or advertising material which represents, directly or by implication, that by following the directions in said book (and here follow the inhibitions)."

I am of the opinion that there is no merit in respondents' contention that the complaint should be dismissed because a "product," such as a "pot or a pan" (to use the simile selected by respondents' counsel), is not here involved. Respondents contend that, in the marketing of the book, they were engaged in the selling of the ideas and opinions contained in the book, and not the book itself as an object of commerce. The argument is specious because the sales of respondents have, by common arithmetic based on their own admis-

sions, amounted to approximately one million dollars and this, to me, amounts to big business in a product in commerce. In other words, for the purposes of this case, the book is a product, and the advertising and false representations on the book jackets, in newspapers, radio and television broadcasting concerning it, not being truthful according to the contentions of the Commission, the whole matter is quite within the jurisdictional cognizance of the Commission to inquire into the facts and act accordingly. Respondents have cited in support of their position several cases involving fraud orders issued by the Post Office Department. These are inapposite to this proceeding, not only because of the difference in the nature of proof to be adduced to warrant issuance of a fraud order by the Post Office Department compared with that required in a proceeding before the Federal Trade Commission, but likewise because of the vast difference between the severity of the orders. In the former the recipient of the order is, in many instances peremptorily put out of business while here the order requires a respondent merely to restrict himself to the truth. These differences are clearly pointed out in the case of *Riley v. Pincus*, 338 U.S. 269, cited with approval by the Supreme Court, *per curiam*, in the remand to the Ninth Circuit Court of Appeals of the *Carter Little Liver Pills* case No. 114 October Term, 1953, S.C.U.S.

The motion to dismiss the complaint will be denied.

OPINION OF THE COMMISSION

By ANDERSON, Commissioner:

The respondents are engaged in the sale and distribution in commerce of a book, entitled "Arthritis and Common Sense", which was written by respondent Dan Dale Alexander. In the initial decision, the hearing examiner found that respondents have falsely represented in advertising for their book the benefits afforded by its regimen and thereby engaged in unfair and deceptive acts and practices within the meaning of the Federal Trade Commission Act. The order contained in the initial decision would forbid the use of such representations in promoting the sale of the publication in commerce and respondents have appealed.

The basic theme of the book and its advertising is that arthritis and related conditions will be corrected and effectively relieved by a dietary regimen which includes cod liver oil and orange juice and use of other foods and beverages prepared and eaten in sequences recommended. The hearing examiner correctly found that the advertising has offered the book as an effective and reliable treatment for arthritis and related conditions and for correcting their under-

lying causes and relieving the aches, pains and symptoms thereof. Respondents state, however, that the book was written as a public service and that the basic objective of their advertising has been to stimulate circulation and discussion of the book's views for establishing their validity. Those considerations, they contend, plus the fact that some professional and lay opinion subscribes to respondents' regimen precludes their book from being considered a commercial product for purposes of regulating advertising publicizing its ideas.

Over a half million copies of the book have been sold resulting from its nationwide promotion in newspaper advertising and on television and radio. The book clearly constitutes an article of commerce. And insofar as the brief's foregoing contentions would portray respondents' promotional activities as an intellectual crusade solely for establishing the validity of the author's medical theories, such argument must be appraised against the background of other record facts. For example, the false statements of therapeutic merit have been attended by gross misrepresentations in advertising respecting the author's educational and scientific backgrounds. The covers or jackets for the books state that he " * * * as guest of the Army and Navy General Hospital of Hot Springs, Arkansas, had further opportunity to observe results of therapeutic treatment employed by the services." This language clearly implies professional recognition of the author by those services, including invitation to observe and evaluate treatment used for arthritic patients. However, his visit to the hospital came about by self-invitation and included no scientific discussion with hospital officials.¹

The jackets also state: "For his work, Dan Dale Alexander, Ph.D., is now being recognized by colleges and recently he was awarded another honorary degree." The latter degree, "Doctor of Arts and Oratory", was conferred by Staley College of the Spoken Word, Brookline, Mass. The award was subsequent to his contribution of \$1,000 to that institution. The hearing examiner found that the author's Ph.D. degree represented an outright purchase by him.² Mr. Alexander has no earned degrees.

¹ The author testified that upon his discharge from army service, and while enroute home, he stopped at the hospital for the "best part of the day"; was a visitor on this one occasion only; went through the wards, "talked with several of the boys", without however seeing any of their case histories; and "looked at" the physiotherapy department; and that he "just browsed through the hospital" and did not talk with anyone in charge on the scientific subject of arthritis.

² The hearing examiner further found that it was unearned and bestowed by the "St. Andrew's Ecumenical University College" of the City of London, England; that respondent Alexander had never visited the institution and did not know if it were authorized to confer degrees; that his only knowledge of the existence of such a university college was based upon his having seen it "in print emblazoned on this diploma" * * * "but I was happy to receive it." Mr. Alexander denied he had "paid a consideration" for the degree but he "sent a check for a hundred dollars in appreciation" prior to receiving it.

Also detracting from conclusions of sales promotions primarily inspired by noncommercial motives is the advertising statement that as an "acid test, the author experimented with his own body by introducing an arthritic condition and then effecting the cure through his corrective diet regime." Similar representations are contained in other advertising statements including those offering the book as a "guide between the cause and cure of arthritis." The medical and lay opinion evidence introduced by respondents for showing that the book's regimen has value included the testimony of Dr. Edward T. Johnson, respecting clinical studies undertaken during the course of this proceeding. The hearing examiner found that testimony unpersuasive for reasons stated in the initial decision; and rebuttal testimony was received detracting from the weight of Dr. Johnson's studies. The witnesses called by counsel supporting the complaint included physicians who were members of faculties of medical schools or held responsible hospital posts and were eminently qualified by training and clinical experience to express authoritative views on the subjects of arthritis and similar diseases.

The circumstance that the causes of those diseases have not been authoritatively determined and that studies thereon and looking to their cure continue at research centers does not, however, signify an entire absence of scientific knowledge as to the management and treatment of those disorders. The witnesses called by counsel supporting the complaint stated, among other things, that those ailments are not caused by any kind of vitamin, oil or dietary deficiency and that the regimen advocated in the book would be wholly ineffective for treating or combatting them or their symptoms; and the hearing examiner correctly found that the respondent Alexander's professions in the advertising respecting ability to self-induce arthritis are completely refuted by the medical testimony received of record. Respondents concede that the author's scientific views are contrary to orthodox medical opinion. We think the record conclusively establishes that respondents' dietary regimen has no therapeutic value for correcting arthritis and related disorders or relieving their symptoms.

Respondents' main argument is that the bans of the order against representations that the book's regimen affords an effective treatment for arthritis and its symptoms constitute an undue restraint on the dissemination of views and medical ideas set forth in their publication and that the order accordingly violates the Constitution's First Amendment. That Amendment, among other things, directs that Congress make no law abridging freedom of speech or of the press. Respondents concede that the order does not purport to forbid

printing or sale of the book but looks instead to prohibiting therapeutic claims used in advertising³ which were found false in the initial decision. Thus, a basic question presented in their appeal is whether the freedom of expression protected by the Amendment also extends to false promises of therapeutic benefits in the advertising for a book when such advertising statements derive from or reflect like views or information contained in the publication itself.

The power of Congress to regulate commerce is complete within itself and has no limitations other than as prescribed by the Constitution. Respondents concede that freedom of speech does not mean that one can talk or distribute where, when and how he chooses inasmuch as rights of others are involved. The right of free press accordingly has been held not violated by general laws which extended to publishing and newspaper businesses for regulating labor relations⁴ or standards⁵ or monopolistic practices forbidden by the antitrust laws.⁶ Nor does freedom of the press include right by a publisher to fraudulent use of the mails to promote circulation by deception of the public. *Donaldson v. Read*, 333 U.S. 178 (1948). Furthermore, Section 15(a)(2) of the Federal Trade Commission Act (the so-called oleomargarine amendment) has been judicially approved as not offending the freedom of speech guarantee. That court further held that there is no constitutional right to disseminate false or misleading advertising.⁷ The party challenging that amendment was not a publisher, however.

Respondents argue that those cases are not controlling here and that the order conflicts with principles applied by courts in two decisions reviewing Commission orders.⁸ In the *Koch* case, a medicinal preparation was being sold and the court noted that a book written by Dr. Koch and widely distributed among physicians explained his theory of natural immunity and also contained case

³ Though such argument is not pressed in the appeal brief, the respondents further contended before the hearing examiner that the previously mentioned paper jackets or covers became constituents or components of their books when placed upon them and that the statements on the covers thus did not constitute advertising. From our inspection of the jackets, we note them to be eye-arresting and attractive and clearly designed to attract the attention and interest of prospective purchasers. The covers have included laudatory expressions by reviewers and others for the obvious purpose of inviting and inducing sales in book stores and when made available at the close of the author's lectures in various cities. We think that the evidence received of record clearly supports inferences that the statements and representations appearing on the paper covers constituted advertising matter under any reasonable standards and interpretation applicable to that term. When similarly holding the jackets' statements to be advertising, the hearing examiner officially noticed certain matters not of record. However, our determinations on this aspect rest solely on matters of record and inferences reasonably based thereon.

⁴ *Associated Press v. N.L.R.B.*, 301 U.S. 103 (1937).

⁵ *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186 (1946).

⁶ *Lorain Journal Co. v. U.S.*, 342 U.S. 143 (1951).

⁷ *E. F. Drew & Co. v. Federal Trade Commission*, 235 F. 2d 735 (2d Cir. 1956).

⁸ *Scientific Manufacturing Company v. Federal Trade Commission*, 124 F. 2d 640 (3d Cir. 1941); *Koch v. Federal Trade Commission*, 206 F. 2d 311 (6th Cir. 1953).

histories of treatments. The court said that the book set forth primarily matters of opinion and that the appended case histories did not serve to change its character in that respect. It held that construing the Act to prohibit dissemination of the book as though it were an advertisement would contravene the First Amendment and ruled such book not an advertisement within the meaning of such Act. The order in the instant case does not extend to forbidding dissemination of respondents' book. There, the book was held not an advertisement; but here respondents' newspaper ads, book jackets and the television shows sponsored by them unquestionably constitute commercial advertising. Furthermore, that court upheld the Commission's order insofar as directed against advertisements for the medicinal preparation being sold which contained like case histories and were disseminated to the public generally.

In the *Scientific* case, the parties were selling pamphlets written by one of them which falsely disparaged the use of aluminum cooking utensils as poisonous and dangerous; and the order appealed from required cessation of those representations in connection with the pamphlets' sale, offering for sale or distribution. Unlike here, it interdicted sale of the pamphlets as long as they contained the matters found misstated. When vacating the order as one forbidding expressions of honest opinions and beliefs by the author, the court added that accepting the theory argued to support the order would permit sanctions against the subject matter of pamphlets if contained in an article in a newspaper, magazine or book. The court, however, did not state that proponent's argument also would be legally repugnant were the order directed solely against deceptive advertising previously used for inducing sales of the pamphlets. Respondents' contentions that the holdings in the foregoing two cases bar an appropriate order in this proceeding are rejected.

The state statutes and local ordinances considered and declared invalid in the various cases additionally cited by respondents dealt primarily with curtailments of the distribution of religious pamphlets or of rights by labor to solicit for union members or to picket. Even in labor dispute situations, however, the First Amendment affords no shield for a course of conduct entailing dissemination of falsified information. *Cafeteria Employees Union v. Angelos*, 320 U.S. 293, 295 (1943). Books, motion pictures, newspapers and publications, of course, are expressions of opinion and information safeguarded by the First Amendment and its protection extends to their dissemination and circulation as well as publication; and we concur in respondents' view that they are not stripped of that status because sold for a profit. Such selling, however, "brings into the

transaction a commercial feature." *Breard v. Alexandria*, 341 U.S. 622, 642 (1951). We think that the essence of those decisions is that regulatory statutes drawn to protect the public against serious and substantial evils do not transgress the First Amendment. Evils in that category which inhere in commercial aspects of the publishing business accordingly are valid subjects for appropriate regulation by Congress.

The argument that the Federal Trade Commission Act confers no valid power to regulate false representations in advertising when integral to theories or views expressed in particular publications being advertised and sold misconceives the objectives and essential nature of the Act. When enacting it and amendments thereto, Congress expressed and reaffirmed a national policy against unfair and deceptive acts, practices and methods in commerce. The legislative targets included practices opposed to good morals because characterized by deception, bad faith or fraud. *Federal Trade Commission v. Gratz*, 253 U.S. 421, 427 (1920). Though far-reaching in its effects, the Act dealt with a specific problem, namely, commercial evils deemed by Congress to be substantial and serious threats to the welfare of business and basic rights of the public. This included deceptive advertising. The sanctions of the Act and its amendments, therefore, are directed against abuses by those using the channels of interstate commerce of their and others' rights, including constitutional rights.

Some statutes, the postal fraud statute for example, require that conclusions of violation rest on proof of fraudulent purpose or intent. Even when such proof is necessary, a universality of scientific belief that advertising representations are wholly unsupported supports inferences of the fraudulent purpose or intent. *Reilly v. Pinbus*, 338 U.S. 269, 276 (1949).⁹ And as a corollary, the Supreme Court has held that there is a kind of fraud in clinging to benefits afforded to a seller by his misrepresentations even in situations where such misrepresentations are innocently made. *Federal Trade Commission v. Algoma Lumber Co.*, 291 U.S. 67, 81 (1934). To the extent that the order proscribes misrepresentations of therapeutic bene-

⁹ With respect to the scientific proof, the hearing examiner correctly found:

"It is concluded that there is no respectable body of medical opinion of record to support the enunciated theories contained in the book, 'Arthritis and Common Sense,' and in fact there is no credible expert or other testimony or facts of record, worthy of consideration or belief, in substantiation of the theories of the book.

"It is concluded that there is no substantial, credible or significant divergence of medical opinion, appearing on record, on any or all of the pertinent disputed theories advanced by the book, which would necessitate a 'picking and choosing' therefrom, or the disregarding thereof, in order to arrive at, or select one school of medical thought over another so as to arrive at a choice of which school or segment of medical opinion should prevail for the determination of the issues herein, this for the reason, that the preponderance of evidence in favor of the charges of the complaint is overwhelming."

fits in respondents' commercial advertising, we think it valid. It invades none of the "essential attributes" of the liberties protected by the First Amendment (Compare *Near v. Minnesota*, 283 U.S. 697, 708 (1931)). Full enjoyment of First Amendment rights does not contemplate a license to engage in false and deceptive advertising.

Respondent Alexander has made guest appearances on various radio and television discussion-type programs sponsored by others. Though conceding that such invitations were solicited by respondents, they state that those extending the invitations and responsible for the programs were inspired by entertainment or news values inherent in interviewing the author and discussing his and the book's theories and ideas. Because of those claimed noncommercial aspects, respondents contend that the order's prohibitions cannot extend to statements by the author at such forums without unlawfully impairing rights of free speech. In the advertising matter, the author's theories on arthritis and his opinions that the book's regimen affords a reliable and effective treatment for that disease have been portrayed as medical views and facts corroborated by the author's research, and as confirmed or tested by clinical benefits reported to respondents by readers following that regimen. The latter theme, that is, the benefits asserted by readers, has been stressed by the author in some of his guest appearances.

In short, instead of being represented as scientific theories and opinions advanced by a layman and unsupported by probative clinical evidence, certain of the promotional activities impute to the author's theories and opinions the status of proved scientific facts. It is this approach, among others, in respondents' advertising and various promotional activities which the order is designed to prohibit. The order is not intended to prohibit truthful and nondeceptive statements expounding the author's theories and opinions. On the other hand, it is intended to forbid respondents from representing that the author's theories and theses are more than unproved and scientifically untested theories and theses. Thus, contrary to respondents' contentions, the order does not infringe respondents' constitutional right to expound their medical theories, but constitutes a reasonable exercise of the Commission's duty to require the truth in the dissemination of those theories.

The order appears inappropriate in one respect, however. By its preamble, the order's succeeding proscriptions relate to sales activities in commerce for "a book entitled 'Arthritis and Common Sense'." This language might be construed as not extending to similar deceptive acts and practices for promoting sales of revised editions of this book offered under another name or other publications in related vein. The order is being appropriately modified.

Syllabus

The respondents' appeal is denied. The initial decision, modified as noted above, is adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon the appeal filed by the respondents from the initial decision of the hearing examiner; and

The Commission having denied the appeal for reasons stated in the accompanying opinion and having further determined that the order to cease and desist contained in the initial decision should be modified:

It is ordered, That the unnumbered paragraph in preamble to the three numbered paragraphs contained in said order be, and it hereby is, modified to read as follows:

"It is ordered, That respondent Witkower Press, Inc., a corporation, and its officers, and respondents Dan Dale Alexander and Bernard Witkower, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a book entitled 'Arthritis and Common Sense,' or any other book or books of the same or of approximately the same content, material or methods, whether sold under the same name or any other name, in commerce, as 'commerce' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that the regimen set out in said book provides:"

It is further ordered, That the initial decision, as so modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the 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 the order to cease and desist as modified.

IN THE MATTER OF

THE CLINTON WATCH COMPANY ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 7434. Complaint, Mar. 11, 1959—Decision, July 19, 1960

Order requiring Chicago distributors of watches to mail order and discount houses, wholesalers and retailers for resale, to cease representing "All Movement Parts GUARANTEED FOR LIFE Never To Break" in adver-